

NO. 07-07-0503-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL B
JUNE 23, 2008

DAVID MCGARY a/k/a DAVID SANDERS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 46TH DISTRICT COURT OF HARDEMAN COUNTY;

NO. 4006; HON. DAN MIKE BIRD, PRESIDING

Memorandum Opinion

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Appellant David McGary a/k/a David Sanders appeals from his conviction of possession of a controlled substance (cocaine). His issue on appeal involves comments made during the State's closing argument. The first pertained to the prosecutor's allusion to a "three strikes and you're out" rule. Though objections to the comments were twice sustained and the jury instructed to disregard them, appellant believed that he was entitled

to a mistrial. The second comment involved reference to punishment being assessed in accordance with community desires. We affirm.

Regarding the “three strikes” comment and the need for a mistrial, appellant did not request one. Thus, he waived any complaint he had about not receiving one. See *Thompson v. State*, 12 S.W.3d 915, 920-21 (Tex. App.–Beaumont 2000, pet. ref’d) (holding that a defendant must request a mistrial to preserve his complaint for review).

As for the purported reference to community desires when assessing punishment, no objection was uttered. Thus, appellant also failed to preserve this complaint. See *Archie v. State*, 221 S.W.3d 695, 699 (Tex. Crim. App. 2007) (stating that to preserve error regarding prosecutorial argument, a defendant must pursue his objections to an adverse ruling).

Accordingly, we overrule the issue and affirm the judgment of the trial court.

Per Curiam

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