

Opinion issued October 9, 2008



In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00027-CR

BOBBY DAMON LEE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 1110265**

MEMORANDUM OPINION

Appellant, Bobby Damon Lee, appeals from a judgment convicting him for

aggravated sexual assault of a child. *See* TEX. PENAL CODE ANN. § 22.021 (Vernon Supp. 2008). Appellant pleaded guilty without an agreed recommendation and was sentenced to five years in prison by the trial court. In his sole issue, appellant asserts the trial court erred by assessing punishment grossly disproportionate to the crime committed. We conclude appellant waived his complaint about the length of his sentence by failing to object on those grounds to the trial court. We affirm.

Procedural Background

Appellant pleaded guilty without an agreed recommendation to the felony offense of aggravated sexual assault of a child, a first degree felony with a punishment range of five to 99 years or life and up to a \$10,000.00 fine. *See id.* At the sentencing hearing, the trial court considered a pre-sentence investigation report and testimony from two witnesses. At the end of the hearing, the State asked for penitentiary time and appellant asked for “probation.” Defense counsel further stated, “if this court does not deem fit to place him on probation, then I would ask the court to consider assessing at the very minimal side of the range of punishment.” The trial court assessed appellant’s punishment at five years in prison. After appellant was sentenced, his trial counsel neither objected to the sentence nor filed a motion for new trial.

Waiver of Sentencing Complaints

Appellant contends that his five year sentence is excessive and grossly disproportionate to the crime committed and violates his constitutional right under the Eighth Amendment to the United States Constitution, article 1, section 13 of the Texas Constitution, and article 1.09 of the Texas Code of Criminal Procedure. *See* U.S. CONST. amend. VIII, TEX. CONST. art. I, § 13; TEX. CODE CRIM. PROC. ANN. art. 1.09 (Vernon 2005).

The State contends appellant waived his complaint by failing to object to the sentence. A timely request, objection, or motion must be made to the trial court to properly preserve a complaint for appellate review. TEX. R. APP. P. 33.1(a) (1) (A); *Ajisebutu v. State*, 236 S.W.3d 309, 311 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd). An appellant waives the right to complain that his sentence constitutes cruel and unusual punishment and violates his due process rights by failing to object on those grounds to the trial court. *Benson v. State*, 224 S.W.3d 485, 498 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Solis v. State*, 945 S.W.2d 300, 301 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd). We hold appellant waived his challenge to his five year sentence by failing to assert any objections to the trial court.

Conclusion

We affirm the judgment of the trial court.

Elsa Alcala
Justice

Panel consists of Justices Taft, Keyes, and Alcala

Do not publish. *See* TEX. R. APP. P. 47.2(b).