In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00064-CR

DENNIS ROSS GRAY, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 100th District Court
Carson County, Texas
Trial Court No. 6748, Honorable Stuart Messer, Presiding

December 30, 2021

MEMORANDUM OPINION

Before QUINN, CJ., and PIRTLE and DOSS, JJ.

Dennis Ross Gray appeals the adjudication of his guilt and conviction for aggravated assault with a deadly weapon. His sole issue concerns the alleged disproportionality of his eighteen-year prison sentence. He avers that the sentence is "grossly disproportionate to the gravity of the offense for which [he] was convicted, thereby constituting cruel and unusual punishment." We affirm.

Our evaluation of a disproportionality challenge like that at bar begins with a comparison of the gravity of the offense with the severity of the sentence. *Buster v.*

State, No. 07-20-00099-CR, 2021 Tex. App. LEXIS 2169, at *5 (Tex. App.—Amarillo Mar. 22, 2021, pet. ref'd) (mem. op., not designated for publication). That entails our consideration of the harm caused or threatened to the victim, the offender's culpability, and the offender's prior adjudicated and unadjudicated offenses. *Id.* at *5–6. Only when we are able to infer a sentence is grossly disproportionate to the offense will we compare the defendant's sentence to others received for similar crimes in this jurisdiction or sentences received in other jurisdictions. *Id.* Moreover, a sentence within the statutory range of punishment is not excessive, cruel, or unusual. *Id.* Indeed, our Court of Criminal Appeals has characterized "the sentencer's discretion to impose any punishment within the prescribed range to be essentially 'unfettered.'" *Ex parte Chavez*, 213 S.W.3d 320, 323 (Tex. Crim. App. 2006); *Buster*, 2021 Tex. App. LEXIS 2169, at *6. "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 at 324. With that in mind, we turn to the record at bar.

First, appellant's conviction for aggravated assault with a deadly weapon is a felony of the second degree. TEX. PENAL CODE ANN. § 22.02(b). The applicable punishment to such a felony includes imprisonment for a term ranging from two to twenty years. *Id.* § 12.33(a). Appellant's eighteen-year sentence is less than the twenty-year maximum.

Second, this was not appellant's only criminal act. He also committed the offenses of driving with an expired license multiple times and resisting arrest while on community

supervision. Furthermore, the latter resulted in the arresting officer being pushed into appellant's vehicle and a civilian assisting that officer's effort in subduing appellant.

Third, appellant also admitted to twice ingesting methamphetamine while on community supervision. So too did the record disclose that he failed to complete any of the 300 hours of community service ordered of him as a condition of his probation.

"In our view, the [foregoing] evidence permitted the trial court to conclude [a]ppellant had not taken either his . . . offense or his community supervision seriously." *Buster*, 2021 Tex. App. LEXIS 2169, at *8–9. Nor did he take seriously the opportunity afforded him to avoid a final felony conviction and amend his behavior, or so the trial court could have inferred. Consequently, "[t]he record does not permit us to find this is one of those 'rare' cases in which the sentence is grossly disproportionate to the offense." *Id.* at *9. And, that means appellant failed to clear the initial prong to the disproportionality test.

We overrule appellant's sole issue and affirm the trial court's judgment.

Brian Quinn
Chief Justice

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