

**Affirmed as Modified and Opinion Filed March 5, 2018**



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

**No. 05-17-00522-CR**

**No. 05-17-00523-CR**

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**DERRICK EUGENE COX, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 195th Judicial District Court  
Dallas County, Texas  
Trial Court Cause Nos. F16-39284-N, F16-41977-N**

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**MEMORANDUM OPINION**

Before Justices Lang, Brown, and Whitehill  
Opinion by Justice Whitehill

Derrick Eugene Cox waived a jury trial and pleaded guilty to evading arrest or detention with a vehicle and aggravated robbery with a deadly weapon. The trial court sentenced appellant to two years' imprisonment for the evading conviction and fifteen years' imprisonment for the aggravated robbery conviction. In two issues, appellant contends the trial court imposed grossly disproportionate sentences and the trial court violated his common law right to allocution. In cause no. 05-17-00522-CR, we affirm the trial court's judgment; in cause no. 05-17-00523-CR, we modify the trial court's judgment and affirm as modified. Because the facts are well-known to the parties, we discuss them below only as necessary to explain our analysis in context.

## I. DISCUSSION

### A. **Appellant's First Issue: Did the trial court err by imposing a grossly disproportionate sentence under the circumstances?**

Appellant's first issue argues that the trial court erred by imposing grossly disproportionate sentences that violate the Eighth Amendment's prohibition against cruel and unusual punishment. The State responds that appellant did not preserve his complaints for appellate review because he did not object to the sentences in the trial court.

The State is correct. The constitutional right appellant invokes must be preserved in the trial court. *See Castaneda v. State*, 135 S.W.3d 719, 723 (Tex. App.—Dallas 2003, no pet.). Accordingly, he did not preserve his first issue for appellate review, and we overrule it.

### B. **Appellant's Second Issue: Did the trial court err by denying appellant a common law allocution?**

Appellant's second issue asserts that the trial court violated his "common law right to allocution." Appellant acknowledges that the trial court satisfied the statutory "allocution" requirements of Article 42.07 of the Texas Code of Criminal Procedure. *See* TEX. CRIM. PROC. CODE art. 42.07 ("Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him."). However, he asserts he was also entitled, under the common law, to make a personal plea in mitigation of punishment prior to sentencing. The State responds appellant has not preserved this issue because he did not object in the trial court and alternatively, the trial court followed allocution protocol mandated by article 42.07.

It is well-settled that to complain on appeal of the denial of a right to allocution, whether statutory or one claimed under the common law, a defendant must timely object. *See Tenon v. State*, 563 S.W.2d 622, 623 (Tex. Crim. App. [Panel Op.] 1978); *McClintick v. State*, 508 S.W.2d 616, 618 (Tex. Crim. App. 1974) (op. on reh'g). Because appellant did not do so, we overrule appellant's second issue.

### III. MODIFICATION

We note that the trial court's judgment in cause no. 05-17-00523-CR incorrectly omits the deadly weapon finding. Appellant was indicted for and convicted of aggravated robbery with a deadly weapon, a firearm. *See* TEX. PENAL CODE § 29.03. The trial court's judgment recites the finding on deadly weapon as "N/A." Accordingly, on our own motion, we modify the judgment to show the finding on deadly weapon is "yes, a firearm." TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (courts of appeals have authority to modify a judgment).

### IV. CONCLUSION

In cause no. 05-17-00522-CR, we affirm the trial court's judgment. In cause no. 05-17-00523-CR, we affirm the trial court's judgment as modified.

/Bill Whitehill/  
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BILL WHITEHILL  
JUSTICE

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

**JUDGMENT**

DERRICK EUGENE COX, Appellant

No. 05-17-00522-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. F16-39284-N.

Opinion delivered by Justice Whitehill.

Justices Lang and Brown participating.

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

Judgment entered March 5, 2018.



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

**JUDGMENT**

DERRICK EUGENE COX, Appellant

No. 05-17-00523-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. F16-41977-N.

Opinion delivered by Justice Whitehill.

Justices Lang and Brown participating.

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

The section entitled "Findings on Deadly Weapon" is modified to show "Yes, a Firearm."

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

Judgment entered March 5, 2018.