



**NUMBERS 13-16-00570-CR  
13-16-00571-CR  
13-16-00572-CR  
13-16-00573-CR  
13-16-00574-CR  
13-16-00575-CR**

**COURT OF APPEALS  
THIRTEENTH DISTRICT OF TEXAS  
CORPUS CHRISTI – EDINBURG**

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**GLENN C. GADOMSKI,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 36th District Court  
of Aransas County, Texas.**

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**MEMORANDUM OPINION<sup>1</sup>**

**Before Chief Justice Valdez and Justices Rodriguez and Hinojosa**

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<sup>1</sup> Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. See TEX. R. APP. P. 47.4.

## Memorandum Opinion by Chief Justice Valdez

Appellant, Glenn C. Gadowski, entered an open plea of guilty to (1) one count of theft of property greater than \$30,000 but less than \$150,000, a third-degree felony in appellate cause number 13-16-570-CR, (2) one count of theft of property greater than \$2,500 but less than \$30,000 in appellate cause number 13-16-572-CR, (3) unlawful possession of a firearm by a felon, a third-degree felony in appellate cause number 13-16-575-CR, and (4) burglary of a habitation, a second-degree felony in appellate cause number 13-16-574-CR. See TEX. PENAL CODE ANN. §§ 30.02, 31.03, 46.04(a) (Westlaw, West through 2015 R.S.); see also *id.* § 12.42 (West, Westlaw through 2015 R.S.). Appellant pleaded “no contest” to one count of engaging in organized criminal activity, a second-degree felony in appellate cause number 13-16-571-CR and one count of theft of property greater than \$150,000 but less than \$300,000, a second-degree felony in appellate cause number 13-16-573-CR. See *id.* §§ 31.03, 71.02(a) (West, Westlaw through 2015 R.S.); see also *id.* § 12.42. The trial court held a consolidated punishment hearing on all cases and sentenced appellant as follows: (1) twenty years’ confinement for engaging in organized criminal activity, (2) twenty years’ confinement for second-degree felony theft, (3) ten years’ confinement for each third-degree felony theft offense, (4) ten years’ confinement for unlawful possession of a firearm, and (5) twenty years’ confinement for burglary of a habitation. The trial court ordered all sentences to run concurrent except that the trial court ordered that the twenty-year sentence for second-degree felony theft run consecutive to the twenty-year sentence for engaging in organized criminal activity. By one issue, appellant contends that the punishment imposed

constitutes cruel and unusual punishment in violation of the Eighth Amendment. See U.S. CONST. amend. VIII. We affirm.

## II. CRUEL AND UNUSUAL PUNISHMENT

By his sole issue in all appellate cause numbers, appellant contends that the stacking of the twenty-year sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment. See *id.* Specifically, appellant argues that the sentence is excessive under the facts of this case “and was more than necessary to accomplish the sentencing objectives articulated under the Texas Penal Code.”

The Eighth Amendment of the United States Constitution provides that “[e]xcessive bail shall not be required, nor excessive fines, nor cruel and unusual punishment inflicted.” *Id.* The Eighth Amendment applies to punishments imposed by state courts through the Due Process Clause of the Fourteenth Amendment. *Id.* amend. XIV. This right and almost every constitutional or statutory right can be waived by a “failure to object.” *Smith v. State*, 721 S.W.2d 844, 855 (Tex. Crim. App. 1986); *Kim v. State*, 283 S.W.3d 473, 475 (Tex. App.—Fort Worth 2009, pet. ref’d); *Noland v. State*, 264 S.W.3d 144, 151–52 (Tex. App.—Houston [1st Dist.] 2007, pet. ref’d) (concluding that by failing to object the appellant did not preserve an argument that the sentence was grossly disproportionate to offense); *Wynn v. State*, 219 S.W.3d 54, 61 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *Smith v. State*, 10 S.W.3d 48, 49 (Tex. App.—Texarkana 1999, no pet.) (same); see *Mercado v. State*, 718 S.W.2d 291, 296 (Tex. Crim. App. 1986) (“As a general rule, an appellant may not assert error pertaining to his sentence or punishment where he failed to object or otherwise raise such error in the trial court.”); see also *Maza v. State*, No. 13-14-00128-CR, 2015 WL 3637821, at \*2 (Tex. App.—Corpus Christi June 11, 2015,

no pet.) (mem. op., not designated for publication) (disagreeing with the appellant's argument that he should be allowed to make his eighth amendment violation argument for the first time on appeal because he did not object in the trial court and thus his argument was not preserved); *Jones v. State*, No. 09-10-00397-CR, 2011 WL 1219227, at \*1 (Tex. App.—Beaumont March 30, 2011, no pet.) (mem. op., not designated for publication) (determining that the appellant had waived her argument that the sentence imposed was disproportionate and was unreasonable under the eighth amendment by failing to object); *Martinez v. State*, No. 13-02-508-CR, 2003 WL 22681385, at \*4 (Tex. App.—Corpus Christi Nov. 13, 2003, pet. ref'd) (mem. op., not designated for publication). To preserve a complaint of disproportionate sentencing, the criminal defendant must make a timely, specific objection to the trial court or raise the issue in a motion for new trial. *Kim*, 283 S.W.3d at 475; *Noland*, 264 S.W.3d at 151–52; *Trevino v. State*, 174 S.W.3d 925, 927–28 (Tex. App.—Corpus Christi 2005, pet. ref'd); *Quintana v. State*, 777 S.W.2d 474, 479 (Tex. App.—Corpus Christi 1989, pet. ref'd) (holding defendant waived cruel and unusual punishment argument by failing to object); see TEX. R. APP. P. 33.1; see also *Maza*, 2015 WL 3637821, at \*2; *Jones*, 2011 WL 1219227, at \*1; *Martinez*, 2003 WL 22681385, at \*4.

Here, appellant neither objected when the trial court pronounced that the sentence for second-degree felony theft would run consecutive to the engaging in organized criminal activity sentence, nor complained, in any post-trial motion, that the sentence was excessive or violated the Eighth Amendment. Therefore, appellant has failed to preserve this issue for our review. See TEX. R. APP. P. 33.1; *Kim*, 283 S.W.3d at 475; *Noland*, 264 S.W.3d at 151–52; *Trevino*, 174 S.W.3d at 927–28; *Quintana*, 777 S.W.2d at 479; see

also *Jones*, 2011 Tex. App. LEXIS 2374, at \*3–4. Moreover, even had appellant preserved error, a punishment falling within the limits prescribed by a valid statute, as in this case, is not excessive, cruel, or unusual.<sup>2</sup> See *Trevino*, 174 S.W.3d at 928. Therefore, because appellant failed to object to the stacking of his sentences and the sentence is within the punishment range, we overrule appellant’s sole issue. See TEX. R. APP. P. 33.1; *Kim*, 283 S.W.3d at 475; *Noland*, 264 S.W.3d at 151–52; *Trevino*, 174 S.W.3d at 927–28; *Quintana*, 777 S.W.2d at 479; see also *Stevens v. State*, 667 S.W.2d 534, 538 (Tex. Crim. App. 1984) (providing that cumulating a sentence is not cruel and unusual punishment) (citing *Baird v. State*, 455 S.W.2d 259 (Tex. Crim. App. 1970)).

### III. CONCLUSION

We affirm the trial court’s judgments in each cause.

/s/ Rogelio Valdez \_\_\_\_\_  
ROGELIO VALDEZ  
Chief Justice

Do Not Publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed the  
25th day of May, 2017.

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<sup>2</sup> The punishment for a second-degree felony is confinement in the Texas Department of Criminal Justice for “any term of not more than [twenty] years or less than [two] years.” See TEX. PENAL CODE ANN. § 12.33 (West, Westlaw through 2015 R.S.). Moreover, because the crimes in this case did not arise out of the same criminal episode, the trial court had discretion to order the sentences cumulated. See *id.* § 3.03 (West, Westlaw through 2015 R.S.) (setting out that sentences for offenses arising out of the same criminal episode prosecuted in a single criminal action shall run concurrently); TEX. CODE CRIM. PROC. ANN. art. 42.08 (West, Westlaw through 2015 R.S.) (giving trial court discretion to cumulate the sentences imposed).