A delinquency adjudication based on conduct that constitutes a felony offense for which the child was committed to the Juvenile Justice Department is a final felony conviction. [Davis v. State](17-2-4)

On April 6, 2017, the Houston Court of Appeals (1st Dist.) held that the trial court did not impose an unlawful sentence outside the statutory range (17 years confinement) because the felony juvenile enhancement that the trial court applied in this case increased the defendant’s possible punishment from a range of 2 to 10 years to a range of 2 to 20 years.

¶ 17-2-4. **Davis v. State**, No. 01-16-00079-CR, \_\_SW3d.\_\_, 2017 WL 1281426 [Tex.App.—Houston (1st Dist.), 4/6/2017].

**Facts:** The State charged Frederick Anthony Davis with aggravated assault. He pleaded guilty to the charge and “true” to one enhancement paragraph without a recommendation as to punishment. The State proffered the PSI report, which the trial court admitted into evidence. That report reflects that, in the prior juvenile delinquency adjudication alleged to enhance his evading arrest offense, Davis initially received 12 months’ probation. When Davis failed to comply with the terms of his probation, the juvenile court revoked it and committed Davis to a juvenile detention facility. The trial court assessed Davis’s punishment at 17 years’ confinement. On appeal, Davis contends that the 17-year sentence is outside the statutory range because his earlier juvenile adjudication cannot apply to enhance his sentence. We conclude that the trial court applied the appropriate sentencing range.

**Held:** Affirmed

**Opinion:** Davis next contends that the trial court improperly used his juvenile adjudication to enhance his conviction, and without the enhancement, 17 years’ confinement exceeds the proper sentencing range of 2 to 10 years.

Davis was convicted of aggravated assault while evading arrest. See TEX. PENAL CODE ANN. § 38.04(a) (a person who intentionally flees from a peace officer commits the offense of evading arrest); TEX. PENAL CODE ANN. § 38.04(b)(2) (a person who causes serious bodily injury to another as a result of fleeing from arrest commits the offense of aggravated assault in the third degree). As a third-degree felony, aggravated assault while evading arrest is subject to enhancement by a prior felony conviction. See TEX. PENAL CODE ANN. § 12.42 (West 2015) (a person who commits a third-degree felony with a prior felony conviction may be assessed a punishment within the range for a second-degree felony with exception of certain state jail felonies.). The felony enhancement that the trial court applied in this case increased Davis’s possible punishment from a range of 2 to 10 years to a range of 2 to 20 years. See TEX. PENAL CODE ANN. §§ 12.33–34 (West 2009).

Whether the trial court was correct in applying Davis’s juvenile adjudication to increase the sentencing range turns on the application of the penal code provisions that govern juvenile offenses. At the time of Davis’s conviction, a delinquency adjudication based on conduct that constitutes a felony offense and results in commitment to juvenile detention counted as a felony conviction for sentencing enhancement purposes. See TEX. PENAL CODE ANN. § 12.42(f) (West 2015) (“[A]n adjudication by a juvenile court ... that a child engaged in delinquent conduct ... constituting a felony offense for which the child is committed to the Juvenile Justice Department ... is a final felony conviction”). Davis was adjudicated delinquent for committing a burglary of a habitation, which is conduct that constitutes a felony offense. See TEX. PENAL CODE ANN. § 30.02 (West 1999).

In his reply brief, Davis argues that he was not convicted of felony burglary of a habitation as charged in the indictment; instead, he was adjudicated delinquent for burglary of a habitation, and thus, the State failed to prove the enhancement as charged. Davis, however, did not object to the form of the indictment, which charged the offense of burglary of a habitation and stated the juvenile court cause number. Rather, he pleaded “true” to the felony enhancement paragraph. The reporter’s record filed in this cause number supports Davis’s plea.

The PSI report reflects that, after receiving probation for burglary of a habitation in 2006, Davis’s probation was revoked in 2007 and he was committed to a juvenile detention facility. When Davis was convicted, Texas law considered his delinquency adjudication was considered “a final felony conviction.” See Act of May 31, 1995, 74th Leg. R. S., ch. 262 § 78, 1995 Tex. Sess. Law Serv. 2581 (West) (to be codified at TEX. PENAL CODE § 12.42(j)) (adding section).

**Conclusion:** Because the record contains evidence supporting Davis’s plea of “true” to the enhancement paragraph, and the adjudicated delinquency constituted a “felony conviction” for enhancement purposes, we hold that the trial court did not impose an unlawful sentence outside the statutory range.