



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-17-00245-CR

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**JEFFERY SCOTT ESTRADA, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 154th District Court  
Lamb County, Texas  
Trial Court No. DCR-5428-16; Honorable Felix Klein, Presiding

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June 30, 2020

**ORDER FOR SUPPLEMENTAL BRIEFING**

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

Following a plea of not guilty, Appellant, Jeffery Scott Estrada, was convicted by a jury of engaging in organized criminal activity, a first degree felony,<sup>1</sup> and sentenced to seventeen years confinement. On direct appeal, this court reversed Appellant's conviction because it was based, in part, on the submission of an invalid predicate offense of possession of a

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<sup>1</sup> TEX. PENAL CODE ANN. § 71.02(a)(5) (West Supp. 2019).

controlled substance with intent to deliver. Based on that finding and our analysis of whether the judgment could be reformed, in the interest of justice, we remanded the case to the trial court for further proceedings consistent with our opinion. See *Estrada v. State*, 570 S.W.3d 402 (Tex. App.—Amarillo 2019).

The State then filed a petition for discretionary review contending this court erred in: (1) determining that possession with intent to deliver was an invalid predicate offense and (2) remanding this case to the trial court without conducting a harmless error analysis. On April 15, 2020, the Texas Court of Criminal Appeals overruled the State's petition for discretionary review as to its first ground; however, it granted the State's petition for discretionary review as to its second ground. Based on that decision, the Court of Criminal Appeals then vacated the judgment of this court and remanded the matter for further action in light of *Walker v. State*, 594 S.W.3d 330 (Tex. Crim. App. 2020) (holding that a court of appeals may reform a judgment after an acquittal of a greater offense to a lesser-included offense if two conditions are met: (1) the jury necessarily found every element necessary to convict the accused of the lesser-included offense when it convicted the accused of the acquitted offense and (2) there is sufficient evidence to support a conviction for that lesser-included offense).

The facts in *Walker* are, however, distinguishable from the facts of this case. In *Walker*, the amended indictment alleged only the invalid predicate offense of *possession with intent to deliver*. Whereas, the indictment in this case alleges, as alternate theories for the predicate offense, the offenses of (1) *possession with intent to deliver* (an invalid predicate offense) and (2) *delivery of a controlled substance* (a valid predicate offense). Thus, we hereby order Appellant and the State to file supplemental briefing in this matter. Specifically, supplemental briefing should address the question of whether the necessary conditions for reformation are satisfied; and, if so, whether this court should remand this matter to the trial

court for a new trial or render judgment as to a lesser-included offense and remand for a new punishment hearing.

Accordingly, Appellant's *Supplemental Brief* is due no later than July 31, 2020, and the State's *Supplemental Brief* is due thirty days following the date Appellant's *Supplemental Brief* is filed.

IT IS SO ORDERED.

Per Curiam