

AFFIRM; and Opinion filed February 26, 2014.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-13-00898-CR

GISELE BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F12-59808-U**

MEMORANDUM OPINION

Before Justices Bridges, O'Neill, and Brown
Opinion by Justice Brown

Gisele waived a jury and pleaded guilty to reckless injury to a child causing serious bodily injury. *See* TEX. PENAL CODE ANN. § 22.04(a)(1) (West Supp. 2013). The trial court found appellant guilty and assessed punishment at imprisonment for 19 ½ years and a \$3,000 fine. In a single issue, appellant contends the sentence violates the Eighth Amendment to the United States Constitution. We affirm the trial court's judgment.

Appellant contends the sentence is disproportionate to the offense and violates the Eighth Amendment to the U.S. Constitution because it disregards her mental health and drug addiction issues. Appellant asserts that because a rehabilitation plan addressing her issues was well

underway at the time of trial, the sentence is excessive and she should have received probation. The State responds that appellant has failed to preserve her complaint for appellate review and alternatively, the trial court properly exercised its discretion in assessing appellant's sentence.

Appellant did not complain about the sentence either at the time it was imposed or in her motion for new trial. *See* TEX. R. APP. P. 33.1(a)(1); *Castaneda v. State*, 135 S.W.3d 719, 723 (Tex. App.—Dallas 2003, no pet.). Thus, appellant has not preserved this issue for appellate review. Moreover, punishment that is assessed within the statutory range for an offense is neither excessive nor unconstitutionally cruel or unusual. *Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.—Dallas 1997, pet. ref'd); *see also Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). Reckless injury to a child causing serious bodily injury is a second-degree felony, punishable by imprisonment for two to twenty years and an optional fine not to exceed \$10,000. *See* TEX. PENAL CODE ANN. §§ 12.33, 22.04(e). Appellant's sentence of 19 ½ years is within the statutory punishment range. We resolve appellant's sole issue against her.

We affirm the trial court's judgment.

/Ada Brown/

ADA BROWN
JUSTICE

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TEX. R. APP. P. 47

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

GISELE BROWN, Appellant

No. 05-13-00898-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the 291st Judicial District
Court of Dallas County, Texas (Tr.Ct.No.
F12-59808-U).

Opinion delivered by Justice Brown,
Justices Bridges and O'Neill participating.

Based on the Court's opinion of this date, the trial court's judgment is **AFFIRMED**.

Judgment entered February 26, 2014.

/Ada Brown/

ADA BROWN
JUSTICE