COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00404-CR
NO. 02-16-00405-CR

GILBERT WILLIAM ANDERSON, III — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 415TH DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NOS. CR16-0118, CR16-0108

MEMORANDUM OPINION[1]

Pursuant to a charge bargain, Appellant Gilbert William Anderson, III pled guilty to two third-degree felonies—one count of felony deadly conduct and a separately charged count of unlawful possession of a firearm by a felon—and pled true to an enhancement paragraph in each case in exchange for the State's waiver of a third count—aggravated assault with a deadly weapon—and its

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

waiver of a second enhancement paragraph in the unlawful-possession-of-a-firearm case. *See* Tex. Penal Code Ann. §§ 22.05(b)(1), (e), 46.04(a)(1), (e) (West 2011); *see also Shankle v. State*, 119 S.W.3d 808, 812–14 (Tex. Crim. App. 2003) (holding that a guilty plea made in exchange for a sentencing cap is a plea bargain for purposes of rule 25.2(a)(2)). The trial court accepted the charge bargain and Appellant's guilty pleas and determined his guilt of the two offenses.

Appellant elected to have a jury assess his punishment. After hearing the evidence, the jury found the enhancement allegation in each case true and assessed Appellant's punishment at twenty years' confinement in each case, the maximum confinement allowed. *See* Tex. Penal Code Ann. § 12.33(a) (West 2011), § 12.42(a) (West Supp. 2017). After the trial judge ascertained that the jury verdicts were unanimous, he "proceed[ed] to publish the verdict[s]" by reading the jury's punishment determinations aloud, and then the following dialogue took place:

[THE COURT:]	Does the State have any request at this time?
[PROSECUTOR]:	No, sir.
THE COURT:	Defendant?
[DEFENSE COUNSEL]:	No, Your Honor.

The trial court then sentenced Appellant in accordance with the jury verdict, with the two sentences running concurrently.

Even though Appellant did not object to the sentences in the trial court, he did timely file a motion for new trial complaining that each sentence was

"excessive and constitute[d] cruel and unusual punishment." However, the record contains no indication that he presented the motion for a ruling in either case. The trial court gave Appellant permission to appeal, and he timely filed his notices of appeal in these cases.

In one issue, Appellant complains that the sentence in each case is cruel and unusual and violates the constitutional prohibition against cruel and unusual punishment. Because he did not timely object or present his motion for new trial to the trial judge for a ruling, he has failed to preserve his issue. *See Nelson v. State*, No. 02-16-00184-CR, 2017 WL 3526340, at *13 (Tex. App.—Fort Worth Aug. 17, 2017, no pet.); *Means v. State*, 347 S.W.3d 873, 874 (Tex. App.—Fort Worth 2011, no pet.).

We therefore overrule Appellant's sole issue and affirm the trial court's judgments.

/s/ Mark T. Pittman
MARK T. PITTMAN
JUSTICE

PANEL: SUDDERTH, C.J.; KERR and PITTMAN, JJ.

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

DELIVERED: May 17, 2018