



In The

Fourteenth Court of Appeals

NO. 14-08-00781-CR

JOSEPH MANSE RICHARD, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 506th Judicial District Court
Waller County, Texas
Trial Court Cause No. 12440**

M E M O R A N D U M O P I N I O N

Appellant Joseph Manse Richard pleaded guilty to possession of a firearm by a felon. The court sentenced him to ten years' confinement in the Institutional Division of the Texas Department of Criminal Justice. On appeal, he argues the court erred in refusing to suspend his sentence and otherwise assessing a sentence disproportionate to the crime. Finding no error, we affirm.

I. BACKGROUND

While arguing with an acquaintance, appellant, a convicted felon, fired a handgun. He was arrested and charged with possession of a firearm by a felon, a third-degree

felony. *See* Tex. Penal Code Ann. § 46.04 (Vernon Supp. 2009). He pleaded guilty to the charged offense. He also admitted to several other offenses, including two previous felonies. His crime was enhanced to a second-degree felony, punishable by two to twenty years' confinement. *See* Tex. Penal Code Ann. §§ 12.33, 12.42 (Vernon Supp. 2009). The court sentenced him to ten years' confinement. On appeal, he contends the court erred in assessing a sentence disproportionate to the crime.¹

II. DISCUSSION

A criminal sentence must be proportionate to the crime for which the defendant has been convicted. *Solem v. Helm*, 463 U.S. 277, 289 (1983). Our proportionality analysis is guided by the following factors: (1) the gravity of the offense and the severity of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commissions of the same crime in other jurisdictions. *Id.* at 291. The first factor is a threshold factor. *Harmelin v. Michigan*, 501 U.S. 957, 1005 (1991) (Kennedy, J., plurality opinion); *State v. Stewart*, 282 S.W.3d 729, 736 (Tex. App.—Austin 2009, no pet.). Thus, we consider the second and third factors only if we determine the severity of the penalty is disproportionate to the offense. *Id.*

Before reaching this analysis, however, we note appellant did not object to his sentence at the trial court. It is well-settled that a defendant waives his right to appeal his sentence when he fails to preserve error by not objecting to the sentence at trial or in a post-trial motion. *See Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995); *Cruz v. State*, 838 S.W.2d 682, 687 (Tex. App.—Houston [14th Dist.] 1992, pet. ref'd); *Solis v. State*, 945 S.W.2d 300, 301 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd). Because appellant raises this issue for the first time on appeal, he has not preserved error for our

¹ Specifically, appellant contends the court erred in assessing a sentence unsupported by the evidence, assessing a sentence disproportionate to the crime, and refusing to suspend his sentence. We address the latter two contentions under a proportionality analysis in this opinion. We do not, however, address his first contention because, to the extent it may be construed as an attack on the sufficiency of the evidence, he cites no authority in support of his argument. Tex. R. App. P. 38.1(i) (“[A] brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.”). Thus, he presents nothing for review.

review. *See Curry*, 910 S.W.2d at 497.

Even so, we note appellant has not shown that ten years' confinement is grossly disproportionate in light of his offense and extensive criminal background. In determining his sentence, the court acknowledged his "unenviable reputation" for "violence, violent tendencies, drugs, [and] weapons." The court paid particular attention to his previous convictions: two counts of felony deadly conduct, two misdemeanor assaults, and possession of a controlled substance.

Accordingly, we cannot conclude the court erred in sentencing appellant to ten years' confinement and refusing to suspend it. Therefore, we overrule appellant's issues on appeal and affirm his sentence.

/s/ Kent C. Sullivan
 Justice

Panel consists of Chief Justice Hedges and Justices Seymore and Sullivan.

Do Not Publish — TEX. R. APP. P. 47.2(b).