



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-23-00007-CR

ALFONZO BUTLER JR., Appellant

V.

THE STATE OF TEXAS

On Appeal from Criminal District Court No. 1
Tarrant County, Texas
Trial Court No. 1698886D

Before Kerr, Birdwell, and Wallach, JJ.
Memorandum Opinion by Justice Wallach

MEMORANDUM OPINION

The State indicted Appellant Alfonzo Butler Jr. for the first-degree aggravated assault, *see* Tex. Penal Code Ann. § 22.02(b)(3), and, in an alternate count, the second-degree aggravated assault of Eduardo Ramirezsoa, *see id.* § 22.02(a). A jury found Butler guilty of first-degree aggravated assault as alleged in the first count.¹ The trial court found true the allegation that Butler had previously been convicted of two felonies. This finding raised the punishment range to life in prison or any term of not more than 99 years or less than 25 years. *See id.* § 12.42(d). The trial court then sentenced Butler to 40 years' imprisonment.

Butler raises one point on appeal—that the sentence assessed was grossly disproportionate to the offense and therefore violative of the Eighth Amendment's prohibition against cruel and unusual punishment. *See* U.S. Const. amend. VIII. We have consistently held that a defendant must preserve error on a grossly disproportionate sentence complaint by objecting in the trial court at the time the sentence was imposed or, at the latest, raising the issue in a motion for new trial.² *See,*

¹While driving on an expressway, Butler cut off another driver, Ramirezsoa. After Ramirezsoa honked in response, Butler fired a weapon at Ramirezsoa and wounded him in the hand. When the police arrested Butler, they found a .40 caliber handgun in his car.

²Several other appellate courts have also so held. *See, e.g., Caudill v. State*, No. 07-19-00331-CR, 2021 WL 2979036, at *2 (Tex. App.—Amarillo July 14, 2021, no pet.) (mem. op., not designated for publication); *Simmons v. State*, No. 03-14-00707-CR, 2017 WL 1130372, at *4 (Tex. App.—Austin Mar. 23, 2017, no pet.) (mem. op., not designated for publication); *Noland v. State*, 264 S.W.3d 144, 151–52 (Tex. App.—

e.g., *Sample v. State*, 405 S.W.3d 295, 304–05 (Tex. App.—Fort Worth 2013, pet. ref'd); *Russell v. State*, 341 S.W.3d 526, 527–28 (Tex. App.—Fort Worth 2011, no pet.); *Laboriel-Guity v. State*, 336 S.W.3d 754, 756 (Tex. App.—Fort Worth 2011, pet. ref'd); *Kim v. State*, 283 S.W.3d 473, 475 (Tex. App.—Fort Worth 2009, pet. ref'd). Because Butler did neither, he has not preserved his complaint for our review.

Having held that error was not preserved for our review, we overrule Butler's sole point and affirm the trial court's judgment.

/s/ Mike Wallach
Mike Wallach
Justice

Do Not Publish
Tex. R. App. P. 47.2(b)

Delivered: September 7, 2023

Houston [1st Dist.] 2007, pet. ref'd); *Nicholas v. State*, 56 S.W.3d 760, 768 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd); *Smith v. State*, 10 S.W.3d 48, 49 (Tex. App.—Texarkana 1999, no pet.).