In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-20-00099-CR

CHRISTOPHER ROBIN BUSTER, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 100th District Court
Carson County, Texas
Trial Court No. 6758; Honorable Stuart Messer, Presiding

March 22, 2021

MEMORANDUM OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

Appellant, Christopher Robin Buster, appeals his conviction and sentence for the first degree felony offense of burglary of a habitation with the intent to commit aggravated assault with a deadly weapon.[1] Through a single point of error, he contends the fifty-five

[1] TEX. PENAL CODE ANN. § 30.02 (West 2020).

year prison sentence assessed against him "was unconstitutionally disproportionate to the gravity of the offense." We will affirm.

BACKGROUND

Appellant was originally placed on deferred adjudication community supervision for a term of eight years pursuant to a plea bargain. Because Appellant does not challenge the grounds on which the trial court based its revocation of his community supervision and adjudication of his guilt, we will relate only those facts necessary to disposition of his appellate issue. TEX. R. APP. P. 47.1.

In March 2019, Appellant was indicted for "intentionally or knowingly, enter[ing] a habitation, without the effective consent of Brenda Turner, the owner thereof, and attempted to commit or committed the felony offense of aggravated assault with a deadly weapon." The State alleged Appellant waved a knife at the victim, but no one was injured. Appellant pleaded guilty to the charged offense in May 2019 and was placed on deferred adjudication community supervision for a period of eight years. A fine of $8,000 was also imposed against him. In addition to numerous other terms and conditions of supervision, Appellant was ordered to pay restitution of $412, to complete 400 community service hours, and to have no contact with the victim, Brenda Turner.

Four months later, the State moved to adjudicate Appellant's guilt based on a number of alleged violations of the terms and conditions of his community supervision. Those violations included allegations that Appellant possessed and used methamphetamine on two occasions, failed to notify his community supervision officer of his change of address, failed to report to his community supervision officer as required,

failed to pay his community supervision fees and court-ordered fees for the months of June, July, and August 2019, and failed to submit his financial statements for those same months. Further, he violated the terms and conditions of his community supervision by going within 200 feet of Turner's residence and by having direct contact with Turner by living in her residence for "three months."

The trial court held a hearing on the State's motion in March 2020. Appellant pleaded "not true" to each of the State's allegations. To prove its allegations against Appellant, the State presented the testimony of Appellant's community supervision officer and the testimony of a Chief Deputy of the Carson County Sheriff's Office. Appellant testified on his own behalf. He told the court he had been a drug addict since he was "nine years old" and that he was now ready to quit using drugs. He said "[f]or the first time in my life, I don't want to use drugs. And it's not because I don't want to go to prison, it's because I would like to be clean." He also said he wanted to participate in a rehabilitation program regardless of whether he was also sent to prison but preferred to do so before he went to prison because "there's drugs in prison." During cross-examination, Appellant denied breaking into Turner's home with a knife, despite admitting that is the offense to which he pleaded guilty. He said, "[t]hat's not how it happened." He told the court Turner was his "drug dealer," that he "was on drugs the whole time [he] was out" and that he moved in with Turner shortly after he pleaded guilty to this offense.

At the conclusion of the hearing and after arguments from counsel, the trial court found Appellant violated each of the conditions set forth in the State's motion, found him guilty, fully and finally convicted him of the first degree felony offense of burglary of a habitation, and made an affirmative finding of a deadly weapon, a knife. At the State's

request, the trial court also made a finding that the burglary of a habitation was made with the intent to commit a felony other than theft. The trial court then specifically stated to Appellant, "Mr. Buster, it appears that you made no effort to comply with any of the conditions at all. You don't report. You don't pay. You continue to use drugs, and you violate the specific conditions of staying away from the victim. There's some indication that you feel like the victim told you it was okay, but you still make no effort to talk with your Probation Officer, whether that's okay. Mr. Buster, it just appears as if you have completely ignored the conditions of your community supervision." The trial court then imposed a sentence of fifty-five years imprisonment in the Texas Department of Criminal Justice, Institutional Division.

Thereafter, Appellant filed a *Motion for New Trial and Motion in Arrest of Judgment*, arguing the verdict in the cause was contrary to the law and evidence and that the "sentence imposed in this cause was grossly disproportionate to the offense and thus violated the Eighth Amendment's prohibition against cruel and unusual punishments." The motion was overruled by operation of law.

ANALYSIS

By his sole appellate issue, Appellant contends the trial court's sentence was unconstitutionally disproportionate to the gravity of the offense for which he was convicted. The State responds that the sentence was within the applicable statutory range and was not grossly disproportionate to Appellant's offense. We agree with the State's contention.

Our evaluation of a challenge to the term of imprisonment imposed in an individual case based on all its circumstances begins with a comparison of the gravity of the offense with the severity of the sentence. *Noyes v. State*, No. 07-16-00229-CR, 2018 Tex. App. LEXIS 3572, at *6 (Tex. App.—Amarillo May 21, 2018, no pet.) (mem. op., not designated for publication) (citing *Graham v. Florida*, 560 U.S. 48, 60, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)). We consider the harm caused or threatened to the victim, the offender's culpability, and the offender's prior adjudicated and unadjudicated offenses. *State v. Simpson*, 488 S.W.3d 318, 323 (Tex. Crim. App. 2016) (citing *Graham,* 560 U.S. at 60). Only if we are able to infer a sentence is grossly disproportionate to an offense will we compare Appellant's sentence with the sentences received for similar crimes in this jurisdiction or sentences received in other jurisdictions. *Winchester v. State*, 246 S.W.3d 386, 388 (Tex. App.—Amarillo 2008, pet. ref'd); *Noyes*, 2018 Tex. App. LEXIS 3572, at *6.

Normally, a sentence within the statutory range of punishment for an offense is not excessive, cruel, or unusual punishment. *Winchester*, 246 S.W.3d at 389. The Court of Criminal Appeals has described "the sentencer's discretion to impose any punishment within the prescribed range to be essentially 'unfettered.' Subject only to a very limited, 'exceedingly rare,' and somewhat amorphous Eighth Amendment gross-disproportionality review, a punishment that falls within the legislatively prescribed range, and that is based upon the sentencer's informed normative judgment, is unassailable on appeal." *Ex parte Chavez*, 213 S.W.3d 320, 323-24 (Tex. Crim. App. 2006).

Under this standard, Appellant's fifty-five year sentence was not grossly disproportionate to his crime. First, Appellant's sentence fell squarely in the middle of

the statutory range of five to ninety-nine years or life imprisonment. TEX. PENAL CODE ANN. § 12.32 (providing punishment for first-degree felony offense). The trial court arrived at this sentence after hearing testimony that Appellant violated numerous conditions of his community supervision, had an extensive criminal history, including felonies in three different states, one of which carried a ten-year sentence he had just completed, and that he had directly violated the order that he not approach or contact the victim by living with her only weeks after being ordered to stay away from her. Appellant's community supervision officer testified Appellant admitted to consuming methamphetamine at least twice during his time on community supervision—the first six days after he pleaded guilty and the second sixteen days after his plea. Appellant also admitted he used methamphetamine throughout his time on community supervision. Appellant told the court he had been a drug addict since he was nine years old and was now forty-three years old. He said he was seeking help in the form of rehabilitation because he wanted to be clean but the trial court could have seen his testimony as lacking credibility, given the lengthy prison sentence Appellant faced. *See Simpson*, 488 S.W.3d at 323 (setting forth considerations for determination whether sentence for term of years is grossly disproportionate to particular defendant's crime).

Further, despite Appellant's plea of guilty to the underlying burglary of a habitation charge, Appellant's testimony at the hearing concerning that offense consisted of assertions the court could have seen as attempts to minimize the offense. Appellant contended at the hearing that the offense did not occur in the manner in which the prosecution alleged but he still admitted he pleaded guilty to that offense as charged. Additionally, he argues on appeal that Turner obviously did not see him as a threat after

he allegedly burglarized her home while in possession of a knife with the intent to commit assault because she permitted him to stay with her for three months immediately after he pleaded guilty to the offense in which she was a victim.[2] However, the perceptions of the victim are not particularly persuasive under circumstances such as those present here. Furthermore, it is a societal concern that an admitted drug addict broke into the home of any person, regardless of his purpose or whether that person had previously provided him with controlled substances. *See Simpson*, 488 S.W.3d at 323.

In our view, the evidence permitted the trial court to conclude Appellant had not taken either his burglary offense or his community supervision seriously. The record does not permit us to find this is one of those "rare" cases in which the sentence is grossly disproportionate to the offense.[3] *Simpson*, 488 S.W.3d at 323. Accordingly, we resolve Appellant's point of error against him.

CONCLUSION

Having overruled Appellant's sole point of error on appeal, we affirm the judgment of the trial court.

Patrick A. Pirtle
Justice

Do not publish.

[2] The Chief Deputy testified Appellant was arrested on a warrant in Turner's home. Appellant's community supervision officer testified Appellant told her he had been living with Turner because "she called and told him that it was okay for him to be there."

[3] Because we do not find Appellant's sentence was grossly disproportionate to the crime for which he was convicted, we do not apply the remaining prongs of the *Solem* test. *See Winchester*, 246 S.W.3d at 391; *Noyes*, 2018 Tex. App. LEXIS 3572, at *8.