



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00092-CR

KASHANN JEMAR SIMMONS

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 213TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1364590D

MEMORANDUM OPINION¹

In a single issue, appellant Kashann Jemar Simmons appeals his conviction for sexual assault of a child and seven-year sentence. Because we conclude Simmons has forfeited his claim that his sentence was disproportionate and unconstitutionally cruel and unusual, we affirm the trial court's judgment.

¹See Tex. R. App. P. 47.4.

Simmons, a supervisor of a high-school, on-campus suspension class, was indicted with four counts of sexual assault against a sixteen-year-old student, a second-degree felony. See Tex. Penal Code Ann. § 22.011(a), (f) (West 2011). The sexual assaults occurred at the school over a two-day period. Simmons pleaded guilty to one count and agreed to have the trial court assess his punishment. The State dismissed the other three counts, and the trial court granted Simmons's unopposed plea in bar, ordering that further prosecution of a pending charge against Simmons for improper relationship between educator and student was barred. See Tex. Penal Code Ann. § 21.12 (West Supp. 2016); Tex. Code Crim. Proc. Ann. art. 32.02 (West 2006). After a punishment hearing and after reviewing a presentence-investigation report, the trial court assessed his punishment at seven years' confinement.

On appeal, Simmons argues that his sentence is disproportionate and unconstitutional because the evidence at punishment showed he had no criminal history, "took full responsibility for his unlawful conduct," apologized to the complainant, and expressed remorse. However, Simmons failed to raise this issue in the trial court at the punishment hearing² and did not file a post-trial motion raising this claim. Thus, he has forfeited this claim.³ See *Sample v.*

²When the trial court asked if there was "any legal or lawful reason why at this time the defendant should not be sentenced," Simmons's counsel stated that there was not. See Tex. Code Crim. Proc. Ann. art. 42.07 (West 2006).

³Even if properly preserved, this argument would have no merit because Simmons's seven-year sentence was well within the range of applicable

State, 405 S.W.3d 295, 303–04 (Tex. App.—Fort Worth 2013, pet. ref'd). We overrule Simmons's sole issue and affirm the trial court's judgment. See Tex. R. App. P. 43.2(a).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: LIVINGSTON, C.J.; DAUPHINOT and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

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punishments for a second-degree felony and was not grossly disproportionate to the underlying offense involving a school supervisor's sexual assault of a student who, as a result of the offense, dropped out of school, was taunted and chastised by her peers, and suffered emotional turmoil. See Tex. Penal Code Ann. § 12.33(a) (West 2011); *Mullinex v. State*, No. 11-08-00207-CR, 2009 WL 1426911, at *1 (Tex. App.—Eastland May 21, 2009, pet. ref'd) (mem. op., not designated for publication); *Williams v. State*, No. 12-01-00311-CR, 2003 WL 1883474, at *5 (Tex. App.—Tyler Apr. 16, 2003, no pet.) (mem. op., not designated for publication); *Smith v. State*, No. 2-02-259-CR, 2003 WL 1849204, at *3 (Tex. App.—Fort Worth Apr. 10, 2003, pet. ref'd) (mem. op., not designated for publication); cf. *Hammer v. State*, 461 S.W.3d 301, 303–04 (Tex. App.—Fort Worth 2015, no pet.) (addressing in the alternative and holding that fifteen-year sentence for burglary of a habitation, a second-degree felony, not grossly disproportionate or unconstitutional).