

Affirmed and Opinion Filed November 29, 2017



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

No. 05-17-00270-CR

**MARSHETA CUDJO, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F16-30581-Q**

MEMORANDUM OPINION

Before Justices Francis, Evans, and Boatright
Opinion by Justice Francis

Marsheta Cudjo waived a jury trial and pleaded guilty to theft of property valued less than \$2,500 and with two or more prior theft convictions. After finding appellant guilty, the trial court assessed punishment at twenty months in the state jail. In a single issue, appellant contends the sentence is excessive and unreasonable. We affirm the trial court's judgment.

Appellant argues the twenty-month sentence is excessive, unreasonable, and constitutes cruel and unusual punishment in violation of the United States and Texas Constitutions. *See* U.S. CONST. amend. VIII, XIV; TEX. CONST. art. I, § 13. Appellant asserts that because the items taken totaled only \$83 and she suffers from "improperly medicated mental illness," the prison sentence is unreasonable. Appellant further complains that the two prior theft convictions used to enhance the offense to a state jail felony are remote and occurred almost seventeen years ago.

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 file a motion for new trial raising this complaint. 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, appellant acknowledges that 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). Theft of property valued less than \$2,500 and with two prior theft convictions is a state jail felony offense punishable by confinement in a state jail facility for not more than two years or less than 180 days and an optional fine up to \$10,000. *See* TEX. PENAL CODE ANN. §§ 12.35, 31.03(e)(4)(D) (West 2011 & Supp. 2017). Because appellant's twenty-month sentence is within the statutory range, we conclude the trial court did not abuse its discretion in imposing the sentence. We overrule appellant's sole issue.

We affirm the trial court's judgment adjudicating guilt.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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TEX. R. APP. P. 47
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

MARSHETA CUDJO, Appellant

No. 05-17-00270-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F16-30581-Q.

Opinion delivered by Justice Francis.

Justices Evans and Boatright participating.

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

Judgment entered November 29, 2017.