Affirmed and Memorandum Opinion filed March 24, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00235-CR

JAMAL ROBERTSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 1233102

MEMORANDUM OPINION

Appellant pleaded guilty to the state jail felony of possessing less than one gram of cocaine. Tex. Health & Safety Code Ann. § 481.115(b) (West 2010). He received two years' deferred adjudication, then violated the terms of his community supervision when he failed to report to his probation officer. The State moved to adjudicate guilt, and appellant was fined $300 and sentenced to eighteen months' imprisonment. In two issues on appeal, he contends his sentence constitutes cruel and unusual punishment in violation of the U.S. and Texas Constitutions. U.S. Const. amend. VIII; Tex. Const. art. I, § 13.

Appellant did not object to the excessiveness of his sentence at the time of rendition, nor did he raise the issue in a timely-filed motion for new trial. In a letter to the trial court, appellant simply requested a second chance to "complete [his] probation." Because appellant never specified the grounds of his complaint, he has waived any error by raising the issue for the first time on appeal. *See Nicholas v. State*, 56 S.W.3d 760, 768 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd); *Solis v. State*, 945 S.W.2d 300, 301 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd).

Even were we to presume error was preserved, we would still hold that appellant's sentence does not constitute cruel or unusual punishment. As a general rule, a trial court's sentence will not be disturbed on appeal if it falls within the range of punishment authorized by statute. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). Appellant was adjudged guilty of a state jail felony, which carries a sentencing range between six and twenty-four months and a fine not to exceed $10,000. Tex. Penal Code Ann. § 12.35 (West 2010). Though on the higher end of that range, appellant's sentence was still within the limits prescribed by the legislature. Thus, his sentence is not excessive. *See Hill v. State*, 493 S.W.2d 847, 849 (Tex. Crim. App. 1973).

Appellant argues that his sentence is still grossly disproportionate, even though his punishment lies within the statutory range. *See Solem v. Helm*, 463 U.S. 277, 303 (1983) (invalidating sentence of life without parole for nonviolent felon, despite statutory authorization). Although appellant asserts this claim under both the state and federal constitutions, he cites no authority establishing that his protection under the Texas Constitution exceeds or differs from that provided by the Eighth Amendment to the U.S. Constitution. Accordingly, we examine his argument solely under the Eighth Amendment. *See Buster v. State*, 144 S.W.3d 71, 81 (Tex. App.—Tyler 2004, no pet.); *see also Baldridge v. State*, 77 S.W.3d 890, 893–94 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd).

The Eighth Amendment encompasses a narrow proportionality principle, which requires that a criminal sentence be graduated to its offense. *See Baldridge*, 77 S.W.3d at 893. The principle is rarely applied to invalidate a sentence for a term of years. *See Lockyer v. Andrade*, 538 U.S. 63, 73 (2003). Legislatures have the broad authority to define their own crimes and set their own punishments. As a reviewing court, we must afford considerable deference to these sentencing schemes. *Solem*, 463 U.S. at 290. Therefore, in assessing the proportionality for a term-of-years sentence, our role is to judge not the wisdom of appellant's sentence, but whether the sentence comports with constitutional standards. *Id.*

Our analysis consists of two steps. We first determine whether "an objective comparison of the gravity of the offense against the severity of the sentence reveals the sentence to be extreme." *Baldridge*, 77 S.W.3d at 893 (citing *Harmelin*, 501 U.S. at 1005 (Kennedy, J., concurring in part and concurring in judgment)). If that comparison leads to an inference of gross disproportionality, we then compare the challenged sentence against (a) the sentences of other offenders in the same jurisdiction, and (b) the sentences imposed for the same crime in other jurisdictions. *Id.*; *see also Solem*, 463 U.S. at 292. The sentence is only cruel and unusual if this comparative analysis validates an initial judgment that the sentence is grossly disproportionate to the crime. *Graham v. Florida*, 130 S. Ct. 2011, 2022 (2010); *Harmelin*, 501 U.S. at 1005 (Kennedy, J., concurring in part and concurring in judgment).

We find that an eighteen-month sentence for a conviction of felony drug possession does not give rise to an inference of gross disproportionality. *See Davis v. State*, 119 S.W.3d 359, 363–64 (Tex. App.—Waco 2003, pet. ref'd) (upholding enhanced sentence of twenty years' confinement for possession of less than one gram of cocaine). Special examination under the Eighth Amendment's proportionality principle is normally reserved for "extreme" or "exceedingly rare" types of punishments. *Lockyer*, 538 U.S. at 73; *see Ex parte Chavez*, 213 S.W.3d 320, 324–25 (Tex. Crim. App. 2006). This is not one of those

cases. Because this ends our comparative analysis, we conclude that appellant's sentence is not in violation of federal constitutional standards.

Appellant's two issues are overruled. The judgment of the trial court is therefore affirmed.

/s/ Tracy Christopher
Justice

Panel consists of Chief Justice Hedges and Justices Frost and Christopher.
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