

APPENDIX TABLE OF CONTENTS

	Page
Order, United States Court of Appeals for the Fifth Circuit, dated December 4, 2023	App. 1
Memorandum Opinion and Order, United States District Court for the Southern District of Texas, Galveston Division, dated June 26, 2023	App. 3
Final Judgment, United States District Court for the Southern District of Texas, Galveston Division, dated June 26, 2023.....	App. 13
Order Denying Habeas Corpus Relief, Texas Court of Criminal Appeals, dated September 7, 2022	App. 14
Findings of Fact and Conclusions of Law, 253rd District Court of Texas, dated July 12, 2022 ...	App. 15
Order, 253rd District Court of Texas, dated July 12, 2022	App. 18
Order Denying Suggestion for Reconsideration, Texas Court of Criminal Appeals, dated September 26, 2022.....	App. 19
Order Refusing Discretionary Review, Texas Court of Criminal Appeals, dated December 5, 2018	App. 20
Memorandum Opinion, Court of Appeals for the First District of Texas, dated August 23, 2018 ..	App. 21
Judgment Adjudicating Guilt, 253rd District Court of Texas, dated August 22, 2016.....	App. 26
Order of Deferred Adjudication, 253rd District Court of Texas, dated February 23, 2016	App. 32

App. 1

**United States Court of Appeals
for the Fifth Circuit**

No. 23-40437

SAMMY JAY RIDDLE,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal
Justice, Correctional Institutions Division,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Southern District of Texas
USDC No. 3:22-CV-330

(Filed Dec. 4, 2023)

ORDER:

Sammy Jay Riddle, Texas prisoner # 02086654, filed a 28 U.S.C. § 2254 application that asserted claims regarding an order in which the state trial court deferred a determination of guilt and placed him on 10 years of deferred adjudication community supervision for aggravated sexual assault of a child. He moves for a certificate of appealability (COA) to appeal the district court's dismissal of his § 2254 application as time

App. 2

barred. Riddle contests the district court's determination that the limitations period under 28 U.S.C. § 2244(d)(1) began to run on the date that the order of deferred adjudication became final. He contends that the limitations period began to run when the judgment adjudicating his guilt became final.

To obtain a COA, a prisoner must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Miller-El P. Cockrell*, 537 U.S. 322, 336 (2003). When, as in this case, the district court denies relief based on procedural grounds, a COA should issue if the prisoner demonstrates, at least, "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Riddle has not made the required showing. Accordingly, his motion for a COA is DENIED.

/s/ Dana M. Douglas
DANA M. DOUGLAS
United States Circuit Judge

App. 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

No. 3:22-cv-330

SAMMY JAY RIDDLE, TDCJ #02086654, PETITIONER,

v.

BOBBY LUMPKIN, RESPONDENT.

MEMORANDUM OPINION AND ORDER

(Filed Jun. 26, 2023)

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*.

Petitioner Sammy Jay Riddle is a state inmate incarcerated in the Texas Department of Criminal Justice-Correctional Institutions Division (TDCJ). He has filed a petition for a federal writ of habeas corpus, raising claims arising from his 2016 guilty plea to a charge of aggravated sexual assault of a child. Dkt. 1. Respondent Bobby Lumpkin answered the petition with a motion to dismiss and provided a copy of the state-court records. Dkts. 3, 4. Riddle did not file a reply, and the time to do so has now expired. Having considered the petition, the motion, all matters of record, and the applicable legal authorities, the court determines that the motion to dismiss should be granted and the petition dismissed for the reasons that follow.

I. BACKGROUND

On February 23, 2016, the state trial court accepted Riddle's guilty plea to one count of aggravated sexual assault of a child in Chambers County Case Number 17477. Dkt. 4-4 at 95-96. In accordance with Riddle's negotiated plea agreement, the court entered a deferred-adjudication order and placed Riddle on ten years of community supervision. *Id.* Riddle did not appeal the deferred-adjudication order.

In May 2016, the State filed a motion to revoke Riddle's community supervision. *Id.* at 127-31. The state trial court held a lengthy evidentiary hearing on the motion and found that Riddle had violated his community supervision on multiple dates and in multiple ways. Dkts. 4-14, 4-15, 4-16. On August 22, 2016, the court revoked Riddle's community supervision, adjudicated him guilty, and sentenced him to 54 years' incarceration. Dkt. 4-4 at 230-31.

Riddle filed a direct appeal from that judgment, but he did not raise any issues relating to the revocation proceedings or the resulting sentence. Dkt. 4-38. Instead, he raised three claims of ineffective assistance of counsel relating to voluntariness of his original plea. *Id.* The First Court of Appeals affirmed based on its conclusion that Riddle's claims were not properly raised in that appeal because "[a] defendant who is placed on deferred-adjudication community supervision may raise issues of error in the original plea proceeding only through a timely appeal after community supervision is first imposed." *Riddle v. State*, No. 01-16-00657-CR,

App. 5

2018 WL 4014036, at *2 (Tex. App.—Houston [1st Dist.] Aug. 23, 2018, pet. ref'd) (citing *Manuel v. State*, 994 S.W.2d 658, 661-62 (Tex. Crim. App. 1999)). The Texas Court of Criminal Appeals refused Riddle's petition for discretionary review on December 5, 2018. Dkt. 4-2. Riddle did not seek further review in the United States Supreme Court.

On March 4, 2020, Riddle filed an application for a state writ of habeas corpus through counsel, raising the following claims:

1. Trial counsel provided ineffective assistance during pretrial plea negotiations by failing to convey a plea offer of misdemeanor time to Riddle.
2. Riddle's guilty plea was involuntary as a result of trial counsel's failure to properly advise him concerning potential impeachment evidence.
3. Riddle's guilty plea was involuntary because the trial court failed to properly advise him of his constitutional rights relating to trial before accepting his plea.
4. Trial counsel provided ineffective assistance by proceeding under a conflict of interest, which prevented Riddle from moving to withdraw his guilty plea.

Dkt 4-35 at 8-26. The state habeas trial court entered findings of fact and conclusions of law and recommended that relief be denied. Dkt. 4-34 at 27-30. On September 7, 2022, the Court of Criminal Appeals

denied the application without written order on the trial court's findings without a hearing and on the court's independent review of the record. Dkt. 4-23; *Ex parte Riddle*, Writ No. 91,158-01 (Tex. Crim. App. Sept. 7, 2022).

On September 8, 2022, Riddle, again through counsel, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 to start these federal proceedings. Dkt. 1. In that petition, he raises the same four claims raised in his state habeas application. *Id.* at 4-5. He asks this court to vacate his conviction and sentence and remand for further proceedings. *Id.* at 20.

II. DISCUSSION

Riddle's petition is governed by the provisions of the Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (AEDPA), which contains a one-year limitations period. *See* 28 U.S.C. § 2244(d). That one-year period runs from the "latest of" four accrual dates:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

App. 7

- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). This limitations period is an affirmative defense, which the respondent raised in his motion to dismiss. Dkt. 3 at 4-6.

Riddle's AEDPA limitations period began to run on "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). A deferred-adjudication order is a "judgment" for purposes of AEDPA. *See Caldwell v. Dretke*, 429 F.3d 521, 528 (5th Cir. 2005). Therefore, "the statute of limitations for a federal habeas application raising claims that address his deferred adjudication begins to run when his deferred-adjudication order becomes final, whether or not he is later convicted and sentenced." *Tharpe v. Thaler*, 628 F.3d 719, 723 (5th Cir. 2010).

All of the claims in Riddle's federal habeas petition attack the validity of the original guilty plea that resulted in the deferred-adjudication order. That order became final for purposes of federal habeas review on March 24, 2016, the date on which Riddle's time to file an appeal from that order expired. *See Roberts v.*

Cockrell, 319 F.3d 690, 694 (5th Cir. 2003) (stating that when a state prisoner does not seek direct review, the conviction becomes final for purposes of § 2244 at “the expiration of the time for seeking such review”); *see also* TEX. R. APP. P. 26.2 (providing that an appeal is perfected when the notice of appeal is filed within 30 days after the day sentence is imposed). Under § 2244(d), the deadline for Riddle to file a timely federal habeas petition raising issues challenging the deferred-adjudication order was one year later, on March 24, 2017. But Riddle did not file his federal habeas petition until September 8, 2022—well outside the one-year limitations period.

Riddle proceeds as if the revocation of his community supervision and entry of the judgment adjudicating guilt restarted his time to seek federal habeas review of issues arising from the earlier deferred-adjudication order; however, the Fifth Circuit has specifically rejected this argument. That court has determined that a deferred-adjudication order and a later conviction and sentence upon revocation “involve two different judgments for AEDPA purposes.” *Tharpe*, 628 F.3d at 724 (cleaned up). Because there are two different judgments, “we are dealing with two separate and distinct limitations periods under the AEDPA.” *Id.* Therefore, “the limitations period applicable to claims arising from entry of the deferred-adjudication order begins to run upon that order becoming final, regardless of any later judgment of conviction and sentence.” *Id.*

App. 9

As explained above, all of Riddle’s claims in his federal petition arise from the entry of the deferred-adjudication order. Under *Tharpe*, the limitations period for claims arising from that order began to run when that order became final on March 24, 2016. The subsequent revocation of Riddle’s community supervision and entry of a judgment of conviction and sentence did not revive the limitations period as to claims arising from the deferred-adjudication order. Riddle’s claims arising from that order are therefore time-barred unless a later accrual date applies.

Riddle filed an application for a state writ of habeas corpus in 2020, and under 28 U.S.C. § 2244(d)(2), the time during which a properly filed application for state habeas relief is pending is not counted toward the limitations period. See *Artuz v. Bennett*, 531 U.S. 4, 5 (2000). However, a state habeas application filed after the federal limitations period has expired does not extend the limitations period. See *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000) (a state habeas application does not extend the § 2244(d)(1) deadline when it is filed after the deadline has expired). In short, belatedly filing a state habeas application does not extend or restart an already-expired federal habeas limitations period.

Riddle’s state habeas application was filed March 4, 2020—almost three years after the federal habeas limitations period for claims arising from the deferred-adjudication order had expired. His state habeas application neither revived nor extended the already-expired federal limitations period as to that order.

Riddle's petition is time-barred unless another exception applies.

But Riddle fails to allege facts showing that any other statutory exception to the limitations period applies. He has not alleged that any unconstitutional state action prevented him from filing his federal habeas petition before the expiration of the limitations period. *See* 28 U.S.C. § 2244(d)(1)(B). He has not alleged facts showing that his claims are based on a newly recognized constitutional right. *See* 28 U.S.C. § 2244(d)(1)(C). And he has not alleged facts showing that the factual basis for his claims could not have been timely discovered if he had acted with due diligence. *See* 28 U.S.C. § 2244(d)(1)(D). Thus, the record does not establish a statutory basis to allow Riddle to avoid the effect of the limitations period. Moreover, Riddle does not argue that his claims are subject to equitable tolling.

Having failed to show that any statutory or equitable exception to the AEDPA limitations period applies to his case, Riddle is not entitled to federal habeas relief. His petition will be dismissed as barred by limitations.

III. CERTIFICATE OF APPEALABILITY

Habeas corpus actions under § 2254 require a certificate of appealability to proceed on appeal. 28 U.S.C. § 2253(c)(1); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a

certificate of appealability when entering a final order adverse to the petitioner.

A certificate of appealability will not issue unless the petitioner makes “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), which requires the petitioner to demonstrate “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Under the controlling standard, a petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 336 (cleaned up). When the denial of relief is based on procedural grounds, the petitioner must show not only that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right,” but also that they “would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484. A district court may deny a certificate of appealability, *sua sponte*, without requiring further briefing or argument. *Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (per curiam).

After careful review of the record and the applicable law, the court concludes that reasonable jurists would not find its assessment of Riddle’s claims debatable or wrong. Because Riddle does not allege facts showing that his claims could be resolved in a different

App. 12

manner, a certificate of appealability will not issue in this case.

IV. CONCLUSION AND ORDER

For the reasons stated above, the court orders as follows:

1. The respondent's motion to dismiss, Dkt. 3, is granted.
2. The petition for writ of habeas corpus filed by Sammy Jay Riddle, Dkt. 1, is denied and this action is dismissed with prejudice.
3. Any pending motions are denied as moot.
4. A certificate of appealability is denied.

The clerk will provide a copy of this order to the parties of record.

SIGNED on Galveston Island this 26 day of June, 2023.

/s/ Jeffrey Brown
JEFFREY VINCENT BROWN
UNITED STATES
DISTRICT JUDGE

App. 13

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

No. 3:22-cv-330

SAMMY JAY RIDDLE, TDCJ #02086654, PETITIONER,

v.

BOBBY LUMPKIN, RESPONDENT.

FINAL JUDGMENT

(Filed Jun. 26, 2023)

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT
JUDGE.*

For the reasons stated in the memorandum opinion and order entered this day, this action is dismissed with prejudice.

This is a final judgment.

SIGNED on Galveston Island this 26 day of June,
2023.

/s/ Jeffrey Brown
JEFFREY VINCENT BROWN
UNITED STATES
DISTRICT JUDGE

App. 14

FILE COPY

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

[SEAL]

9/7/2022

Tr. Ct. No. 17477-A

RIDDLE, SAMMY JAY

WR-91,158-01

This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing and on the Court's independent review of the record.

Deana Williamson, Clerk

JOSH BARRETT SCHAFFER
JOSH SCHAFFER, PLLC
1021 MAIN ST., SUITE 1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

App. 15

Cause No. 17477-A

EX PARTE	§ IN THE DISTRICT
	§ COURT OF
	§ CHAMBERS COUNTY,
	§ TEXAS
SAMMY JAY RIDDLE	§ 253rd JUDICIAL
	§ DISTRICT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Having considered the Petition for Writ of Habeas Corpus, the Affidavit filed by counsel for the State, and the Courts file in the above captioned cause the Court makes the following Findings of Fact and Conclusions of Law:

1. Applicant was indicted in Cause No. 17477 for the offense of Aggravated Sexual Assault of a Child.
2. Applicant was represented at trial by Robert Turner.
3. On February 26, 2016, after entering a plea of guilty, Applicant was placed on deferred adjudication for a period of 10 years.
4. On July 21, 2016, the Court found the allegations in the State's Motion to Revoke Defendant's Unadjudicated Probation to be true.
5. On August 22, 2016 the Court adjudicated Appellant guilty and sentenced Appellant to

App. 16

54 years in the Institutional Division of the Texas Department of Criminal Justice.

6. Counsel for the State Kathy Esquivel filed an affidavit addressing the matters raised by Appellant.
 7. Said Affidavit by counsel and supporting matters are attached and are incorporated herein for all purposes.
 8. Applicant received effective assistance of counsel.
 9. Applicant fails to raise any new evidence.
 10. Applicant fails to state sufficient specific facts to support his grounds for relief.
-

App. 17

Cause No. 17477-A

EX PARTE	§ IN THE DISTRICT
	§ COURT OF
	§ CHAMBERS COUNTY,
	§ TEXAS
SAMMY JAY RIDDLE	§ 253rd JUDICIAL
	§ DISTRICT

CONCLUSIONS OF LAW

1. There are no material, previously unresolved issues of fact which are material to the legality of Applicant's conviction and sentence and there being ample evidence in the record for the Court to rule on the relief sought.

RECOMMENDATION

It is the recommendation of this Court that the relief requested by Applicant be DENIED.

SIGNED ON THIS THE 12th DAY OF July, 2022.

/s/ Chap B. Cain, III

Judge Presiding
253rd District Court
Chambers County, Texas

App. 18

Cause No. 17477-A

EX PARTE	§ IN THE DISTRICT
	§ COURT OF
	§ CHAMBERS COUNTY,
	§ TEXAS
SAMMY JAY RIDDLE	§ 253rd JUDICIAL
	§ DISTRICT

ORDER

The Court having considered the record in the above styled cause and the answers and affidavits filed specifically adopts the State's Finding of Fact and Conclusions of Law.

IT IS SO ORDERED.

SIGNED ON THIS THE 12th DAY OF July, 2022.

/s/ Chap B. Cain, III

Judge Presiding
253rd District Court
Chambers County, Texas

App. 19

FILE COPY

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

[SEAL]

9/26/2022

Tr. Ct. No. 17477-A

RIDDLE, SAMMY JAY

WR-91,158-01

This is to advise that the applicant's suggestion for re-consideration has been denied without written order.

Deana Williamson, Clerk

JOSH BARRETT SCHAFFER
JOSH SCHAFFER, PLLC
1021 MAIN ST., SUITE 1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

App. 20

FILE COPY

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

[SEAL]

12/5/2018

COA No. 01-16-00657-CR

Tr. Ct. No. 17477

RIDDLE, SAMMY JAY

PD-1007-18

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

Deana Williamson, Clerk

JOSH BARRETT SCHAFFER
JOSH SCHAFFER, PLLC
1021 MAIN ST., SUITE 1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

App. 21

Opinion issued August 23, 2018

[SEAL]

**In The
Court of Appeals
For The
First District of Texas**

NO. 01-16-00657-CR

**SAMMY JAY RIDDLE, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 253rd District Court
Chambers County, Texas
Trial Court Case No. 17477**

MEMORANDUM OPINION

Appellant Sammy Jay Riddle pleaded guilty to the offense of aggravated sexual assault of a child and was placed on deferred-adjudication community supervision. After Riddle violated the conditions of his community supervision, the trial court adjudicated his guilt and sentenced him to 54 years in prison.

App. 22

On direct appeal, Riddle claims that his guilty plea resulted from ineffective assistance of counsel.

Under established precedents, Riddle is not permitted to raise errors on direct appeal from the adjudication of his guilt relating to the proceedings that preceded his guilty plea and placement on deferred-adjudication community supervision. Accordingly, we affirm the judgment of the trial court.

Background

Appellant Sammy Jay Riddle was indicted for the offenses of aggravated sexual assault of a child. *See* TEX. PENAL CODE § 22.021. Almost two years later, he was indicted for the offense of continuous sexual abuse of a young child. *See id.* § 21.02. The second case was set for trial, but after a jury was selected, Riddle and the State reached a plea agreement. As part of the agreement, Riddle pleaded guilty to the charge of aggravated sexual assault of a child. In exchange, the State recommended a deferred adjudication on that charge and a dismissal of the remaining charge of continuous sexual abuse of a young child. The court accepted Riddle's guilty plea, and it found that the evidence supported a guilty finding. It deferred adjudication and placed Riddle on community supervision for ten years.

The State subsequently filed a motion to revoke community supervision. After a hearing, the court determined that Riddle had committed twenty violations of the conditions of his community supervision. Riddle

then was adjudicated guilty and sentenced to 54 years in prison for the offense of aggravated sexual assault of a child.

After appointment of appellate counsel, Riddle filed a motion for a new trial, alleging ineffective assistance of counsel relating to the circumstances of his plea bargain. He claimed that his guilty plea was neither knowing nor voluntary because his trial counsel never informed him of a misdemeanor plea-bargain offer made by the State. Riddle contended that had he been aware of the offer, he would have accepted it, and thus his guilty plea was the result of ineffective assistance of trial counsel.

Riddle attached to his motion for new trial the affidavit of his trial counsel, Robert G. Turner. Turner stated that, in September 2015, before Riddle was indicted for the offenses of continuous sexual abuse of a child, the State called him and suggested a resolution of the case that would involve a misdemeanor plea. Additional details were not discussed or finalized during the call. Turner further stated that, at the time, he was waiting to receive information from a private investigator who was working on the case. Riddle was indicted for the offense of continuous sexual assault of a child approximately one month after the State's call to Turner. The affidavit stated that Turner had first informed Riddle of the potential misdemeanor-plea agreement after the second indictment, at which point the offer had been withdrawn.

The trial court did not grant a requested hearing on the motion for new trial, which was denied by operation of law. Riddle appeals.

Analysis

Riddle contends that he received ineffective assistance from his trial counsel in three respects: failure to timely advise him of the misdemeanor-plea offer; failure to withdraw after a conflict of interest developed because of counsel's failure to communicate the misdemeanor-plea offer; and failure to raise the issue of the misdemeanor-plea offer in subsequent proceedings. Riddle claims that his guilty plea was neither knowing nor voluntary and that his plea and placement on deferred-adjudication community supervision resulted from ineffective assistance of counsel. He also argues that the trial court erred by denying him a hearing on his motion for new trial and by not granting him a new trial.

A defendant who is placed on deferred-adjudication community supervision may raise issues of error in the original plea proceeding only through a timely appeal after community supervision is first imposed. *Manuel v. State*, 994 S.W.2d 658, 661–62 (Tex. Crim. App. 1999). This includes issues relating to both the voluntariness of the guilty plea and claims of ineffective assistance of counsel. *Gavin v. State*, 404 S.W.3d 597, 605 (Tex. App.—Houston [1st Dist.] 2010, no pet.); *Guillory v. State*, 99 S.W.3d 735, 738 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd).

Riddle could have appealed from the order placing him on deferred adjudication community supervision when the order was initially imposed. *See* TEX. CODE CRIM. PROC. art. 44.01(j); *Manuel*, 994 S.W.2d at 661. The State filed its motion to revoke community supervision three months after Riddle's plea, and it was not until after he was adjudicated guilty and sentenced to prison that he raised the claim that his guilty plea resulted from ineffective assistance of counsel. But under the law applicable to this appeal, a defendant who pleads guilty to a felony, is placed on deferred adjudication community supervision, and is later adjudicated guilty may not complain on appeal of error in the original plea proceeding. *See Manuel*, 994 S.W.2d at 661-62; *Gavin*, 404 S.W.3d at 605; *Guillory*, 99 S.W.3d at 738. The application of this rule is dispositive of Riddle's claims on appeal, all of which relate to allegations of ineffective assistance resulting in the guilty plea.

Conclusion

We affirm the judgment of the trial court.

Michael Massengale
Justice

Panel consists of Justices Jennings, Massengale, and Caughey.

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

[SEAL] **CASE No. 17477** COUNT
INCIDENT NO./TRN: 9064102341 A001

THE STATE OF TEXAS	§ IN THE 253RD DISTRICT
v.	§ COURT
SAMMY JAY RIDDLE	§ CHAMBERS COUNTY,
STATE ID No.: TX07499005	§ TEXAS

JUDGMENT ADJUDICATING GUILT

Judge	HON. CHAP B.	Date	8/22/2016
Presiding:	CAIN, III	Judgment	
		Entered:	
Attorney	KATHY	Attorney	ROBERT G.
for State:	ESQUIVEL	for	TURNER
		Defendant:	
<u>Date of Original Commu-</u>		<u>Statute for Offense:</u>	
<u>nity Supervision Order:</u>		22.021	
2/23/2016			
<u>Offense for which Defendant Convicted:</u>			
AGGRAVATED SEXUAL ASSAULT OF CHILD			
<u>Date of Offense:</u>			
6/13/2005			
<u>Degree:</u>	<u>Plea to Motion</u>	<u>Findings on</u>	
1ST DEGREE	<u>to Adjudicate:</u>	<u>Deadly Weapon:</u>	
FELONY	NOT TRUE	N/A	
<u>Terms of Plea Bargain:</u>			
<u>Date Sentence</u>		<u>Date Sentence</u>	
<u>Imposed:</u>	8/22/2016	<u>to Commence:</u>	8/22/2016
<u>Punishment and Place of Confinement:</u>	54 YEARS		
INSTITUTIONAL DIVISION, TDCJ			
THIS SENTENCE SHALL RUN CONCURRENTLY.			

App. 27

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

<u>Fine:</u>	<u>Court</u>	<u>Restitution:</u>	<u>Restitution Payable to:</u>
\$ 0.00	<u>Costs:</u>	\$ 0.00	<input type="checkbox"/> VICTIM (see below)
	\$ 0.00		<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.**

	<u>If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order:</u>		
	From 12/20/2013 to 12/20/2013		
Time	From 5/10/2016	to 8/22/2016	From to
Credited:	From to	From to	From to
	<u>If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.</u>		
	N/A DAYS	NOTES: N/A	

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 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 **10 YEARS**; (4) The Court assessed a fine of \$ 0.00; (5) While on community supervision, Defendant violated the terms and conditions of community supervision as set out in the State's **AMENDED** Motion to Adjudicate Guilt as follows: 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 26 AND 27.

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 Presentence 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 CHAMBERS COUNTY DISTRICT CLERK'S OFFICE. 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 CHAMBERS County, Texas on the date the sentence is to commence. Defendant shall be confined in the CHAMBERS County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the CHAMBERS COUNTY DISTRICT CLERK'S OFFICE. 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.

☐ **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 **CHAMBERS COUNTY DISTRICT CLERK'S OFFICE**. 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.

**Furthermore, the following
special findings or orders apply:**

Signed and entered on August 22, 2016

/s/ Chap B. Cain, III
JUDGE PRESIDING

Clerk:

App. 31

FILED
THIS THE 23 DAY OF Aug
A.D. 2016 AT 9:26 O'CLOCK A.M
PATTI L. HENRY
DISTRICT CLERK,
CHAMBERS COUNTY, TEXAS
BY /s/ Illegible DEPUTY



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[SEAL] **CASE No. 17477** COUNT
INCIDENT No./TRN: 9064102341 A001

THE STATE OF TEXAS	§ IN THE 253RD DISTRICT
v.	§ COURT
SAMMY JAY RIDDLE	§ CHAMBERS COUNTY,
STATE ID No.: TX07499005	§ TEXAS

ORDER OF DEFERRED ADJUDICATION

Judge Presiding:	HON. CHAP B. CAIN, III	Date Order Entered:	2/23/2016
Attorney for State:	KATHY ESQUIVEL	Attorney for Defendant:	ROBERT G. TURNER

Offense:
AGGRAVATED SEXUAL ASSAULT OF CHILD

<u>Charging Instrument:</u>	<u>Statute for Offense:</u>
INDICTMENT	22.021

Date of Offense:

6/13/2005

<u>Degree of Offense:</u> 1ST DEGREE FELONY	<u>Plea to Offense:</u> GUILTY	<u>Findings on Deadly Weapon:</u> N/A
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Terms of Plea Bargain:

10 YEARS DEFERRED ADJUDICATION

App. 33

Plea to 1st Enhancement Paragraph:	N/A	Plea to 2nd Enhancement/Habitual Paragraph:	N/A
Findings on 1st Enhancement Paragraph:	N/A	Findings on 2nd Enhancement/Habitual Paragraph:	N/A

**ADJUDICATION OF GUILT DEFERRED;
DEFENDANT PLACED ON COMMUNITY SUPERVISION.**

PERIOD OF COMMUNITY SUPERVISION: 10 YEARS

<u>Fine:</u>	<u>Court</u>	<u>Restitution:</u>	<u>Restitution Payable to:</u>
\$ 0.00	Costs:	\$ N/A	<input type="checkbox"/> VICTIM (see below)
	\$ 349.00		<input type="checkbox"/> AGENCY/AGENT (see below)

Sex Offender Registration Requirements 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 N/A DAYS
Credited: NOTES: N/A

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

This cause was called for trial in Chambers County, Texas. The State appeared by her District Attorney as named above.

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.

Both parties announced ready for trial. Defendants waived the right of trial by jury and entered a plea as indicated above. The Court admonished the Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court **FINDS** such evidence substantiates Defendant's guilt. The Court **FINDS** that, in this cause, it is in the best interest of society and Defendant to defer proceedings without entering an adjudication of guilt and to place Defendant on community supervision.

The court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** that Defendant is given credit noted above for the time spent incarcerated. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

The Court **ORDERS** that no judgment shall be entered at this time. The Court further **ORDERS** that Defendant be placed on community supervision for the adjudged period so long as Defendant abides by and

App. 35

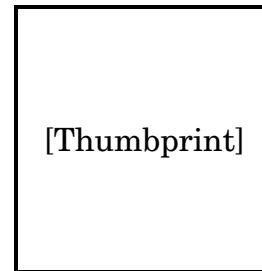
does not violate the terms and conditions of community supervision. See TEX. CODE CRIM. PROC. art. 42.12 § 5(a).

**Furthermore, the following
special findings or orders apply:**

Signed and entered on February 23rd, 2016

/s/ Chap B. Cain, III
JUDGE PRESIDING

Clerk:



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