Affirmed and Memorandum Opinion filed October 26, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00264-CR
NO. 14-09-00265-CR

JEREMIAH CORDELL MOSLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Cause Nos. 1159737, 1162624

M E M O R A N D U M O P I N I O N

Appellant Jeremiah Cordell Mosley pleaded guilty to two felony charges of aggravated robbery. The trial court sentenced him to twenty-five years' confinement in the Institutional Division of the Texas Department of Criminal Justice in each cause, and ordered that his sentences run concurrently. On appeal, he argues the court erred in assessing sentences disproportionate to the crimes. We affirm.

I. BACKGROUND

Between March 24 and 26 of 2008, appellant committed armed robberies of four retail stores. He was apprehended and charged with two felony counts of aggravated robbery, and he pleaded guilty to both charges.[1]

On March 12, 2009, the court held a pre-sentencing hearing. The State called no witnesses and relied solely on the pre-sentence investigation report. The defense called appellant as its only witness.

Appellant testified that prior to the robberies his father had forced him to leave home and move in with a relative. He began spending time with the "wrong crowd," began using Xanax, and was under the influence of Xanax when he committed the robberies. He also pointed out that he had enlisted in the Army prior to the robberies, was preparing to report to basic training, and otherwise was trying to get his life in order.

On cross-examination, appellant admitted that he had planned the robberies before he began taking Xanax. In fact, he secured a gun from a friend and planned the robberies several days in advance. He fired the gun during one robbery and used it to pistol-whip a store employee during another. He also acknowledged that he was thinking clearly during the robberies and, during one robbery, had the presence of mind to identify the location of the security cameras and disable them. Appellant further admitted to a prior conviction for criminal trespass.

After hearing the testimony, the court sentenced appellant to twenty-five years' confinement for each count, and ordered appellant to serve his sentences concurrently. On appeal, appellant contends that the court erred in assessing sentences disproportionate to the crimes in violation of the Eighth Amendment to the United States Constitution and article I, section 13 of the Texas Constitution. Specifically, appellant argues the sentences are grossly disproportionate because he (1) has no prior *felony* record; (2) was under the influence of Xanax when he committed the offenses; (3) did not shoot anyone

[1] Appellant also admitted to the facts of all four robberies.

while committing the offenses; (4) did not deny guilt; and (5) was the product of a dysfunctional household.

II. DISCUSSION

A. Standard of Review

A criminal sentence must be proportionate to the crime for which the defendant has been convicted. *Solem v. Helm*, 463 U.S. 277, 290 (1983); *Harris v. State*, 204 S.W.3d 19, 29 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (Eighth Amendment forbids only extreme sentences that are grossly disproportionate to the crime). In *Solem*, the United States Supreme Court stated that a proportionality analysis is to be guided by the following factors: (1) the gravity of the offense and the severity of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commissions of the same crime in other jurisdictions. *Solem*, 463 U.S. at 290-91. The first factor is a threshold factor. *Hicks v. State*, 15 S.W.3d 626, 632 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd) (citing *Harmelin v. Michigan*, 501 U.S. 957 (1991) and noting that *Harmelin* refined *Solem*). Thus, a reviewing court considers the second and third factors only if it concludes the severity of the penalty is disproportionate to the offense. *Id.*

B. Preservation of Error

Before we reach that analysis, however, we note appellant did not raise this objection in the trial court. It is well-settled that a defendant waives the right to appeal his sentence when, as here, he fails to preserve error by not objecting to the sentence at trial or in a post-trial motion. *See Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995); *Solis v. State*, 945 S.W.2d 300, 301 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd); *Cruz v. State*, 838 S.W.2d 682, 687 (Tex. App.—Houston [14th Dist.] 1992, pet. ref'd). Because appellant raises this issue for the first time on appeal, he has not preserved error for our review. *See Curry*, 910 S.W.2d at 497.

Even so, we note appellant has not shown that twenty-five years' confinement is

grossly disproportionate in light of his criminal record, the number of offenses he committed, and the punishment range prescribed by statute for aggravated robbery, which is life or five to ninety-nine years' confinement. Tex. Penal Code Ann. § 29.03 (Vernon 2003), § 12.32 (Vernon Supp. 2009); *Solem*, 463 U.S. at 291; *see also Baldridge v. State*, 77 S.W.3d 890, 893 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd) ("It has long been recognized that if the punishment assessed is within the range of punishment established by the Legislature under its constitutional authority, there is no violation of the state constitutional provisions against cruel and unusual punishment.").

III. CONCLUSION

Accordingly, even if appellant had preserved error, we could not conclude the court erred in sentencing appellant to twenty-five years' confinement for each of the convictions. Therefore, we overrule appellant's sole issue and affirm the judgments.

/s/ Kent C. Sullivan
Justice

Panel consists of Justices Frost, Boyce, and Sullivan.
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