COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00194-CR

RICARDO VASQUEZ — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM CRIMINAL DISTRICT COURT NO. 2 OF TARRANT COUNTY
TRIAL COURT NO. 1392612D

MEMORANDUM OPINION[1]

I. INTRODUCTION

Appellant Ricardo Vasquez appeals his ten-year sentence that the trial court imposed after it adjudicated him guilty of the offense of sexual assault of a child under the age of seventeen. In two points, Vasquez argues that his sentence is excessive and not supported by evidence. We will affirm.

[1]*See* Tex. R. App. P. 47.4.

II. BACKGROUND

Pursuant to a plea bargain, Vasquez pleaded guilty to the offense of sexual assault of a child. In accordance with the terms of his plea bargain, on April 13, 2015, the trial court placed Vasquez on deferred-adjudication community supervision for eight years and assessed a fine of $800. Later, the trial court twice amended the terms of Vasquez's community supervision.

In February 2016, the State filed a petition to proceed to adjudication, alleging three violations of Vasquez's community supervision terms. The following month, the State filed its first amended petition to proceed to adjudication, alleging four violations. At the revocation hearing, Vasquez pleaded "true" to the four allegations in the State's first amended petition. Based on his pleas, the trial court found the allegations to be true, revoked Vasquez's community supervision, and found him guilty of the offense of sexual assault of a child. The trial court sentenced Vasquez to ten years' confinement. This appeal followed.

III. DISCUSSION

A. The Proportionality of Vasquez's Sentence

In his first point, Vasquez argues that the ten-year sentence constitutes cruel and unusual punishment and that it is grossly disproportionate to the crime that he was convicted of. The State argues that Vasquez has failed to preserve this point for our review. We agree with the State.

To preserve for appellate review a complaint that a sentence is grossly disproportionate, constituting cruel and unusual punishment, a defendant must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling desired. Tex. R. App. P. 33.1(a); *Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996) (holding complaint of cruel and unusual punishment under Texas constitution was waived because defendant presented his argument for first time on appeal); *Noland v. State*, 264 S.W.3d 144, 151–52 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd) (holding that when appellant failed to object to his sentence at the punishment hearing or to complain about it in his motion for new trial, he failed to preserve his Eighth Amendment complaint that the punishment assessed was "grossly disproportionate and oppressive"); *see also Mercado v. State*, 718 S.W.2d 291, 296 (Tex. Crim. App. 1986) (stating that as a general rule, appellant may not assert error pertaining to his sentence or punishment when he failed to object or otherwise raise such error in the trial court).

Vasquez argues that he preserved this point for our review by lodging a complaint about the excessiveness of his sentence in his motion for new trial, but as the State points out, the record is devoid of any indication that Vasquez presented his motion for new trial to the trial court. *See Washington v. State*, 271 S.W.3d 755, 756 (Tex. App.—Fort Worth 2008, pet ref'd) (mem. op.) ("Although appellant timely filed a motion for new trial, he has failed to preserve his

complaint because the record does not indicate that he presented his motion for new trial to the trial court.").

Because Vasquez did not raise a complaint about the excessiveness of the trial court's sentence when it was pronounced, and because there is no evidence in the record demonstrating that Vasquez presented his motion for new trial to the trial court, he has failed to preserve this point for our review. We overrule Vasquez's first point.

B. Evidence Supporting Vasquez's Sentence

In his second point, Vasquez argues that the trial court abused its discretion and violated his rights to due process and due course of law by sentencing him based solely on evidence of his violations of community supervision. The State argues that Vasquez has also failed to preserve this point for our review. We agree.

Generally, complaints concerning due process are not preserved for appeal if the appellant did not make a due process objection at the time of revocation. *Rogers v. State*, 640 S.W.2d 248, 263–64 (Tex. Crim. App. [Panel Op.] 1982) (second op. on reh'g); *see* Tex. R. App. P. 33.1(a). The preservation rule "ensures that trial courts are provided an opportunity to correct their own mistakes at the most convenient and appropriate time—when the mistakes are alleged to have been made." *Hull v. State*, 67 S.W.3d 215, 217 (Tex. Crim. App. 2002). Even "constitutional rights, including those that implicate a defendant's due process rights, may be forfeited for purposes of appellate review unless

properly preserved." *Anderson v. State*, 301 S.W.3d 276, 280 (Tex. Crim. App. 2009).

Like in his first point, Vasquez argues that he preserved this argument for our review by filing his motion for new trial, but as discussed above, the record does not indicate that Vasquez presented his motion for new trial to the trial court. *See Washington*, 271 S.W.3d at 756. The record also demonstrates that at the time the trial court pronounced its sentence, it inquired whether there was any legal reason it should not do so, to which Vasquez's counsel replied, "No, Your Honor." Because Vasquez did not present this complaint to the trial court, and because there is no evidence in the record demonstrating that Vasquez presented his motion for new trial to the trial court, he has failed to preserve this point for our review. We overrule Vasquez's second point.

IV. CONCLUSION

Having overruled both of Vasquez's points on appeal, we affirm the trial court's judgment.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

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

DELIVERED: May 18, 2017