

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00234-CR

KEON GRAVES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 08-04946

MEMORANDUM OPINION

In carrying out a plea bargain agreement, Keon Graves¹ pled guilty to the felony offense of unauthorized use of a motor vehicle, and the trial court placed him on deferred adjudication for a period of three years. Later, the State filed a motion to revoke Graves's unadjudicated community supervision. Graves pled "true" to the alleged claim that he had violated the terms of the trial court's community supervision order. Following a revocation hearing, the trial court found Graves had violated a condition of his

¹The record reflects the Keon Graves is also known as Keon Martinez Graves and Keon Julius Graves.

community supervision, found Graves guilty of the offense of unauthorized use of a motor vehicle, and sentenced Graves to two years in the state jail. In two issues, Graves contends that his sentence is constitutionally disproportionate and unreasonable.² *See* U.S. Const. amend VIII; Tex. Const. art. I, § 13. We affirm the trial court’s judgment.

The record does not show that Graves complained to the trial court about the length of his sentence. *See* Tex. R. App. P. 33.1(a). Even had Graves preserved his complaint for appellate review, his two-year sentence is within the statutorily authorized range of punishment for the offense of unauthorized use of a motor vehicle, a state jail felony. *See* Tex. Penal Code Ann. § 31.07 (West 2011); *see also id.* § 12.35 (West 2011) (providing that a state jail felony may be punished by confinement in a state jail for any term of not more than two years or less than 180 days). Generally, a sentence that is within the range of punishment established by the Legislature will not be disturbed on appeal. *See Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). A punishment that is within the statutory range for the offense is generally not excessive, unconstitutionally cruel, or unusual under the United States or Texas Constitutions. *See Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.—Dallas 1997, pet. ref’d); *see also*

²Graves also contends that the trial court “unreasonabl[y] applied facts” in violation of article 37.07 of the Code of Criminal procedure, used “unverifiable facts” to sentence Graves, and violated Graves’s due process and equal protection rights under the United States and Texas Constitutions. *See* Tex. Code Crim. Proc. Ann. art. 37.07 (West Supp. 2010); *see also* U.S. Const. amend. XIV; Tex. Const. art. I, §§ 3, 19. Graves cites no relevant authority to support his arguments that the sentence range for a crime of unauthorized use of a motor vehicle is grossly disproportionate, or that a two year sentence exceeds the sentences available for similar crimes in Texas or elsewhere. *See* Tex. R. App. P. 38.1(i).

Jackson v. State, 989 S.W.2d 842, 846 (Tex. App.—Texarkana 1999, no pet.). Punishment is generally not considered constitutionally excessive even when it is imposed at the statutory maximum. See *Gavin v. State*, No. 01-08-00881-CR, 2010 Tex. App. LEXIS 3862, at **20-21 (Tex. App.—Houston [1st Dist.] May 20, 2010, no pet.) (not yet released for publication); see also *Holley v. State*, 167 S.W.3d 546, 549-50 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). Finally, Graves has failed to carry his burden of proving that the trial court's sentence in his case is grossly disproportionate, as the record contains no evidence "reflecting sentences imposed for similar offenses on criminals in Texas or other jurisdictions by which to make a comparison."³ *Jackson*, 989 S.W.2d at 846. We overrule Graves's two issues and affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on August 24, 2011
Opinion Delivered August 31, 2011
Do Not Publish

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

³Graves states that this Court "is in a better position than [Graves] to determine sentences for similar crimes in the same jurisdiction and sentences for the same crime in other jurisdictions[.]" but, asks us, in the event we need more information, to abate the appeal for a hearing to gather information regarding sentences imposed for similar offenses on criminals in Texas or other jurisdictions. Graves cites no authority in support of his argument that he should be allowed to create a record different than the one that was before the trial court. See Tex. R. App. P. 38.1(i).