

AFFIRM; and Opinion Filed June 16, 2014.



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

No. 05-12-01415-CR

PAUL MALONE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the Criminal District Court No. 1
Dallas County, Texas
Trial Court Cause No. F12-13564-H**

MEMORANDUM OPINION

Before Justices Bridges, Francis, and Lang-Miers
Opinion by Justice Lang-Miers

Paul Malone appeals his conviction for aggravated assault with a deadly weapon. In two issues, appellant contends the sentence imposed violates his constitutional rights. We affirm the trial court's judgment.

Appellant pleaded guilty before a jury to aggravated assault with a deadly weapon, causing serious bodily injury and involving family violence. *See* TEX. PENAL CODE ANN. § 22.02(a)(2), (b)(1) (West 2011). After finding appellant guilty, the jury assessed punishment at forty-five years' imprisonment and a \$10,000 fine. Appellant contends the sentence is grossly disproportionate to the offense and inappropriate to the offender, in violation of the Eighth and

Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Texas Constitution. *See* U.S. CONST. amend. VIII, XIV; TEX. CONST. art. I, § 13. Appellant asserts he has suffered from depression since childhood and, at the time of the offense, he experienced tunnel vision and a loss of hearing and was unaware of his actions. Appellant argues that because he had never been convicted of a felony offense and was employed, he should have been granted probation. The State responds that appellant failed to preserve his complaints for appellate review and alternatively, the sentence cannot be characterized as being grossly disproportionate to the offense.

Appellant did not complain about the sentence either at the time it was imposed or in a 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, he 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). Aggravated assault with a deadly weapon, involving family violence, is a first-degree felony offense, punishable by imprisonment for five to ninety-nine years or life and an optional fine not to exceed \$10,000. *See* TEX. PENAL CODE ANN. §§ 12.32, 22.02(b)(1). The jury had evidence before it of the severity of the injuries the complainant received after appellant shot her multiple times, as well as the ongoing medical issues the complainant has as a result of those injuries. The jury also heard evidence of appellant's previous physical abuse of the complainant. The jury also heard evidence that a physician's assistant for Parkland Hospital assigned to the Dallas County jail made several possible diagnoses of appellant, including bipolar disorder, intermittent explosive disorder, and post-traumatic stress disorder with the possibility of a

seizure. The physician's assistant diagnosed medication for soothing mood swings and an antidepressant for appellant. There was also evidence that appellant reported having been shot in the head, with the bullet remaining, which could indicate neurological damage or concern for the possible presence of lead in appellant's system. Appellant's forty-five-year sentence is in the middle of the punishment range for a first-degree felony, and the \$10,000 fine is also within the statutory range.

Reviewing the record as a whole, we conclude the sentence does not violate either the United States or Texas Constitution. We overrule appellant's two issues.

We affirm the trial court's judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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TEX. R. APP. P. 4

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

JUDGMENT

PAUL MALONE, Appellant

No. 05-12-01415-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the Criminal District Court
No. 1 of Dallas County, Texas (Tr.Ct.No.
F12-13564-H).

Opinion delivered by Justice Lang-Miers,
Justices Bridges and Francis participating.

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

Judgment entered June 16, 2014.

/Elizabeth Lang-Miers/

ELIZABETH LANG-MIERS

JUSTICE