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⚖ Vol. 16, No. 13, April 7, 2008

Case Name: [Arnold Ray Beedy v. The State of Texas](#)

- OFFENSE: Indecency w/ a Child
- COUNTY: Brazoria
- COURT OF APPEALS: Houston [1st] 2006
- C/A CITATION: 194 S.W.3d 595
- C/A RESULT: Cumulation Order Deleted
- CCA. CASE No. PD-1224-06 DATE OF OPINION: April 2, 2008
- DISPOSITION: Court of Appeals Affirmed
- OPINION: Judge Keasler VOTE: 6-3-0
- TRIAL COURT: 23rd D/C; Hon. Robert May
- LAWYERS: [Joseph Varela](#) (Defense);

⚖ 427 **Judgments & Sentences / Stacked Sentences (Probation or Deferred After Prison Term)**: In a single proceeding, Appellant entered two open guilty pleas to two counts of indecency with a child by exposure. He also pled true to an enhancement paragraph alleging a prior conviction for sexual assault of a child. The trial judge sentenced Appellant to 12 years' imprisonment on Count One, deferred adjudication of guilt on Count Two, and ordered Appellant to serve 10 years of community supervision. As to Count Two, the trial judge entered a cumulation order stacking Appellant's deferred adjudication community supervision term onto his prison sentence for Count One. Appellant appealed, arguing that the trial judge abused his discretion by stacking his 10 year deferred adjudication community supervision term onto his 12 year prison sentence. The Court of Appeals agreed and held that the cumulation order was improper because deferred adjudication community supervision is not a "conviction" for purposes of the statutes authorizing cumulation, Penal Code § 3.03(c) and Article 42.08(a), C.Cr.P. The State argued that rather than remove the cumulation order, the Court of Appeals should send the case back to the trial court for re-sentencing.

Holding: We hold that the Court of Appeals did not err in rejecting the State's proposal to remand for re-sentencing because an unlawful cumulation order does not constitute "reversible error" under Article 44.29, C.Cr.P. The State appears to acknowledge the obvious conflict between the remedy it seeks and the procedural posture of the case. In its petition and accompanying briefs, the State recognizes that if this case were remanded, Appellant would be returned to a point in which the trial judge could adjudicate guilt on Count Two. Nevertheless, the State adheres to the view that re-sentencing is the only proper remedy and advances no other remedy. The actual remedy pursued by the State, as defined by the procedural posture of this case, surpasses the State's request and may have consequences that the State never anticipated: because Appellant's guilt has not yet been determined, he would be entitled to an entirely new trial and therefore would be in a position to change his plea and exercise his right to a jury trial.

Concurring / Dissenting Opinions: Presiding Judge Keller, Judge Womack and Judge Johnson concurred without note.