

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00375-CR

JOANNA BRADY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 09-07009

MEMORANDUM OPINION

Pursuant to a plea bargain agreement, appellant Joanna Brady pleaded guilty to burglary of a habitation. The trial court found the evidence sufficient to find Brady guilty, but deferred further proceedings, placed Brady on community supervision for two years, and assessed a fine of \$500. The State subsequently filed a motion to revoke Brady's unadjudicated community supervision. Brady pleaded "true" to one violation of the terms of her community supervision. The trial court found that Brady violated the conditions of her community supervision, found her guilty, and assessed punishment at twelve years of confinement. Brady then filed this appeal, in which she argues 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.

In issues one and two, Brady argues that the trial court's sentencing was disproportionate and unreasonable, thereby violating her 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 Brady raised her state and federal constitutional complaints in the trial court. *See* Tex. R. App. P. 33.1(a). However, even if Brady had preserved her constitutional issues for our review, Brady's arguments would still fail. Brady's sentence was within the statutorily-authorized range of punishment for the offense. *See* Tex. Penal Code Ann. § 30.02(c)(1) (West 2011) (burglary of a habitation is a second-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 September 30, 2011
Opinion Delivered October 12, 2011
Do Not Publish

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