

**AFFIRM; and Opinion Filed December 16, 2013.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-13-00508-CR  
No. 05-13-00509-CR  
No. 05-13-00510-CR**

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**MICHELLE RENAE ANDERSON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 204th Judicial District Court  
Dallas County, Texas  
Trial Court Cause Nos. F11-53993-Q, F11-63173-Q, F13-51244-Q**

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**MEMORANDUM OPINION**

Before Justices Francis, Lang-Miers, and Lewis  
Opinion by Justice Lang-Miers

Michelle Renae Anderson appeals from her convictions for felony prostitution. In four issues, appellant contends the ten-year sentences violate the United States and Texas Constitutions, and the judgments placing her on community supervision should be modified. We affirm the trial court's judgments.

**BACKGROUND**

In cause nos. 05-13-00508-CR and 05-13-00509-CR, appellant waived a jury, pleaded guilty to prostitution, having three or more prior prostitution convictions, and pleaded true to two

enhancement paragraphs alleging prior non-state jail felony convictions. *See* TEX. PENAL CODE ANN. § 43.02(a)(1), (c)(2) (West Supp. 2013). The trial court assessed punishment at ten years' imprisonment, probated for five years, in each case. The State later moved to revoke appellant's community supervision, alleging she violated several conditions of community supervision. Appellant pleaded true to the allegations in a hearing on the motions. The trial court found all of the allegations true, revoked appellant's community supervision, and assessed punishment at ten years' imprisonment in each case.

In cause no. 05-13-00510-CR, appellant waived a jury, pleaded guilty to prostitution, having three or more prior prostitution convictions, and pleaded true to two enhancement paragraphs alleging prior non-state jail felony convictions. *See* TEX. PENAL CODE ANN. § 43.02(a)(1), (c)(2). After finding appellant guilty, the trial court assessed punishment at ten years' imprisonment.

#### DISPROPORTIONATE SENTENCES

In her first two issues, appellant contends the ten-year sentences are grossly disproportionate to the crime and inappropriate to the offender, in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Texas Constitution. *See* U.S. CONST. amend. VIII, XIV; TEX. CONST. art. I, § 13. Appellant asserts that based on the evidence she presented at trial about the abuse she suffered in childhood and her drug addiction, she should have received further drug treatment and not severe sentences. The State responds that appellant failed to preserve her complaints for appellate review and, alternatively, the sentences are not grossly disproportionate to the offenses.

Appellant did not complain about the sentences either at the time they were imposed or in motions for new trial. *See* TEX. R. APP. P. 33.1(a)(1); *Castaneda v. State*, 135 S.W.3d 719, 723

(Tex. App.—Dallas 2003, no pet.). Thus, appellant has not preserved this issue for appellate review.

Moreover, punishment that is assessed within the statutory range for an offense is neither excessive nor unconstitutionally cruel or unusual. *Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.—Dallas 1997, pet. ref'd); *see also Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). Prostitution with three or more prior convictions for prostitution is a state jail felony. With the two enhancement paragraphs, the punishment range is elevated to that of a second-degree felony, punishable by imprisonment for two to twenty years and an optional fine not to exceed \$10,000. *See* TEX. PENAL CODE ANN. §§ 12.33, 12.425(b), 43.02(c)(2) (West 2011 & West Sup. 2013). Appellant's ten-year sentences are within the statutory punishment range. We resolve appellant's first two issues against her.

#### JUDGMENTS PLACING APPELLANT ON COMMUNITY SUPERVISION

In her third and fourth issues, appellant asks us to modify the judgments placing her on community supervision to reflect she entered open guilty pleas in cause nos. 05-13-00508-CR and 05-13-00509-CR. The State responds that appellant is entitled to have the judgments modified as she requests.

Once the trial court revoked appellant's community supervision and imposed the sentences, the original judgment suspending the sentence and placing her on community supervision was no longer in effect. *See Taylor v. State*, 131 S.W.3d 497, 502 (Tex. Crim. App. 2004); *McCoy v. State*, 81 S.W.3d 917, 919 (Tex. App.—Dallas 2002, pet. ref'd). A trial court's judgment revoking community supervision expressly sets aside the underlying order placing appellant on community supervision. *See McCoy*, 81 S.W.3d at 919. Because the orders placing

appellant on community supervision are no longer in effect, we resolve appellant's third and fourth issues against her.

We affirm the trial court's judgments.

/Elizabeth Lang-Miers/

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ELIZABETH LANG-MIERS

JUSTICE

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TEX. R. APP. P. 47

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**Court of Appeals  
Fifth District of Texas at Dallas**

JUDGMENT

MICHELLE RENAE ANDERSON,  
Appellant

No. 05-13-00508-CR      V.

THE STATE OF TEXAS, Appellee

Appeal from the 204th Judicial District  
Court of Dallas County, Texas (Tr.Ct.No.  
F11-53993-Q).

Opinion delivered by Justice Lang-Miers,  
Justices Francis and Lewis participating.

Based on the Court's opinion of this date, the trial court's judgment is **AFFIRMED**.

Judgment entered December 16, 2013.

/Elizabeth Lang-Miers/

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ELIZABETH LANG-MIERS

JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

JUDGMENT

MICHELLE RENAE ANDERSON,  
Appellant

No. 05-13-00509-CR      V.

THE STATE OF TEXAS, Appellee

Appeal from the 204th Judicial District  
Court of Dallas County, Texas (Tr.Ct.No.  
F11-63173-Q).

Opinion delivered by Justice Lang-Miers,  
Justices Francis and Lewis participating.

Based on the Court's opinion of this date, the trial court's judgment is **AFFIRMED**.

Judgment entered December 16, 2013.

/Elizabeth Lang-Miers/

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ELIZABETH LANG-MIERS

JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

JUDGMENT

MICHELLE RENAE ANDERSON,  
Appellant

No. 05-13-00510-CR      V.

THE STATE OF TEXAS, Appellee

Appeal from the 204th Judicial District  
Court of Dallas County, Texas (Tr.Ct.No.  
F13-51244-Q).

Opinion delivered by Justice Lang-Miers,  
Justices Francis and Lewis participating.

Based on the Court's opinion of this date, the trial court's judgment is **AFFIRMED**.

Judgment entered December 16, 2013.

/Elizabeth Lang-Miers/

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ELIZABETH LANG-MIERS

JUSTICE