

AFFIRMED and Opinion Filed November 20, 2018



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

No. 05-17-00786-CR

STEVEN WAYNE SIMMONS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 422nd Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 16-90142-422-F**

MEMORANDUM OPINION

Before Justices Stoddart, Whitehill, and Boatright
Opinion by Justice Whitehill

A jury found appellant Steven Wayne Simmons guilty of burglary of a habitation, a first-degree felony. Appellant elected for the court to assess punishment, and the judge imposed a thirty-year prison sentence. Appellant raises two issues on appeal: (i) the sentence violates the Eighth Amendment because it is grossly disproportionate to the offense and inappropriate to the offender and (ii) the sentence violates Texas Constitution article I, § 13, for the same reasons.

We overrule appellant's issues because he did not preserve them in the trial court.

Error preservation is a systemic requirement on appeal, and the court of criminal appeals has instructed us not to address the merits of unpreserved issues. *See Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009); *see also* TEX. R. APP. P. 33.1(a)(1). The constitutional rights appellant invokes must be preserved in the trial court. *See, e.g., Sims v. State*, No. 05-16-00669-

CR, 2017 WL 2224543, at *1 (Tex. App.—Dallas May 22, 2017, no pet.) (mem. op., not designated for publication); *Bell v. State*, 326 S.W.3d 716, 724 (Tex. App.—Dallas 2010, pet. dism'd, untimely filed).

Appellant did not object when the trial court pronounced his sentence. Although he filed a new trial motion, the motion raised no complaint about his sentence. Accordingly, appellant did not preserve his issues for appellate review, and we overrule them. *See Cox v. State*, No. 05-17-00522-CR, 2018 WL 1149568, at *1 (Tex. App.—Dallas Mar. 5, 2018, no pet.) (mem. op., not designated for publication).

We affirm the trial court's judgment.

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

STEVEN WAYNE SIMMONS, Appellant

No. 05-17-00786-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 422nd Judicial District Court, Kaufman County, Texas
Trial Court Cause No. 16-90142-422-F.
Opinion delivered by Justice Whitehill.
Justices Stoddart and Boatright
participating.

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

Judgment entered November 20, 2018.