

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00016-CR
NO. 09-11-00017-CR

MICHAEL JOSEPH PERRIO A/K/A MICHAEL PERRIO
A/K/A MICHAEL J. PERRIO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 08-04266 and 09-05775

MEMORANDUM OPINION

Pursuant to a plea bargain, Michael Joseph Perrio, a/k/a Michael Perrio a/k/a Michael J. Perrio, pleaded guilty to sexual assault and delivery of a controlled substance and received eight years of deferred adjudication community supervision for each offense. The State later filed a motion to revoke Perrio's community supervision in each case. Perrio pleaded "true" to two alleged violations of his community supervision for sexual assault and pleaded "true" to one alleged violation of his community supervision for delivery of a controlled substance. The trial court found that Perrio violated the conditions of his community supervision, found Perrio guilty of the charged offenses,

sentenced Perrio to twenty years in prison for each offense, and ordered that Perrio's sentence for delivery of a controlled substance run consecutively to the sexual assault sentence. In two issues, Perrio contends that his sentences are constitutionally disproportionate and unreasonable.¹ *See* U.S. Const. amend. VIII; *see also* Tex. Const. art. I, § 13. We affirm the trial court's judgment.

The record does not show that Perrio presented his complaint to the trial court.² *See* Tex. R. App. P. 33.1(a). Even had Perrio preserved his complaint for appellate review, his twenty-year sentence is within the statutorily authorized range of punishment for each of the charged offenses. *See* Tex. Penal Code Ann. §§ 12.33, 22.011(f) (West Supp. 2010); *see also* Tex. Health & Safety Code Ann. § 481.112(c) (West 2010).³ Generally, a sentence that is within the range of punishment established by the Legislature will not be disturbed on appeal. *See Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). A punishment that is within the statutory range for the offense is generally not excessive or unconstitutionally cruel or unusual under the Texas

¹ Perrio also contends that the trial court “unreasonabl[y] applied facts” in violation of article 37.07 of the Code of Criminal Procedure, used “unverifiable facts” to sentence Perrio, and violated Perrio's due process and equal protection rights under the United States and Texas Constitutions. *See* Tex. Code Crim. Proc. Ann. art. 37.07 (West Supp. 2010); *see also* U.S. Const. amend. XIV; Tex. Const. art. I, §§ 3, 19. Perrio cites no applicable authority to support these arguments. *See* Tex. R. App. P. 38.1(i).

² Perrio contends that he presented his complaint to the trial court in a “post-verdict motion[.]” However, the record does not contain any such motion.

³ Because amended sections 12.33, 22.011, and 481.112 contain no material changes applicable to this case, we cite to the current version of each statute. *See* Tex. Penal Code Ann. §§ 12.33, 22.011(f) (West Supp. 2010); *see also* Tex. Health & Safety Code Ann. § 481.112(c) (West 2010).

Constitution or the United States Constitution. *See Kirk v. State*, 949 S.W.2d 769, 772 (Tex. App.—Dallas 1997, pet. ref’d); *see also Jackson v. State*, 989 S.W.2d 842, 846 (Tex. App.—Texarkana 1999, no pet.). This includes sentences imposed at the statutory maximum. *See Gavin v. State*, No. 01-08-00881-CR, 2010 Tex. App. LEXIS 3862, at **20-21 (Tex. App.—Houston [1st Dist.] May 20, 2010, no pet.) (not yet released for publication); *see also Holley v. State*, 167 S.W.3d 546, 549-50 (Tex. App.—Houston [14th Dist.] 2005, pet. ref’d). Moreover, “the cumulation of sentences does not constitute cruel and unusual punishment.” *Stevens v. State*, 667 S.W.2d 534, 538 (Tex. Crim. App. 1984). Even were Perrio’s sentences grossly disproportionate, the record contains no evidence “reflecting sentences imposed for similar offenses on criminals in Texas or other jurisdictions by which to make a comparison.”⁴ *Jackson*, 989 S.W.2d at 846. We overrule Perrio’s two issues and affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on May 5, 2011
Opinion Delivered May 18, 2011
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.

⁴ Perrio asks us to abate the appeal for a hearing to gather information regarding sentences imposed for similar offenses on criminals in Texas or other jurisdictions. Perrio cites no applicable authority to support this proposition. *See Tex. R. App. P. 38.1(i)*.