

Affirmed as Modified and Opinion Filed July 14, 2016



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00928-CR
No. 05-15-00929-CR
No. 05-15-00930-CR
No. 05-15-00931-CR
No. 05-15-00932-CR
No. 05-15-00933-CR
No. 05-15-00934-CR
No. 05-15-00935-CR

GABRIELLE REGINA JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 283rd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F14-20157-T, F14-55131-T, F14-55132-T, F14-55133-T,
F14-55134-T, F14-75828-T, F14-75829-T, F14-75830-T**

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Bridges, and Justice Lang
Opinion by Justice Bridges

Gabrielle Regina Jackson waived a jury and pleaded guilty to theft enhanced by two prior theft convictions, four offenses of aggravated assault with a deadly weapon, and three offenses of retaliation. *See* TEX. PENAL CODE ANN. §§ 22.02(a), 31.03(a), 36.06(a) (West 2011 & Supp. 2015). After finding appellant guilty, the trial court assessed punishment at two years' confinement in state jail for the theft and five years' imprisonment for the aggravated assaults

and retaliations. In two issues, appellant contends the sentences are excessive and disproportionate for the offenses. We modify the trial court's judgments and affirm as modified.

Appellant argues the two-year state jail and five-year prison sentences are grossly disproportionate to the crimes and inappropriate to the offender in violation of the United States and Texas Constitutions. *See* U.S. CONST. amend. VIII; TEX. CONST. art. I, § 13. Appellant asserts that because she has been diagnosed with serious mental illnesses and has difficulty with anger and substance abuse, she deserved treatment and not incarceration. The State responded that appellant has failed to preserve this issue for appellate review and alternatively, the sentences are within the statutory punishment ranges for the offenses.

To preserve error for appellate review, the record must show appellant made a timely request, objection, or motion. *See* TEX. R. APP. P. 33.1(a)(1). Constitutional rights, including the right to be free from cruel and unusual punishment, may be waived. *Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996). Appellant did not object when she was sentenced, nor did she complain about the sentences in her motions for new trial, which alleged the verdicts were contrary to the law and evidence. Accordingly, she has not preserved the issue for appellate review. *See Castaneda v. State*, 135 S.W.3d 719, 723 (Tex. App.—Dallas 2003, no pet.).

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) (sentence will not be disturbed on appeal if it is within its statutory range of punishment). Theft enhanced by two prior theft convictions is a state-jail felony punishable by confinement in state jail for not less than 180 days or more than two years and an optional fine not to exceed \$10,000. *See* TEX. PENAL CODE ANN. §§ 12.35, 31.03(e)(4)(D). Aggravated assault with a deadly weapon is a

second-degree felony punishable by imprisonment for two to twenty years and an optional fine not to exceed \$10,000. *See id.* §§ 12.33, 22.02(b). Retaliation is a third-degree felony punishable by imprisonment for two to ten years and an optional fine not to exceed \$10,000. *See id.* §§ 12.34, 36.06(c). Appellant’s two- year and five year sentences are within the punishment ranges for the offenses. Accordingly, we conclude the trial court did not abuse its discretion in imposing the sentences. We overrule appellant’s issues.

We note the trial court’s judgment in each case incorrectly reflects there was a plea bargain agreement. The record reflects appellant entered an open plea of guilty to the charges in the indictment in each case. Accordingly, we modify the section of the judgment entitled “terms of plea bargain” to state “open.” *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref’d).

As modified, we affirm the trial court’s judgment in each case.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00928-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-20157-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED**
as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.



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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00929-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-55131-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED**
as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.



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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00930-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-55132-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED**
as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.



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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00931-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-55133-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.



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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00932-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-55134-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED**
as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.



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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00933-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-75828-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED**
as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.



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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00934-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-75829-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED**
as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.



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

JUDGMENT

GABRIELLE REGINA JACKSON,
Appellant

No. 05-15-00935-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas
Trial Court Cause No. F14-75830-T.
Opinion delivered by Justice Bridges. Chief
Justice Wright and Justice Lang
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED**
as follows:

The section entitled "Terms of Plea Bargain" is modified to show "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered July 14, 2016.