Opinion issued June 5, 2008

In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00384-CR

MICHAEL IAN FIGART, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from County Criminal Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 1430260

MEMORANDUM OPINION

Appellant, Michael Ian Figart, pleaded guilty to criminal mischief . *See* TEX. PENAL CODE ANN. § 28.03(b)(2) (Vernon Supp. 2007) (Class B misdemeanor if

amount of pecuniary loss is $50 or more but less than $500). Appellant also pleaded true to a prior misdemeanor conviction for theft. The jury assessed punishment at confinement for 180 days and a $2,000 fine, and the trial court probated the $2,000 fine.

In a single issue, appellant challenges the State's closing argument on punishment. Because appellant does not dispute the facts concerning the offense, we do not address them in this memorandum opinion. We affirm.

On appeal, appellant complains of three instances of alleged improper jury argument. At the beginning of the State's jury argument, the prosecutor stated:

> Before I tell you why this case merits 180 days in jail, I'll talk to you about the charge that you're going to receive. Now, I want you to keep in mind in Harris County, you get credit. It's two-for-one. So he'll only do three months. And probation is not appropriate in this case.

At the end of the State's initial jury argument, the prosecutor said, "I just wanted to go over the charge with you before you get up and hear me tell you exactly why it's important that he spend the next three months in jail." Appellant did not object to either statement by the prosecutor, but instead proceeded with his own jury argument.

Although not specifically complained about in appellant's brief, the prosecutor mentioned the following during closing jury argument: "This is a kid that's been accused of murder and convicted of theft. He absolutely deserves to spend the next

three months in jail." Appellant then objected stating, "Judge, this assumes facts not in evidence. We sat through it the first time, but the prosecutor is giving them -- about the two-for one credit, that's not in evidence and it's not admissible for the jury to consider." After the trial court overruled appellant's objection, the prosecutor made the third argument of which appellant complains, "He absolutely deserves 180 days in jail. He'll spend the next three months in jail . . . ."

Appellant did not object to the prosecutor's two-for-one credit argument when it was made for the first and only time at the beginning of the State's opening jury argument. Any error is, therefore, waived. *See* TEX. R. APP. P. 33.1(a). Appellant specifically objected to the prosecutor's statement in closing, "He absolutely deserves to spend the next three months in jail," claiming the statement assumed facts not in evidence. There is nothing in that closing statement which mentions the two-for-one credit, so appellant's objection that it assumed facts not in evidence is without merit. Instead, the closing argument merely asked the jury to assess punishment within the proper range of punishment.

Appellant is attempting on appeal to challenge the prosecutor's initial two-for-one credit argument, to which there was no timely objection. We hold the trial court properly overruled appellant's objection made during the rebuttal portion of the State's closing argument, and we overrule appellant's sole issue on appeal.

We affirm the judgment of conviction.

Sam Nuchia
Justice

Panel consists of Justices Nuchia, Alcala, and Hanks.

Do not publish. TEX. R. APP. P. 47.2(b).