

APPENDIX

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APPENDIX A

IN THE COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

**NO. 01-17-00684-CR
NO. 01-17-00685-CR**

[Filed June 26, 2018]

KAYLEN DEWAYNE SIMMONS,)
Appellant)
)
V.)
)
THE STATE OF TEXAS,)
Appellee)
)

Opinion issued June 26, 2018

On Appeal from the 212th District Court
Galveston County, Texas
Trial Court Case Nos. 11-CR-3445 & 12-CR-2519

MEMORANDUM OPINION

Appellant Kaylen Dewayne Simmons pleaded guilty to two burglary offenses, committed in May 2011 (trial court case no. 11-CR-345; appellate court case no. 01-17-00684-CR) and July 2012 (trial court case no. 12-CR-2519; appellate court case no. 01-17-00685-CR). *See* TEX. PENAL CODE § 30.02. The trial court deferred adjudication of guilt and placed Simmons on

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community supervision for six years, running concurrently for both offenses.

The State subsequently filed a motion to adjudicate, alleging that Simmons had violated several conditions of community supervision. The trial court granted the motion, adjudicated Simmons guilty of the underlying offenses, and sentenced him to four years in prison.

In two issues, Simmons argues that the trial court abused its discretion in revoking community supervision, and that both judgments adjudicating guilt mistakenly refer to allegations which the court found were “not true.” The State concedes error on the second issue. We modify the judgments to eliminate the statements referring to allegations that the trial court found “not true.” As modified, we affirm.

Background

In September 2013, Kaylen Dewayne Simmons was placed on deferred-adjudication community supervision based on two burglary offenses. About three years later, Simmons was arrested in Brazoria County on an outstanding warrant. When he was searched incident to arrest, the arresting officer allegedly found marijuana in an amount less than two ounces.

The State filed motions to adjudicate in both burglary cases. Both motions alleged several violations of the conditions of community supervision. Among these, the State alleged that Simmons had possessed less than two ounces of marijuana, violating conditions prohibiting him from possessing drugs that had not been prescribed to him and requiring him not to commit an offense against the State. In addition, the State alleged that Simmons failed to pay fees, failed to

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appear before his probation officer, and failed to perform community service at a rate of at least 16 hours per month, up to a total of 240 hours.

At the hearing on the motion to adjudicate, Simmons pleaded true to the allegation that he failed to perform community service as ordered and one additional allegation regarding the payment of fees. He denied the other allegations, including those based on his alleged possession of marijuana. Simmons argued that he did not pay fees because he was indigent, and that he was in jail for three months and unable to complete his community service or report to his probation officer. He also testified that he did not complete his community service hours because he did not have an approved location for doing community service from March 2016 through 2017. He conceded that he could have done community service from 2013 through 2016. A probation officer testified that Simmons had completed only 72 hours of community service, although nearly four years had passed since he began deferred-adjudication community supervision.

The trial court found that all of the allegations were true, except those based on the allegation that he possessed marijuana. The first page of each judgment indicates that the court found the marijuana allegations “not true.” However, the second page of each judgment includes the marijuana allegations among the list of conditions that were violated.

Analysis

I. Adjudication of guilt

In his first issue, Simmons asserts that the trial court erred by revoking his community supervision

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because he established “the affirmative defense of indigency and incarceration by uncontroverted testimony.” On appeal, we review a trial court’s decision to adjudicate for an abuse of discretion. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013); *Rickels v. State*, 202 S.W.3d 759, 763-64 (Tex. Crim. App. 2006). Proof of a single violation of a condition of community supervision is sufficient to support a trial court’s decision to adjudicate guilt. *See Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979); *Canseco v. State*, 199 S.W.3d 437, 439 (Tex. App.- Houston [1st Dist.] 2006, pet. ref’d). A plea of true, standing alone, is sufficient to support an adjudication of guilt. *Moses*, 590 S.W.2d at 470.

Simmons pleaded true to the allegation that he failed to perform community service as ordered, and the court found this allegation to be true in both cases. This is sufficient to support the trial court’s determination. *See Moses*, 590 S.W.2d at 470. On appeal, Simmons argues that his failure to comply with the community service requirement should have been excused because he had been unable to perform community service from 2016 through 2017. To the extent he suggests that this is an affirmative defense to revocation, he provided no supporting argument or authority.

The trial court did not abuse its discretion by adjudicating guilt on the underlying offenses because there was sufficient proof that Simmons violated a condition of community supervision by failing to perform community service as required. Accordingly, we need not address his other arguments challenging

the other grounds for adjudication of his guilt. *See* TEX. R. APP. P. 47.1. We overrule the first issue.

II. Reformation of the judgments

In his second issue, Simmons argues that the second page of each judgment mistakenly recites that he possessed marijuana despite the trial court's oral pronouncement that it found such allegations to be "not true." The State agrees that this was a mistake.

Appellate courts have the power to correct and reform a trial court judgment to make the record speak the truth when they have the necessary data and information to do so, or make any appropriate order as the law and nature of the case may require. *See, e.g.*, *Nolan v. State*, 39 S.W.3d 697, 698 (Tex. App.—Houston [1st Dist.] 2001, no pet.). "When there is a conflict between the oral pronouncement of sentence and the sentence in the written judgment, the oral pronouncement controls." *See Thompson v. State*, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003).

The recitations on the second page of each judgment that pertain to the alleged possession of marijuana do not conform to the oral pronouncements made by the trial court or the findings as recorded on the first page of each judgment. Accordingly, we modify the trial court's judgments to delete the recitations on the second page of each judgment that relate to the alleged possession of marijuana.

Conclusion

We modify the judgments to delete the following language from the second page of each judgment challenged in this appeal:

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1. On or about the 8TH day of August, A.D., 2016, in Brazoria County, Texas, the said Defendant, Kaylen Dewayne Simmons, did then and there commit the offense of Possession of Marihuana < 2 OZ.; and
....
10. Said Defendant was in possession of a drug as evidenced by his arrest on August 8, 2016 for Possession of Marihuana < 2 OZ and

As modified, we affirm the judgments of the trial court.
See TEX. R. APP. P. 43.2(b).

Michael Massengale
Justice

Panel consists of Justices Keyes, Bland, and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).

APPENDIX B

**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

01-17-00684-CR & 01-17-00685-CR

[Filed August 21, 2018]

**ORDER ON APPELLANT'S
MOTION FOR EN BANC RECONSIDERATION**

Appellate case name:

Kaylen Dewayne Simmons v. The State of Texas

Appellate case number:

01-17-00684-CR & 01-17-00685-CR

Trial court case number:

11-CR-3445 & 12-CR-2519

Trial court:

212th District Court of Galveston County

Date motion filed:

July 2, 2018

Party filing motion:

Appellant, Kaylen Dewayne Simmons

It is ordered that the motion for reconsideration en banc is **DENIED**.

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Judge's signature: /s/ Michael Massengale

- Acting Individually
- Acting for the Court

En banc court consists of: Chief Justice Radack, and Justices Jennings, Keyes, Higley, Bland, Massengale, Brown, Lloyd, and Caughey

Date: August 21, 2018

APPENDIX C

**IN THE 212TH JUDICIAL DISTRICT COURT
OF GALVESTON COUNTY, TEXAS**

CASE No. 11CR3445 COUNT

INCIDENT No./TRN: 917-950-4744 A001

[Filed July 27, 2017]

THE STATE OF TEXAS)
)
v.)
)
KAYLEN DEWAYNE SIMMONS)
STATE ID No.: TX08941492)
)

JUDGMENT ADJUDICATING GUILT

Judge Presiding: **HON. Patricia Grady**

Date Judgment Entered: **JULY 27, 2017**

Attorney for State: **LESLIE REBESCHER**

Attorney for Defendant: **JOSEPH WILLIE**

**Date of Original Community Supervision Order:
SEPTEMBER 25, 2013**

**Statute for Offense:
30.02 Penal Code**

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Offense for which Defendant Conflicted:
BURGLARY OF HABITATION

Date of Offense:
MAY 18, 2011

Degree:
2ND DEGREE FELONY

Plea to Motion to Adjudicate:
TRUE TO ALLEGATIONS 12 & 26
NOT TRUE TO ALLEGATIONS 1, 4, 10, 13 & 16A

Findings on Motion to Adjudicate:
TRUE TO ALLEGATIONS 4, 12, 13, 16A & 26
NOT TRUE TO ALLEGATIONS 1 & 10

Terms of Punishment by Court:
FOUR (4) YEARS INSTITUTIONAL DIVISION,
TDCJ

Date Sentence Imposed: **JULY 27, 2017**

Date Sentence to Commence: **JULY 27, 2017**

Punishment and Place of Confinement:
FOUR (4) YEARS INSTITUTIONAL DIVISION,
TDCJ

THIS SENTENCE SHALL RUN
CONCURRENTLY.

SENTECE OF CONFINEMENT
SUSPENDED, DEFENDANT PLACED ON
COMMUNITY SUPERVISION FOR N/A.

<u>Fine:</u> \$	<u>Court Costs:</u> \$193.00 + 17 ⁰⁰	<u>Attorney Fees:</u> \$ Retained
<hr/>		
<u>Restitution:</u> \$	<u>Restitution Payable to:</u> <input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below)	
<hr/>		

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

The age of the victim at the time of the offense was **N/A**.

Time Credited:

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 10/06/16 to 12/15/16

From to

From to

From to

From to

From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

DAYS NOTES: TOWARD INCARCERATION

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

The Court previously deferred adjudication of guilt in this case. Subsequently, the Court heard the matter of Defendant's compliance with and obedience to the terms and conditions of the Court's Order of Deferred

Adjudication of Guilt. The State appeared by her Criminal District Attorney.

Counsel / Waiver of Counsel (select one)

- Defendant appeared in-person with Counsel.
- Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

After hearing and considering the evidence presented by both sides, the Court **FINDS THE FOLLOWING:** (1) The Court previously found the Defendant to be qualified for community supervision; (2) The Court **DEFERRED** further proceedings, made no finding of guilt, and rendered no judgment; (3) The Court issued an order placing Defendant on community supervision for a period of **Six (6) years, No (0) months;** (4) The Court assessed a fine of \$ **N/A**; (5) While on community supervision, Defendant violated the terms and conditions of community supervision as set out in the State's **ORIGINAL** Motion to Adjudicate Guilt as follows:

- 1. On or about the 8TH day of August , A.D., 2016, in Brazoria County, Texas, the said Defendant , Kaylen Dewayne Simmons ,did then and there commit the offense of Possession of Marihuana < 2 OZ. ; and**
- 4. Said Defendant did fail to report in person to his adult Community Supervision Officer as ordered for the month(s) of October, 2015; and January and February, 2016; and**

10. Said Defendant was in possession of a drug as evidenced by his arrest on August 8, 2016 for Possession of Marihuana < 2OZ; and

12. Said Defendant did fail to pay his Community Supervision fee as ordered and is currently \$ 370.00 in arrears; and

13. Said Defendant did fail to pay the Costs of Court as ordered and is currently in arrears; and

16A. Said Defendant did fail to pay Crime Stoppers Program payment as ordered, and is currently in arrears; and

26. Said Defendant failed to participate in Community-based program/community work program, to-wit: at a rate of no less than sixteen (16) hours per month until completed; and

Accordingly, the Court **GRANTS** the State's Motion to Adjudicate the Defendant's Guilt in the above cause. **FINDING** the Defendant committed the offense on the date as noted above, the Court **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the offense. The Court **FINDS** the Pre-sentence Investigation, if so ordered, was done according to the applicable provisions of *TEX CODE CRIM. PROC. art. 42.12 § 9*.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

Confinement in State Jail or Institutional Division. The Court **ORDERS** the authorized agent of

the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Galveston County and Pre-Trial Services**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

- County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of **GALVESTON COUNTY, TEXAS** on the date the sentence is to commence. Defendant shall be confined in the **GALVESTON COUNTY JAIL** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Galveston County and Pre-Trial Services**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- Punishment reduced to a Class “A” Misdemeanor under Article 12.44 (a), Texas Penal Code.**
- Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the

Office of the **GALVESTON COUNTY Galveston County and Pre-Trial Services**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

- The Court **ORDERS** Defendant's sentence **EXECUTED**.
- The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Attachment "A" is attached hereto and incorporated herein for all purposes.

Furthermore, the following special findings or orders apply:

- The Court **FINDS** Defendant is convicted of a state jail felony and is not presumptively entitled to diligent participation credit in accordance with Code of Criminal Procedure, article 42.12, Section 15(h). TEX. CODE CRIM. PROC. art. 42.0199.

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Signed and Entered on this the 27TH Day of July,
A.D., 2017.

/s/Patricia Grady
JUDGE PRESIDING
212TH JUDICIAL DISTRICT COURT
GALVESTON COUNTY, TEXAS

A copy furnished to the above named Defendant and
noted in the Docket on this the 27TH day of July, A.D.,
2017.

**JOHN D. KINARD, DISTRICT CLERK,
GALVESTON COUNTY, TEXAS**

BY: /s/, DEPUTY
CLERK 212TH JUDICIAL DISTRICT COURT
GALVESTON COUNTY, TEXAS



DEFENDANT'S RIGHT THUMBPRINT

ATTACHMENT A

CAUSE NO. 11CR3445

STATE OF TEXAS

vs.

KAYLEN DEWAYNE SIMMONS

() Pursuant the Texas Code of Criminal Procedure, the Court finds that the victim(s) of this crime is (are) owed restitution. Such restitution shall be ordered as a condition of parole.

VICTIM: _____

ADDRESS: _____

AMOUNT: \$ _____

() Pursuant to Article 42.18 8(g), of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ _____ as reimbursement for court appointed attorney fees. Such fees shall be ordered as a condition of parole.

(X) Pursuant to Article 42.18 8(g) and Article 102.0178, of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas,

77551, \$ 193.00 + 17⁰⁰ for Court Costs. Such costs shall be ordered as a condition of parole.

- () Pursuant to Article 42.18 8(g), of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ ____ as a fine. Such fine shall be ordered as a condition of parole.
- (X) Pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ 25.00 as a Crime Stoppers Program payment. Such payment shall be ordered as a condition of parole.
- () Pursuant to Article 42.18 8(g), of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ __ to reimburse the County for extradition costs. Such costs shall be ordered as a condition of parole.
- () Attend and successfully complete a program designed to educate persons on the dangers of drug abuse pursuant to V.T.C.A. Transportation Code, Section 521.374.
- () The Defendant's driver's license will be suspended for 180 days and continue for an indefinite period up and until the Defendant completes the education

**program pursuant to V.T.C.A.
Transportation Code, Section 521.372.**

- () The Defendant's driver's license will be suspended for one (1) year.

APPENDIX D

**IN THE 212TH JUDICIAL DISTRICT COURT
OF GALVESTON COUNTY, TEXAS**

CASE No. 12CR2519 COUNT

INCIDENT No./TRN: 921-629-3861 A001

[Filed July 27, 2017]

THE STATE OF TEXAS)
)
 v.)
)
 KAYLEN DEWAYNE SIMMONS)
 STATE ID No.: TX08941492)
 _____)

JUDGMENT ADJUDICATING GUILT

Judge Presiding: **HON. Patricia Grady**

Date Judgment Entered: **JULY 27, 2017**

Attorney for State: **LESLIE REBESCHER**

Attorney for Defendant: **JOSEPH WILLIE**

Date of Original Community Supervision Order:
SEPTEMBER 25, 2013

Statute for Offense:
30.02 Penal Code

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Offense for which Defendant Conflicted:
BURGLARY OF HABITATION

Date of Offense:
JULY 24, 2012

Degree:
2ND DEGREE FELONY

Plea to Motion to Adjudicate:
TRUE TO ALLEGATION 26
NOT TRUE TO ALLEGATIONS 1, 4, 10, 13 & 16A

Findings on Motion to Adjudicate:
TRUE TO ALLEGATIONS 4, 13, 16A & 26
NOT TRUE TO ALLEGATIONS 1 & 10

Terms of Punishment by Court:
FOUR (4) YEARS INSTITUTIONAL DIVISION,
TDCJ

Date Sentence Imposed: **JULY 27, 2017**

Date Sentence to Commence: **JULY 27, 2017**

Punishment and Place of Confinement:
FOUR (4) YEARS INSTITUTIONAL DIVISION,
TDCJ

THIS SENTENCE SHALL RUN
CONCURRENTLY.

SENTENCE OF CONFINEMENT
SUSPENDED, DEFENDANT PLACED ON
COMMUNITY SUPERVISION FOR N/A.

<u>Fine:</u>	<u>Court Costs:</u>	<u>Attorney Fees:</u>
\$	\$303 ⁰⁰	\$ Retained

<u>Restitution:</u>	<u>Restitution Payable to:</u>
\$	<input type="checkbox"/> VICTIM (see below)
	<input type="checkbox"/> AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

The age of the victim at the time of the offense was **N/A**.

Time Credited:

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 09/13/12 to 10/03/12

From 09/02/15 to 09/10/15

From 10/06/16 to 12/15/16

From to

From to

From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

DAYS NOTES: TOWARD INCARCERATION

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

The Court previously deferred adjudication of guilt in this case. Subsequently, the Court heard the matter of Defendant's compliance with and obedience to the terms and conditions of the Court's Order of Deferred

Adjudication of Guilt. The State appeared by her Criminal District Attorney.

Counsel / Waiver of Counsel (select one)

- Defendant appeared in person with Counsel.
- Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

After hearing and considering the evidence presented by both sides, the Court **FINDS THE FOLLOWING:** (1) The Court previously found the Defendant to be qualified for community supervision; (2) The Court **DEFERRED** further proceedings, made no finding of guilt, and rendered no judgment; (3) The Court issued an order placing Defendant on community supervision for a period of **Six (6) years, No (0) months;** (4) The Court assessed a fine of \$ **N/A**; (5) While on community supervision, Defendant violated the terms and conditions of community supervision as set out in the State's **ORIGINAL** Motion to Adjudicate Guilt as follows:

- 1. On or about the 8TH day of August , A.D., 2016, in Brazoria County, Texas, the said Defendant , Kaylen Dewayne Simmons ,did then and there commit the offense of Possession of Marihuana < 2 OZ. ; and**
- 4. Said Defendant did fail to report in person to his adult Community Supervision Officer as ordered for the month(s) of October, 2015; and January and February, 2016; and**

10. Said Defendant was in possession of a drug as evidenced by his arrest on August 8, 2016 for Possession of Marihuana < 2OZ; and

13. Said Defendant did fail to pay the Costs of Court as ordered and is currently in arrears; and

16A. Said Defendant did fail to pay Crime Stoppers Program payment as ordered, and is currently in arrears; and

26. Said Defendant failed to participate in Community-based program/community work program, to-wit: at a rate of no less than sixteen (16) hours per month until completed; and

Accordingly, the Court **GRANTS** the State's Motion to Adjudicate the Defendant's Guilt in the above cause. **FINDING** the Defendant committed the offense on the date as noted above, the Court **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the offense. The Court **FINDS** the Pre-sentence Investigation, if so ordered, was done according to the applicable provisions of *TEX CODE CRIM. PROC. art. 42.12 § 9*.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

Confinement in State Jail or Institutional Division. The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the

manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Galveston County and Pre-Trial Services**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

- County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of **GALVESTON COUNTY, TEXAS** on the date the sentence is to commence. Defendant shall be confined in the **GALVESTON COUNTY JAIL** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Galveston County and Pre-Trial Services**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- Punishment reduced to a Class “A” Misdemeanor under Article 12.44 (a), Texas Penal Code.**
- Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the **GALVESTON COUNTY Galveston County and Pre-Trial Services**. Once there, the Court **ORDERS** Defendant to pay or make

arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

- The Court **ORDERS** Defendant's sentence **EXECUTED**.
- The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Attachment "A" is attached hereto and incorporated herein for all purposes.

Furthermore, the following special findings or orders apply:

- The Court **FINDS** Defendant is convicted of a state jail felony and is not presumptively entitled to diligent participation credit in accordance with Code of Criminal Procedure, article 42.12, Section 15(h). TEX. CODE CRIM. PROC. art. 42.0199.

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Signed and Entered on this the 27TH Day of July,
A.D., 2017.

/s/Patricia Grady
JUDGE PRESIDING
212TH JUDICIAL DISTRICT COURT
GALVESTON COUNTY, TEXAS

A copy furnished to the above named Defendant and
noted in the Docket on this the 27TH day of July, A.D.,
2017.

**JOHN D. KINARD, DISTRICT CLERK,
GALVESTON COUNTY, TEXAS**

BY: /s/, DEPUTY
CLERK 212TH JUDICIAL DISTRICT COURT
GALVESTON COUNTY, TEXAS



DEFENDANT'S RIGHT THUMBPRINT

ATTACHMENT A

CAUSE NO. 12CR2519

STATE OF TEXAS

vs.

KAYLEN DEWAYNE SIMMONS

() Pursuant the Texas Code of Criminal Procedure, the Court finds that the victim(s) of this crime is (are) owed restitution. Such restitution shall be ordered as a condition of parole.

VICTIM: _____

ADDRESS: _____

AMOUNT: \$ _____

() Pursuant to Article 42.18 8(g), of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ _____ as reimbursement for court appointed attorney fees. Such fees shall be ordered as a condition of parole.

(X) Pursuant to Article 42.18 8(g) and Article 102.0178, of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas,

77551, \$303⁰⁰ for Court Costs. Such costs shall be ordered as a condition of parole.

- () Pursuant to Article 42.18 8(g), of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ ____ as a fine. Such fine shall be ordered as a condition of parole.
- (X) Pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ 25.00 as a Crime Stoppers Program payment. Such payment shall be ordered as a condition of parole.
- () Pursuant to Article 42.18 8(g), of the Texas Code of Criminal Procedure the Defendant is ordered to pay to the Department of Court Services, 600 59th Street Ste. 1500, Galveston, Texas, 77551, \$ ____ to reimburse the County for extradition costs. Such costs shall be ordered as a condition of parole.
- () Attend and successfully complete a program designed to educate persons on the dangers of drug abuse pursuant to V.T.C.A. Transportation Code, Section 521.374.
- () The Defendant's driver's license will be suspended for 180 days and continue for an indefinite period up and until the Defendant completes the education program pursuant to V.T.C.A. Transportation Code, Section 521.372.

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- () **The Defendant's driver's license will be suspended for one (1) year.**

APPENDIX E

**OFFICIAL NOTICE FROM COURT OF
CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711**

COA Nos.
01-17-00684-CR
01-17-00685-CR

[Filed October 10, 2018]

SIMMONS, KAYLEN DEWAYNE)
)

Tr. Ct. No. 11-CR-3445
PD-0926-18

Tr. Ct. No. 12-CR-2519
PD-0927-18

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

1ST COURT OF APPEALS CLERK
CHRISTOPHER A. PRINE
301 FANNIN
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* DELIVERED VIA E-MAIL *

APPENDIX F

U.S. CONST. amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEX. CONST. art. I, § 3

Sec. 3. EQUAL RIGHTS. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

TEX. CONST. art. I, § 19

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

TEX. CONST. art. V, § 6

Sec. 6. COURTS OF APPEALS; JUSTICES; JURISDICTION. (a) The state shall be divided into courts of appeals districts, with each district having a Chief Justice, two or more other Justices, and such other officials as may be provided by law. The Justices shall have the qualifications prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

TEX. PEN. CODE § 2.04

§ 2.04. Affirmative Defense

- (a) An affirmative defense in this code is so labeled by the phrase: “It is an affirmative defense to prosecution . . .”
- (b) The prosecuting attorney is not required to negate the existence of an affirmative defense in the accusation charging commission of the offense.

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- (c) The issue of the existence of an affirmative defense is not submitted to the jury unless evidence is admitted supporting the defense.
- (d) If the issue of the existence of an affirmative defense is submitted to the jury, the court shall charge that the defendant must prove the affirmative defense by a preponderance of evidence.