Opinion issued May 10, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00574-CR
NO. 01-15-00575-CR

DOMINGO MEDINA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Case Nos. 1424158 & 1424159

MEMORANDUM OPINION

Appellant, Domingo Medina, without an agreed punishment recommendation from the State, pleaded guilty to two separate offenses of

robbery.[1] After a pre-sentence investigation ("PSI") hearing, the trial court assessed his punishment at confinement for sixteen years for each offense and ordered that the sentences run concurrently. In his sole issue, appellant contends that the trial court erred in assessing his punishment without first ordering a substance-abuse evaluation.

We affirm.

Substance-Abuse Evaluation

In his sole issue, appellant argues that the trial court erred in assessing his punishment without first ordering a substance-abuse evaluation because the PSI report indicates that he has a history of substance abuse and committed the robberies as a result of his "desperat[ion] for money to buy drugs." *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 9(h) (Vernon Supp. 2015).

The Texas Code of Criminal Procedure provides that,

> [o]n a determination by the judge that alcohol or drug abuse may have contributed to the commission of the offense, . . . the judge shall direct a supervision officer . . . to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report that evaluation to the judge. The evaluation shall be made: . . . after conviction and before sentencing, if the judge assesses punishment in the case.

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[1] *See* TEX. PENAL CODE ANN. § 29.02 (Vernon 2011); appellate cause no. 01-15-00574-CR, trial court cause no. 1424158; appellate cause no. 01-15-00575-CR, trial court cause no. 1424159.

Id. art. 42.12, § 9(h)(2). A substance-abuse evaluation must be made only if the trial court makes a "determination" that alcohol or drug abuse "may have contributed to the commission of the offense." *Torres v. State*, 391 S.W.3d 179, 182 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd). However, the statute does not require that a trial court make such a determination sua sponte. *Id*. Here, the record does not show that the trial court made such a determination.

The trial court did give appellant, at his sentencing hearing, an opportunity to object and make additions to the PSI report. However, he did not object to the absence in the PSI report of an evaluation for the appropriateness of alcohol- or drug-abuse rehabilitation. Consequently, appellant has not preserved his issue for appellate review. *See* TEX. R. APP. P. 33.1(a); *Melchor v. State*, No. 01-03-00799-CR, 2004 WL 1173008, at *1 (Tex. App.—Houston [1st Dist.] May 27, 2004, no pet.) (mem. op., not designated for publication) (failure to object or otherwise raise issue about lack of substance-abuse evaluation waives issue); *Alberto v. State*, 100 S.W.3d 528, 529 (Tex. App.—Texarkana 2003, no pet.) (defendant must request substance-abuse evaluation in trial court to preserve issue); *Chavez v. State*, No. 01-98-00699-CR, 1999 WL 233576, at *1 (Tex. App.—Houston [1st Dist.] Apr. 22, 1999, pet. ref'd) (not designated for publication).

We overrule appellant's sole issue.

Conclusion

We affirm the judgments of the trial court.

Terry Jennings
Justice

Panel consists of Chief Justice Radack and Justices Jennings and Lloyd.

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