

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00355-CR

CLAIBON JOSEPH SIMPSON, III, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 07-00096

MEMORANDUM OPINION

Pursuant to a plea bargain agreement, appellant Claibon Joseph Simpson, III pleaded guilty to aggravated assault. The trial court found the evidence sufficient to find Simpson guilty, but deferred further proceedings, placed Simpson on community supervision for ten years, and assessed a fine of \$1,000. The State subsequently filed a motion to revoke Simpson’s unadjudicated community supervision. Simpson pleaded “true” to four violations of the terms of his community supervision. The trial court found that Simpson violated the conditions of his community supervision, found him guilty of aggravated assault, and assessed punishment at thirteen years of confinement. The trial

court ordered the sentence to run consecutively to a prior sentence. Simpson then filed this appeal, in which he argues that his sentence is constitutionally disproportionate and unreasonable. *See* U.S. CONST. amend. VIII; Tex. Const. art. I, § 13. We affirm the trial court's judgment.

In issues one and two, Simpson argues that the trial court's sentence was disproportionate and unreasonable, thereby violating his rights under the Eighth Amendment to the U.S. Constitution and Article I, section 13 of the Texas Constitution. *See* U.S. CONST. amend. VIII; Tex. Const. art. I, § 13. The record does not reflect that Simpson raised his state and federal constitutional complaints in the trial court. *See* Tex. R. App. P. 33.1(a). However, even if Simpson had preserved his constitutional issues for our review, Simpson's arguments would still fail. Simpson's sentence was within the statutorily-authorized range of punishment for the offense. *See* Tex. Penal Code Ann. § 22.02(b) (West 2011) (aggravated assault is generally a second-degree felony, unless certain circumstances not present in this case make the offense a first-degree felony); Tex. Penal Code Ann. § 12.33 (West 2011) (second-degree felony punishment range is two to twenty 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 U.S. 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 issues one and two and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on October 11, 2011
Opinion Delivered October 19, 2011
Do Not Publish

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