

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00226-CR
NO. 09-11-00227-CR
NO. 09-11-00228-CR

KALE RYAN BURROWS a/k/a KALE BURROWS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause Nos. 10-09028, 10-09029, and 10-09076

MEMORANDUM OPINION

In carrying out three plea bargain agreements, Kale Ryan Burrows a/k/a Kale Burrows pled guilty in each of the felony theft cases, and the trial court placed him on deferred adjudication for a term of ten years in each case. Later, in each of the three cases, the State filed motions to revoke Burrows's placement on community supervision. During the revocation hearings, Burrows pled "true" to four violations of his community supervision in each case. The trial court found that Burrows violated the conditions of his

community supervisions, found Burrows guilty of the felony theft offenses, sentenced Burrows to ten years in prison in each case, and ordered that the sentences run concurrently. In two issues, Burrows contends that his sentences are constitutionally disproportionate and unreasonable.¹ *See* U.S. Const. amend VIII; Tex. Const. art. I, § 13. We affirm the trial court’s judgments.

The record does not show that Burrows presented his complaints regarding the length of his sentences to the trial court. *See* Tex. R. App. P. 33.1(a). Each respective case was elevated to a third degree felony based on two prior state jail felonies. *See* Tex. Penal Code Ann. § 12.42 (West 2011) (elevating punishment of a state jail felony to a third degree felony if defendant has been previously convicted of two state jail felonies).² Even had Burrows preserved his complaint for appellate review, each of his ten-year sentences is within the statutorily authorized range of punishment for felony theft. *See*

¹Burrows 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 Burrows, and violated Burrows’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. Burrows does not cite any authority in support of these arguments. *See* Tex. R. App. P. 38.1(i).

²Amended section 12.42 contains no material changes relevant to this case, therefore, we cite to the current version of the statute. *See* Tex. Penal Code Ann. § 12.42 (West 2011).

Tex. Penal Code Ann. § 31.03 (West 2011); *see also id.* § 12.34 (West 2011).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 United States or Texas Constitutions. *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.). Punishment is not generally considered excessive even when it is 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). Finally, Burrows has failed to prove that his sentences were grossly disproportionate, as 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. In each of Burrows’s

³Because amended sections 12.34 and 31.03 contain no material changes relevant to this case, we cite to the current version of each statute. *See Tex. Penal Code Ann.* §§ 12.34, 31.03 (West 2011).

⁴Burrow states that this Court “is in a better position than [Burrows] to determine sentences for similar crimes in the same jurisdiction and sentences for the same crime in other jurisdictions[,]” but, asks us, in the event we need more information, to abate the appeal for a hearing to gather information regarding sentences imposed for similar offenses on criminals in Texas or other jurisdictions. Burrows cites no authority to

appeals, we overrule Burrows's two issues and affirm the trial court's respective judgments.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on August 25, 2011
Opinion Delivered August 31, 2011
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.

support his argument that under these circumstances, he should be allowed to create a record different than the one that was before the trial court. *See* Tex. R. App. P. 38.1(i).