

Opinion issued October 14, 2010



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-01081-CR

TODDRICK BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd Court
Harris County, Texas
Trial Court Case No. 1204628**

MEMORANDUM OPINION

Appellant, Toddrick Brown, entered a plea of guilty for the felony offense of burglary of a habitation, *see* TEX. PENAL CODE. ANN. § 30.02 (Vernon 2003), and the trial court deferred adjudication of guilt and placed appellant on five years' community supervision and a \$400 fine. The State later moved to adjudicate guilt

based on several alleged violations of the conditions of appellant's community supervision. The trial court found the allegations of the State's motion to be true, adjudicated appellant guilty, and assessed appellant's punishment at five years' confinement and a \$400 fine.

In appellant's sole point of error, appellant contends that the court's assessment of five years' confinement violates the Eighth Amendment of the United States Constitution because the term is disproportionate to the crime committed by appellant. We affirm.

CRUEL AND UNUSUAL PUNISHMENT

Appellant argues that his punishment was so disproportionate to his crimes that it constituted cruel and unusual punishment under the Eighth Amendment. To preserve for appellate review a complaint that a sentence is grossly disproportionate, constituting cruel and unusual punishment, a defendant must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling desired. *See* TEX. R. APP. P. 33.1(a); *Rhoades v. State*, 934 S.W.2d 113, 119–20 (Tex. Crim. App. 1996). Here, there is no record that after the trial court announced its sentence at the punishment stage, appellant made an objection to the trial court about the punishment assessed or that he asserted his claim under the Eighth Amendment. In addition, appellant did not move for a new trial. Accordingly, we hold that appellant has waived his cruel-and-unusual-

punishment complaint. *See Ladd v. State*, 3 S.W.3d 547, 564 (Tex. Crim. App. 1999) (concluding that defendant did not preserve cruel and unusual punishment complaint for appellate review because he failed to object to sentence).

Accordingly, we overrule appellant's sole point of error.

CONCLUSION

We affirm the judgment of the trial court.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Massengale and Mirabal.¹

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

¹ The Honorable Margaret Garner Mirabal, Senior Justice, Court of Appeals for the First District of Texas, participating by assignment.