In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00356-CR

DOUGLAS CLYDE HANNAH, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 413th District Court
Johnson County, Texas[1]
Trial Court No. F48001, Honorable William C. Bosworth, Jr., Presiding

April 6, 2016

MEMORANDUM OPINION

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

Appellant, Douglas Clyde Hannah, appeals from the judgment by which he was adjudicated guilty of the offense of indecency with a child by contact and sentenced to twenty years' imprisonment.[2] On appeal, he contends the trial court abused its discretion by imposing the maximum punishment of twenty years. We will affirm.

[1] Pursuant to the Texas Supreme Court's docket equalization efforts, this case was transferred to this Court from the Tenth Court of Appeals. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013).

[2] *See* TEX. PENAL CODE ANN. § 21.11(a)(1) (West 2011).

Factual and Procedural History

In February 2014, appellant pleaded guilty to allegations of indecency with a child by contact. He was placed on deferred adjudication community supervision for a period of ten years. Following a modification of the terms of his community supervision in response to an application to proceed to adjudication, the State filed a second application to proceed, alleging that appellant violated several terms and conditions of his supervision.

At the hearing on the State's application, appellant pleaded true to the allegations. The trial court found the allegations true and, after hearing evidence, sentenced appellant to the maximum punishment available for the second-degree felony offense at issue: twenty years.[3] After sentence was pronounced, appellant, through counsel, raised the issue of his indigence and expressed a general desire to appeal, but lodged no objections in the trial court. No motion for new trial was filed.

Appellant now appeals, contending that the trial court abused its discretion by imposing a twenty-year sentence when the State offered no evidence in support of the maximum sentence. We will affirm the trial court's judgment.

Preservation of Error

The Texas Rules of Appellate Procedure require that, as a prerequisite to presenting a complaint for appellate review, the record must show as follows:

[3] *See id.* § 12.33 (West 2011); *see also id.* § 21.11(d) (making an offense under Section 21.11(a)(1) a second-degree felony).

> (1) the complaint was made to the trial court by a timely request, objection, or motion that:
>
> > (A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and
> >
> > . . . .
>
> (2) the trial court:
>
> > (A) ruled on the request, objection, or motion, either expressly or implicitly; or
> >
> > (B) refused to rule on the request, objection, or motion, and the complaining party objected to the refusal.

TEX. R. APP. P. 33.1(a). Alleged error relating to disproportionate sentencing may also be preserved by filing and presenting a motion for new trial raising the issue. *See Richardson v. State*, 328 S.W.3d 61, 72 (Tex. App.—Fort Worth 2010, pet. ref'd) (per curiam). It is well-established that a disproportionate-sentence claim is not exempt from the requirements of error preservation. *See Stewart v. LaGrand*, 526 U.S. 115, 119, 119 S. Ct. 1018, 143 L. Ed. 2d 196 (1999) (per curiam); *Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996) (en banc).

Analysis

Here, appellant lodged no objection to the sentence in the trial court and, therefore, failed to preserve any error in the sentence. *See* TEX. R. APP. P. 33.1. To the extent appellant's issue may be understood as a claim that the imposition of the maximum punishment on these facts represents cruel, unusual, or disproportionate punishment, such error, likewise, was not preserved. *See Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995) (en banc) (holding defendant failed to preserve cruel

and unusual punishment claim when he urged no objection in trial court); *Ham v. State*, 355 S.W.3d 819, 825 (Tex. App.—Amarillo 2011, pet. ref'd) (same). While appellant may have preserved this issue by raising it in a motion for new trial, no motion for new trial was filed. That said, any error—constitutionally based or otherwise—relating to the sentence has not been preserved for our review.

As a general rule, a reviewing court should not address the merits of an issue that has not been preserved for appeal, and it is the duty of that court to ensure that the issue has been preserved for review. *See Wilson v. State*, 311 S.W.3d 452, 473–74 (Tex. Crim. App. 2010) (per curiam) (op. on reh'g) (citing, *inter alia*, *Ford v. State*, 305 S.W.3d 530, 532–33 (Tex. Crim. App. 2009)). Accordingly, because it is not preserved for our review, we overrule appellant's sole point of error on appeal.

Conclusion

Having overruled appellant's sole point of error, we affirm the trial court's judgment of conviction. *See* TEX. R. APP. P. 43.2(a).

Mackey K. Hancock
Justice

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