

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

---

**NO. 09-11-00293-CR**

---

**ANDREW JOSEPH FRANK A/K/A ANDREW JOSEPH LEWIS  
A/K/A JOSEPH FRANK, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the 252nd District Court  
Jefferson County, Texas  
Trial Cause No. 10-08484**

---

**MEMORANDUM OPINION**

Andrew Joseph Frank was indicted for felony theft, and the indictment included prior felony convictions. Frank pleaded guilty to the offense and the enhancements. The trial court found the evidence sufficient to find Frank guilty, deferred further proceedings, placed him on community supervision for seven years, and assessed a fine of \$1000.

The State filed a motion to revoke Frank’s unadjudicated probation. Frank pleaded “true” to one of the alleged violations of the conditions of his community supervision and

“not true” to other alleged violations. The trial court heard evidence on the alleged violations to which Frank pleaded “not true.” The trial court found the evidence sufficient to find Frank violated the condition to which he pleaded “true,” and one of the violations to which he pleaded “not true.” The trial court revoked Frank’s unadjudicated probation, found him guilty, and assessed punishment at twenty years of confinement.

Frank contends there are not sufficient allegations in the indictment to show “that [the] last two paragraphs were for offense(s) that occurred subsequent to the first previous conviction having become final.” He argues the asserted sequencing defect in the indictment limits the sentencing range to that for a third-degree felony. A defendant must timely object to any defect of form or substance in the indictment. *See* Tex. Code Crim. Proc. Ann. art. 1.14(b) (West 2005); *Studer v. State*, 799 S.W.2d 263, 273 (Tex. Crim. App. 1990). The argument Frank makes on appeal was not timely preserved for appellate review. *See Teal v. State*, 230 S.W.3d 172, 178 (Tex. Crim. App. 2007) (“[A]ll substantive defects in indictments are waivable under the statutes and these defects do not render the indictment ‘void.’”); *see also* Tex. R. App. P. 33.1. We overrule appellant’s issue. The trial court’s judgment is affirmed.

AFFIRMED.

---

DAVID GAULTNEY  
Justice

Submitted on October 13, 2011  
Opinion Delivered November 9, 2011  
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.