Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00534-CR

Curtis Scott **CRENWELGE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 216th Judicial District Court, Kerr County, Texas
Trial Court No. A12121
Honorable N. Keith Williams, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: July 12, 2017

AFFIRMED

Curtis Scott Crenwelge appeals the 45-year sentence imposed upon the revocation of his deferred adjudication community supervision, arguing it constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

BACKGROUND

On August 17, 2012, Crenwelge pled no contest to aggravated assault and stipulated to the use or exhibition of a deadly weapon, i.e., a firearm. TEX. PENAL CODE ANN. § 22.02(a)(2) (West 2011). The second degree felony aggravated assault was enhanced to a first degree felony based

on Crenwelge's prior felony conviction for robbery in 2011. TEX. PENAL CODE ANN. § 12.42(b) (West Supp. 2016). The trial court accepted Crenwelge's plea and made an affirmative finding of use of a deadly weapon, but deferred a finding of guilt and placed Crenwelge on deferred adjudication for a term of five years.

Approximately three years later, the State moved to adjudicate guilt and revoke Crenwelge's community supervision based on multiple violations. Crenwelge pled "not true" to the violations alleged in the State's fifth amended motion to adjudicate and revoke. The trial court held an evidentiary hearing on February 24, 2016 at which the State introduced multiple witnesses and exhibits. At the conclusion of the hearing, the trial court found multiple violations to be true, including Crenwelge's commission of several offenses while on community supervision including evading arrest/detention, resisting arrest, assault-public servant, reckless driving, driving while intoxicated, and possession of a controlled substance and drug paraphernalia, along with his failure to pay probation fees and file statements of income. The trial court adjudicated Crenwelge guilty of aggravated assault with a deadly weapon punishable as a first degree felony, as charged in the indictment, and revoked his community supervision. The trial court reset sentencing to obtain a presentence investigation report.

At the sentencing hearing on May 26, 2016, the State proceeded based on the presentence investigation report and presented no additional evidence. Crenwelge presented testimony by his mother about the physical and sexual abuse he suffered as a child, his multiple diagnoses of various mental illnesses, including bipolar disorder, oppositional defiance disorder, ADHD, paranoid schizophrenia, and post-traumatic stress disorder, beginning when he was eight or nine years old, his struggles with substance abuse since he was 13 or 14 years old, his detention at TYC from the age of 14 to 18 years old, his prior suicide attempts, and his inability to complete high school or obtain a GED. His mother testified that Crenwelge did well on community supervision from 2012

to 2015, but became unable to obtain his prescribed medication and reverted to self-medicating with illegal drugs. Crenwelge's grandmother, who raised him, also passed away around the same time. Crenwelge's sister confirmed the testimony by the mother and agreed that Crenwelge needs medication and treatment.[1]

At the conclusion of the sentencing hearing, counsel for Crenwelge noted he had already been incarcerated for ten months and cited the mitigating evidence in arguing for his release to a treatment program. The State argued for a life sentence based on Crenwelge's lengthy criminal history and the danger he posed to society. The trial court imposed a 45-year sentence of imprisonment. Crenwelge now appeals.

ANALYSIS

In his sole issue on appeal, Crenwelge challenges his 45-year sentence as cruel and unusual punishment that violates the Eighth Amendment. U.S. CONST., VIII amend. Crenwelge acknowledges the general rule that a sentence that falls within the statutory range of punishment is not considered excessive in violation of the Eighth Amendment, but argues his sentence falls within the exception that applies when a sentence is grossly disproportionate to the offense of conviction. *See Ex parte Chavez*, 213 S.W.3d 320, 323 (Tex. Crim. App. 2006); *see also Reynolds v. State*, 430 S.W.3d 467, 471 (Tex. App.—San Antonio 2014, no pet.). In analyzing a claim of disproportionality, we "initially make a threshold comparison of the gravity of [the defendant's] offenses against the severity of his sentence." *Reynolds*, 430 S.W.3d at 472 (quoting *McGruder v. Puckett*, 954 F.2d 313, 316 (5th Cir. 1992)). Only if we determine that this threshold is met and that the sentence is grossly disproportionate to the offense of conviction, do we then proceed to

[1] The record shows that Crenwelge was examined and found to be competent to stand trial. *See* TEX. CODE CRIM. PROC. ANN. arts. 46B.001-.025 (West 2006 & Supp. 2016).

consider two additional factors set forth by the United States Supreme Court in *Solem v. Helm*, 463 U.S. 277, 292 (1983): the sentences imposed for commission of the same crime in the same and other jurisdictions. *Id.*

Crenwelge argues the 45-year term of imprisonment is grossly disproportionate to the conduct underlying his aggravated assault conviction because no one was injured in the assault — according to Crenwelge, the presentence report states he fired a single shot that did not hit any person or cause any property damage.[2] Moreover, Crenwelge argues the offense he actually committed was a second degree felony aggravated assault with a punishment range of two to twenty years' imprisonment. *See* TEX. PENAL CODE ANN. § 12.33(a) (West 2011). The punishment range was enhanced to that of a first degree felony with a punishment range of five to 99 years or life based on his prior felony conviction in 2011. *See id.* § 12.32(a) (West 2011). Crenwelge stresses that he must serve approximately one-half of the assessed sentence before becoming eligible for parole, which he argues is disproportionate to the facts underlying the offense of conviction. In addition, Crenwelge cites the mitigating evidence presented at his sentencing hearing concerning his mental illness diagnoses, history of physical and sexual abuse as a child, and struggles with substance abuse.

At the sentencing hearing, the prosecutor stressed the dangerous nature of Crenwelge's conduct underlying the offense of conviction, stating that he "point[ed] a firearm at a vehicle containing a young child" and then fired a single shot. The limited record before us does not indicate whether the gunshot was directed at the vehicle or elsewhere. In arguing for a life sentence, the prosecutor also cited the dangerous conduct underlying Crenwelge's community supervision violations based on his commission of the offenses of evading arrest with a vehicle

[2] The State waived its right to file a responsive brief.

during a long high-speed chase, reckless driving, and assault on a public servant. Before pronouncing sentence, the trial court acknowledged the prior abuse, mental illness diagnoses, and substance abuse problems suffered by Crenwelge, but also noted the dangerous nature of the offense and the lengthy criminal history that Crenwelge amassed in only 29 years of life, reciting that he has "27 misdemeanor arrests, six misdemeanor convictions, two probation cases, the revocation, 19 misdemeanor cases pending at this time, 14 felony arrests, three felony convictions, four felony probations, three revocations, one motion to revoke, and nine felony cases pending at this time." The trial court went on to detail the video of "one of the most dangerous chase scenes I've seen," stressing Crenwelge's disregard for the public's safety while he evaded police. Stating "this has got to stop," the trial court pronounced a 45-year sentence of imprisonment.

The gross disproportionality principle will only invalidate a sentence in an exceedingly rare and extreme case. *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003). "The narrow proportionality principle in the Eighth Amendment 'does not require strict proportionality between crime and sentence' but rather 'forbids only extreme sentences that are grossly disproportionate to the crime.'" *In re J.P.M.*, 410 S.W.3d 408, 410 (Tex. App.—San Antonio 2013, no pet.) (quoting *Graham v. Florida*, 560 U.S. 48, 60 (2010)). We cannot say, based on the record and arguments before us, that the trial court's decision to sentence Crenwelge to a 45-year term of imprisonment was grossly disproportionate to the gravity of Crenwelge's conduct in pointing a loaded firearm at a vehicle containing a young child and then firing a shot. Therefore, we need not address the two remaining *Solem* factors.

Based on the foregoing analysis, we overrule Crenwelge's sole issue on appeal and affirm the trial court's judgment and sentence.

Rebeca C. Martinez, Justice

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