



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

NO. 02-16-00042-CR

JUDY SHAW

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 235TH DISTRICT COURT OF COOKE COUNTY
TRIAL COURT NO. 14-00055

MEMORANDUM OPINION¹

In April 2015, Appellant Judy Shaw pleaded guilty to possession of a controlled substance (methamphetamine) in an amount less than one gram, a state jail felony, in exchange for three years' deferred adjudication community supervision, a fine, a lab fee, and "any other terms recommended by the Pre-Sentence Investigation." In December 2015, the State filed a motion to proceed

¹See Tex. R. App. P. 47.4.

to adjudication, alleging multiple violations of the terms and conditions of Shaw's community supervision.

Shaw pleaded true to the allegations in the State's motion and stipulated to them. Shaw had the opportunity to put on evidence with regard to sentencing but did not offer anything. The trial court found the allegations true and sentenced her to two years' confinement. Shaw did not object to the trial court's pronouncement of sentence. Shaw filed a notice of appeal, but she did not file a motion for new trial.

In a single point, Shaw complains that the evidence is insufficient to support imposition of the maximum state-jail-felony sentence "because the types of probation violations did not rise to the level of any new offenses." Essentially, Shaw's argument is that her sentence is excessive and disproportionate.² However, Shaw did not raise this complaint during trial or in a subsequent motion for new trial. Therefore, she has failed to preserve it for our review. See *Laboriel-Guity v. State*, 336 S.W.3d 754, 756 (Tex. App.—Fort Worth 2011, pet.

²Shaw argues that because the punishment range "is from 180 days to 2 years, the court should consider the seriousness of the violations in the Motion to Adjudicate and assess punishment accordingly Two years[] confinement in state jail is onerous and simply too much time for [her] violations of her probation." See Tex. Penal Code Ann. § 12.35 (West Supp. 2016) (setting out punishment range for state jail offense).

ref'd); *Kim v. State*, 283 S.W.3d 473, 475 (Tex. App.—Fort Worth 2009, pet. ref'd).³ We overrule Shaw’s sole point and affirm the trial court’s judgment.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: WALKER, MEIER, and SUDDERTH, JJ.

DO NOT PUBLISH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

DELIVERED: March 2, 2017

³Additionally, we note that a sentence within the statutory range of punishment is generally not subject to a challenge for excessiveness, see *Kim*, 283 S.W.3d at 475–76, and that although Shaw argues that she did not commit any new offenses and committed only technical violations, the allegations to which she pleaded true and to which she stipulated included “obtaining methamphetamine from two separate individuals” and “injecting methamphetamine approximately one time per week to avoid withdrawal symptoms,” i.e., possession of a controlled substance in an amount less than 1 gram—the same offense to which she originally pleaded guilty in exchange for deferred adjudication community supervision. Her probation officer testified at the revocation hearing that Shaw told him that she had been using methamphetamine approximately once a week, that he saw the syringes that she had used to inject it, and that she gave him the name of the two individuals from whom she was buying it.