In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00238-CR

SHARON BADEAUX A/K/A SHARON KAY BADEAUX, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 10-09787

MEMORANDUM OPINION

Pursuant to a plea bargain, Sharon Badeaux a/k/a Sharon Kay Badeaux pleaded guilty to forgery. The trial court found Badeaux guilty, assessed her punishment at two years in prison, suspended the imposition of her sentence, placed Badeaux on community supervision for five years, and assessed a $500.00 fine. The State filed a motion to revoke. After finding three of the alleged violations to be true, the trial court revoked Badeaux's community supervision, and sentenced her to two years of confinement in state jail.

Badeaux's two issues on appeal concern punishment. In her first issue, she contends she received ineffective assistance of counsel due to counsel's failure to object to the sentence assessed and in failing to file a motion for new trial or for reconsideration of the sentence. In Badeaux's second issue, she argues the trial court abused its discretion in sentencing her to two years for forgery.

Badeaux cites various cases in which the trial court sentenced a defendant to a lesser punishment for forgery, or sentenced a defendant for the same punishment for more than one count of forgery. She argues that these sentences demonstrate that her sentence is disproportionate to the crime, and that "[n]othing in the record indicates aggravating factors for this case of forgery to warrant a maximum sentence." Badeaux maintains the trial court committed reversible error by assessing punishment that was cruel, unusual, and excessive, in violation of the Eighth Amendment to the United States Constitution; article I, subsection 13 of the Texas Constitution, and article 1.09 of the Code of Criminal Procedure. Badeaux does not argue that the cruel and unusual provisions of the state constitution or the statute are broader and offer greater protection than the Eighth Amendment. *See Baldridge v. State*, 77 S.W.3d 890, 894 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd); *Puga v. State*, 916 S.W.2d 547, 550 (Tex. App.—San Antonio 1996, no pet.). We address Badeaux's issues together.

A complaint that a sentence is grossly disproportionate, constituting cruel and unusual punishment, must be preserved for appellate review by a timely request,

objection or motion stating the specific grounds for the ruling desired. *Kim v. State*, 283 S.W.3d 473, 475 (Tex. App.—Forth Worth 2009, pet. ref'd) (citing *Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996)); *see* Tex. R. App. P. 33.1(a). Badeaux did not raise this complaint below. Even if Badeaux had preserved the complaint, however, the sentence is not cruel, unusual, or excessive. The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. "Subject only to a very limited, 'exceedingly rare,' and somewhat amorphous Eighth Amendment gross-disproportionality review, a punishment that falls within the legislatively prescribed range, and that is based upon the sentencer's informed normative judgment, is unassailable on appeal." *Ex parte Chavez*, 213 S.W.3d 320, 323-24 (Tex. Crim. App. 2006) (footnote omitted); *see also Jarvis v. State*, 315 S.W.3d 158, 162 (Tex. App.—Beaumont 2010, no pet.). The sentence was within the statutory range. *See* Tex. Penal Code Ann. § 32.21 (West 2011); Tex. Penal Code Ann. § 12.35 (West 2011). The sentence is not subject to a sufficiency of the evidence review on appeal. *See Jarvis*, 315 S.W.3d at 162. The trial court considered that Badeaux had been on probation for the current charge for six months and in that time violated three terms of her community supervision. The record shows that the trial court considered the fact that her probation on a prior felony charge of document fraud had previously been revoked and she served

jail time. Trial counsel was not ineffective in failing to raise an issue in a motion in the absence of error in the sentencing.

Issues one and two are overruled. We affirm the judgment.

AFFIRMED.

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DAVID GAULTNEY
Justice

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

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