

**AFFIRMED and Opinion Filed October 28, 2021**



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

**No. 05-20-00221-CR  
No. 05-20-00225-CR  
No. 05-20-00226-CR  
No. 05-20-00227-CR  
No. 05-20-00228-CR  
No. 05-20-00229-CR  
No. 05-20-00230-CR  
No. 05-20-00231-CR  
No. 05-20-00232-CR  
No. 05-20-00234-CR**

**ROBERT MICHAEL KESSLER, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the 366th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 366-84524-2018 CTS 1-10**

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**MEMORANDUM OPINION**

Before Justices Schenck, Smith, and Garcia  
Opinion by Justice Smith

Appellant Robert Michael Kessler entered an open guilty plea to ten counts of possession of child pornography. After a punishment hearing, the trial court found Kessler guilty on all counts and sentenced him to a total of twenty-five years in

prison.<sup>1</sup> In his first two issues, Kessler argues the trial court’s cumulative order violated the objectives of penal code section 1.02. In a third issue, he contends the trial court did not have jurisdiction in the case. Because Kessler failed to preserve his issues for review, we affirm the trial court’s judgments.

The underlying facts of this case are well-known to the parties and appellant has not challenged the sufficiency of the evidence; therefore, we include only those details necessary for resolution of his issues on appeal. *See* TEX. R. APP. P. 47.1.

### **Sentencing**

In his first two issues, Kessler argues the trial court abused its discretion by ordering consecutive sentences, which violated the objectives of penal code section 1.02. *See* TEX. PENAL CODE ANN. § 1.02. Specifically, he asserts the trial court refused to consider rehabilitation and refused to set a punishment solely designed to prevent recidivism. *See id.* § 1.02(1)(b), (c). The State responds Kessler waived his complaints by failing to object, and alternatively, the trial court acted within its discretion and sentenced him within the punishment range after considering the penal code’s public safety objective.

We first address waiver. Kessler acknowledges he made no “timely request, objection, or motion” that his sentence violated section 1.02 of the penal code. Section 1.02 was neither mentioned at the punishment hearing nor in a motion for

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<sup>1</sup> The trial court sentenced appellant to ten years, to run consecutively, for counts 1 and 2. The trial court sentenced him to five years for counts 3-10, to run concurrently, but consecutively to counts 1 and 2.

new trial. Rather, at the conclusion of the hearing when the trial court announced the sentence and asked if there was any reason at law he should not be sentenced, counsel answered, “Fair enough. No legal reason.”

Relying on *Hernandez v. State*, 268 S.W.3d 176 (Tex. App.—Corpus Christi-Edinburgh 2008, no pet.), Kessler asserts an exception to the preservation rules apply when a trial court violates a defendant’s due process rights by not acting impartially. In that case, the trial court expressed its intent prior to trial to follow its policy of doubling a defendant’s highest, previously imposed sentence. *Id.* at 182. On appeal, the court concluded the trial court arrived at Hernandez’s punishment by relying on an arbitrary mathematical formula, rather than a careful and fair consideration of the evidence relevant to punishment. *Id.* The court announced its intention to double the sentence, which followed its “tradition” of doubling previous sentences, prior to hearing any evidence. *Id.* Because the trial judge’s comments were so egregious that they clearly evidenced the judge’s bias on punishment, the appellate court determined the defendant could raise the complaint the first time on appeal. *Id.* at 184.

The record before us does not reveal such egregious comments clearly evidencing any bias by the trial court. The record does not indicate the trial court arbitrarily refused to consider the entire range of punishment, refused to consider evidence, or imposed a predetermined punishment. *See Jaenicke v. State*, 109 S.W.3d 793, 796 (Tex. App.—Houston [1st Dist.] 2003, pet. ref’d) (explaining due

process violations that do not require trial objection). Importantly, the case law relied on by appellant does not involve rule 1.02 and whether a party must object to preserve such arguments for review. Rather, this Court, along with other sister courts, has concluded that a defendant must make a rule 1.02 objection in the trial court to preserve the issue for appeal. *See Zamarron v. State*, No. 05-19-00632-CR, 2020 WL 6280869, at \*4 (Tex. App.—Dallas Oct. 27, 2020, pet. ref'd) (mem. op., not designated for publication); *see also Montelongo v. State*, No. 08-18-00093-CR, 2020 WL 4034961, at \*3–5 (Tex. App.—El Paso 2020, pet. ref'd) (not designated for publication) (concluding rule 1.02 issue not preserved when no objection to trial court); *Short v. State*, No. 03-11-0000719-CV, 2012 WL 5834565, at \*1 (Tex. App.—Austin Nov. 7, 2012, no pet.) (mem. op., not designated for publication). Accordingly, Kessler failed to preserve his issue for review. *See* TEX. R. APP. P. 33.1.

Even if Kessler preserved his issue, the trial court acted within its discretion in imposing the twenty-five-year sentence. Generally, if there is record evidence supporting the trial judge's sentence, we will not reverse absent a showing of an abuse of discretion. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). In addition, appellate courts will not disturb a sentence that is within the statutory range. *Id.*

Here, Kessler has not argued his individual sentences were outside the statutory range of punishment. *See* TEX. PENAL CODE ANN. §§ 12.34(a), 43.26(a),

(d). Further, the trial court heard substantial evidence regarding the amount of child pornography in Kessler's possession, along with the extensive lengths he went to conceal his activities. Many of the pictures were identified victims of child pornography that were parts of known collections that circulate among individuals looking for such pornography. He also possessed child pornography of children near the age of his young children, with some pictures looking similar enough to his daughter that investigators made two referrals to CPS. Thus, the trial court did not abuse its discretion by sentencing appellant to twenty-five years in prison. We overrule appellant's first and second issues.

### **Jurisdiction**

In his final issue, Kessler contends that the trial court lacked jurisdiction because the case was originally presented for indictment in a different trial court, and there were no written orders transferring the case to the court that tried the case and rendered judgment.

When a defendant fails to file a plea to the jurisdiction, he waives any right to complain that a transfer order does not appear in the record. *Wilson v. State*, No. 05-18-00801-CR, 2019 WL 3491931, at \*4 (Tex. App.—Dallas Aug. 1, 2019, no pet.) (mem. op., not designated for publication) (citing *Lemasurier v. State*, 91 S.W.3d 897, 899 (Tex. App.—Fort Worth 2002, pet. ref'd)). Kessler did not file a plea to the jurisdiction in this case; therefore, he waived his complaint.

Further, even if Kessler had preserved his complaint for review, this Court has considered and rejected this argument on numerous occasions, and we do so again today. *See Keller v. State*, 604 S.W.3d 214, 231 (Tex. App.—Dallas 2020, pet. ref'd); *Bourque v. State*, 156 S.W.3d 675, 678 (Tex. App.—Dallas 2005, pet. ref'd); *see also Wilson*, 2019 WL 3491931 at \*4 (collecting cases). Kessler's third issue is overruled.

### **Conclusion**

We affirm the trial court's judgment.

/Craig Smith/  
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CRAIG SMITH  
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**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00221-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 1.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00225-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 2.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021





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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00226-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 3.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00227-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 4.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00228-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 5.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00229-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 6.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00230-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 7.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00231-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 8.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00232-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 9.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021



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

**JUDGMENT**

ROBERT MICHAEL KESSLER,  
Appellant

No. 05-20-00234-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 366-84524-  
2018 CT 10.

Opinion delivered by Justice Smith.  
Justices Schenck and Garcia  
participating.

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

Judgment entered October 28, 2021