

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00016-CR

KENNETH WAYNE ISEDORE, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 08-03364

MEMORANDUM OPINION

Pursuant to a plea bargain agreement, appellant Kenneth Wayne Isedore, Jr. pled guilty to injury to a child, a lesser-included offense of the crime with which he was originally charged. The trial court found the evidence sufficient to find Isedore guilty, but deferred further proceedings, placed Isedore on community supervision for five years, and assessed a fine of \$500. The State subsequently filed a motion to revoke Isedore's unadjudicated community supervision. Isedore pled "true" to five of the alleged violations of the terms of his community supervision. The trial court found that Isedore

violated the conditions of his community supervision, found him guilty of injury to a child, and assessed punishment at eight years of confinement. Isedore then filed this appeal, in which he contends in two issues that the trial court's sentencing was constitutionally disproportionate and unreasonable. *See* U.S. CONST. amend. VIII; TEX. CONST. art. I, § 13. We affirm the trial court's judgment.

The record does not reflect that Isedore raised his complaints in the trial court. *See* TEX. R. APP. P. 33.1(a). However, even if Isedore had preserved his issues for our review, Isedore's arguments would still fail. Isedore's eight-year sentence was within the statutorily-authorized range of punishment. *See* TEX. PEN. CODE ANN. § 22.04(f) (Vernon Supp. 2009) (bodily injury to a child is a third-degree felony when committed intentionally or knowingly); TEX. PEN. CODE ANN. § 12.34 (Vernon Supp. 2009) (third-degree felony punishment range is two to ten years of confinement and a fine of up to \$10,000). Generally, a sentence that is within the range of punishment established by the Legislature will not be disturbed on appeal. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). In addition, a punishment that is within the statutory range for the offense is generally not excessive or unconstitutionally cruel or unusual under the Texas Constitution or the federal Constitution. *Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.--Dallas 1997, pet. ref'd); *see also Jackson v. State*, 989 S.W.2d 842, 846 (Tex. App.--Texarkana 1999, no pet.). We overrule Isedore's issues and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on March 23, 2010
Opinion Delivered March 31, 2010
Do Not Publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.