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⚖ Vol. 17, No. 28, July 20, 2009

Case Name: [Ambrosia Valery Deleon v. The State of Texas](#)

- OFFENSE: Aggravated Sexual Assault / Sexual Assault / Indecency with a Child
- COUNTY: Lynn
- C/A CASE No. 07-07-0325-CR
- DATE OF OPINION: July 9, 2009
- DISPOSITION: Conviction Affirmed as Reformed OPINION: Campbell, J.
- TRIAL COURT: 106th D/C; Hon. Carter Schildknecht
- LAWYERS: [Artie Aguilar](#) (Defense); [Sammy McCrary](#) (State)

⚖ 427 **Judgments & Sentence / Cumulated Sentences**: A twenty-count indictment charged Appellant with indecency with a child, sexual assault, and aggravated sexual assault. Appellant's daughter was the victim of all of the offenses. She was born July 15, 1983, and the last offense charged occurred on or about July 1, 2000. The jury convicted Appellant of the sixteen counts tried and assessed a sentence of confinement in prison for each count. The trial court ordered that Appellant's sentences in counts two through seven and nine through twelve run concurrently. It imposed consecutive sentencing for counts fourteen through nineteen. It cumulated the sentence of court fourteen, so that service would not begin until Appellant discharged the sentences imposed in counts two through seven and nine through twelve. Under the trial court's judgment, therefore, the sentences for the six latter counts not only would run consecutively to each other, but would also run consecutively to the concurrent sentences for the ten earlier counts. The practical consequence was that the consecutive sentences would not begin until Appellant had completed the 99-year sentence imposed for count nine. In 1997, the Texas Legislature amended Penal Code § 3.03 to add some sexual offenses committed against a victim younger than seventeen to the list of offenses subject to consecutive sentencing when there were multiple convictions in a single trial. Those offenses included indecency with a child, sexual assault, and aggravated sexual assault. The trial court ordered Appellant's sentences for conduct predating September 1, 1997 to run concurrently and his sentences for conduct occurring after September 1, 1997 to run consecutively. But none of Appellant's sentences for the six offenses committed after September 1, 1997 would begin to run until he had completed his sentences for all ten offenses committed before that date. Appellant claimed that his sentences for the six post-September 1, 1997 offenses could run consecutively with each other, but that they must begin immediately following trial.

Holding: The legislature made a 1995 amendment to Section 3.03 of the Penal Code, permitting consecutive sentences for multiple intoxication manslaughter convictions, applicable only if each offense joined for trial was committed on or after the amendment's effective date, September 1, 1995. The effective date language of the 1997 amendment does not contain such a provision. The 1997 statute simply stated that its change in law applies only to "an offense committed on or after" its effective date, September 1, 1997, and that offenses committed before that date are subject to the law in effect when the offense was committed. The trial court's cumulation order complies with the plain meaning of the statute. Nothing in the statutory language prohibits the manner in which the trial court elected to cumulate Appellant's sentences for his post-September 1, 1997 offenses.