COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

MARY JACQUELINE BATCHELOR,	§	
	§	No. 08-20-00115-CR
Appellant,	§	
	§	Appeal from the
v.	§	
	§	29th District Court
THE STATE OF TEXAS,	§	
	§	of Palo Pinto County, Texas
Appellee.	§	
	§	(TC#16521D)
	§	

MEMORANDUM OPINION

Mary Jacqueline Batchelor, Appellant, pleaded guilty to the offense of Engaging in Organized Criminal Activity by conspiring to deliver methamphetamine.[1] Following a pre-sentencing investigation and a hearing, the trial court sentenced Appellant within the legislatively prescribed range for the offense at forty years' confinement in the Institutional Division of the Texas Department of Criminal Justice. On appeal, Appellant argues the trial court abused its

[1] This case was transferred from the Eastland Court of Appeals pursuant to the Texas Supreme Court's docket equalization efforts. *See* TEX.GOV'T CODE ANN. § 73.001. We follow the precedent of the Eastland Court of Appeals to the extent they might conflict with our own. *See* TEX.R.APP.P. 41.3.

discretion because there was factually insufficient evidence to support imposition of the sentence. We affirm.

DISCUSSION

Appellant's sole complaint on appeal is that the trial court "abused its discretion when the evidence was factually insufficient to support the imposed sentence." Appellant acknowledges that she admitted her participation and plead guilty to the offense, but argues the evidence adduced at sentencing does not support the forty-year sentence. Appellant waived her right to appeal the guilty finding and appeals only from the sentence imposed by the trial court.

Appellant faces an uphill battle in this regard, as the Texas Court of Criminal Appeals instructs that where, as here, a punishment falls within a legislatively prescribed range, the judge or jury's selection of a particular sentence is generally unassailable, subject only to "exceedingly rare" circumstances when the sentence is grossly disproportional. *Barrow v. State*, 207 S.W.3d 377, 381 (Tex.Crim.App. 2006); *see also Reyes v. State,* 557 S.W.3d 624, 631 (Tex.App.—El Paso 2017, pet. ref'd). The Court of Criminal Appeals in *Barrow* went on to describe a jury's discretion to impose any punishment within the prescribed range as essentially "unfettered" and "unassailable" subject only to a very limited review on appeal. *Id.* at 381. We note the Eastland Court also follows the general rule that a penalty assessed within the range of punishment established by the legislature will not be disturbed on appeal. *See Flores v. State*, 936 S.W.2d 478 (Tex.App.—Eastland 1996, pet. ref'd).

Here, Appellant has not specifically argued her sentence is grossly disproportional to her crime or that it violates her rights under either the Texas or United States Constitution. The trial court set punishment at a forty-year sentence from a range of 5-99 years (or life with the

enhancement to which Appellant pleaded true). To the extent Appellant's argument here is that the sentence is disproportionate to the crime, that argument has been waived. *See Fuller v. State*, 253 S.W.3d 220, 232 (Tex.Crim.App. 2008)("almost all error—even constitutional error—may be forfeited if the appellant failed to object"); *see also* TEX.R.APP.P. 33.1(a)(1)(A).

Even if Appellant had properly raised a disproportionality objection, we would overrule the issue based on the record here, where the trial court considered evidence offered in a pre-sentencing report and an extensive sentencing hearing, during which both law enforcement and Appellant's stepfather testified, before imposing a sentence within the legislatively prescribed punishment range for Appellant's offense. *See Reyes*, 557 S.W.3d at 631-34 (extensive discussion of gross disproportionality review).

Instead, Appellant seems to argue that this should be an abuse of discretion review or a challenge to the sufficiency of the evidence put forth in the sentencing hearing. We will instead defer to the trial court's nearly "unfettered discretion" in weighing of the evidence and the decision as to where the punishment should fall within the range of legislatively approved sentences. *See Barrow*, 207 S.W.3d at 381.

The trial court here heard testimony from the investigating officers as to the nature of Appellant's involvement. The court also admitted without objection a host of evidence reflecting Appellant's nine prior convictions ranging from misdemeanor theft to possession of methamphetamine. The court also considered testimony from Appellant's bond supervision officer relating to multiple bond violations by Appellant while awaiting trial in this case. Appellant was rearrested after testing positive for methamphetamine multiple times, yet she continued to use methamphetamine in violation of her bonds. Her drug screen taken shortly before she entered her

plea of guilty in this case reflected she had been using "amphetamines, methamphetamines, and MDMA, ecstasy, and Molly." The trial court expressed frustration at this evidence as it assessed her sentence of forty years of confinement. Even under the standard argued by Appellant, which we do not find to be applicable here, we would not conclude on this record the prison term assessed is not supported by the evidence or is an abuse of the trial court's discretion. *See Reyes*, 557 S.W.3d at 635.

CONCLUSION

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

JEFF ROSE, Former Chief Justice, Third Court of Appeals

October 29, 2021

Before Rodriguez, C.J., Alley, J., and Rose, Former Chief Justice
Rose, Former Chief Justice (Sitting by Assignment)

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