



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00155-CR

WILLIAM BLUITT IV, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the Criminal District Court 4
Tarrant County, Texas¹
Trial Court No. 1385944D, Honorable Michael Thomas, Presiding

April 5, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL, J. and HANCOCK, S.J.²

Appellant, William Blutt IV, entered an open plea of guilty for the offense of aggravated robbery. His plea was accepted by the trial court. Before holding a sentencing hearing, the trial court ordered the preparation of a presentence investigation report ("PSI"). After holding a hearing on punishment, the trial court sentenced appellant to twenty years' incarceration in the Texas Department of Criminal

¹ Pursuant to the Texas Supreme Court's docket equalization efforts, this case was transferred to this Court from the Second Court of Appeals. See TEX. GOV'T CODE ANN. § 73.001 (West 2013).

² Mackey K. Hancock, Justice (Ret.), Seventh Court of Appeals, sitting by assignment.

Justice-Institutional Division. Appellant appeals the sentence on the basis that the PSI was incomplete in that it did not address his prior military service. We will affirm.

Appellant's sole issue contends that the trial court's reliance on an incomplete PSI is fundamental error that requires a new sentencing hearing. In a felony case in which the judge is assessing sentence, the judge is required to direct a supervision officer to prepare and file a PSI containing certain information identified by the statute. See TEX. CODE CRIM. PROC. ANN. art. 42.12, § 9(a) (West Supp. 2016). Information regarding whether the defendant is or has served in the state or federal military forces is one example of information required in a PSI. *Id.* § 9(l). Because the PSI in the present case did not include information on appellant's military service, appellant contends that this omission constitutes fundamental error and that he is entitled to a new sentencing hearing.

Generally, to preserve a complaint for appeal, a defendant must present a timely request, objection, or motion to the trial court stating the specific grounds for the ruling desired. TEX. R. APP. P. 33.1(a). Complaints that are not properly preserved are waived unless they involve systemic requirements or fundamental rights. *Mendez v. State*, 138 S.W.3d 334, 342 (Tex. Crim. App. 2004). The right to preparation of a PSI may be forfeited by a failure to object. *Jefferson v. State*, No. 14-12-00854-CR, 2013 Tex. App. LEXIS 13782, at *5 (Tex. App.—Houston [14th Dist.] Nov. 7, 2013, pet. ref'd) (mem. op., not designated for publication), rev'd on other grounds, 2014 Tex. Crim. App. Unpub. LEXIS 385 (Tex. Crim. App. Apr. 16, 2014) (not designated for publication) (citing *Summers v. State*, 942 S.W.2d 695, 696-97 (Tex. App.—Houston [14th Dist.] 1997, no pet.)). Likewise, material inaccuracies in a PSI are waived if not raised at the

time of the sentencing hearing. See *Harris v. State*, 416 S.W.3d 50, 52 (Tex. App.—Houston [1st Dist.] 2013, no pet.).

Appellant did not object to the omission of information about his military service from the PSI at the sentencing hearing. As such, he failed to preserve this complaint for appellate review. See *Jefferson*, 2013 Tex. App. LEXIS 13782, at *5 (failure to object to omission of military information in PSI waives error on appeal); *Harris*, 416 S.W.3d at 52 (failure to object to PSI referencing insufficiently supported extraneous offenses waives objection on appeal).

Appellant contends that the omission of information about his military service from the PSI “*should* be considered fundamental error because it is explicitly required by law” However, other than complaints involving systemic requirements or rights that are waivable-only, “all other complaints, whether constitutional, statutory, or otherwise, are forfeited by failure to comply with [Texas Rule of Appellate Procedure] 33.1(a).” *Mendez*, 138 S.W.3d at 331. Systemic requirements include personal and subject-matter jurisdiction and a penal statute’s compliance with the Separation of Powers Section of the state constitution. *Saldano v. State*, 70 S.W.3d 873, 888 (Tex. Crim. App. 2002). Examples of waivable-only rights include the right to assistance of counsel and the right to trial by jury. *Id.*

Appellant does not cite any authority that establishes that the failure to include information about a defendant’s military service in a PSI is fundamental error. Neither does appellant provide any argument as to why it should be so classified other than that it is “explicitly required by law.” The courts that have confronted the issue have required

a timely objection to preserve any claim of error. See *Jefferson*, 2013 Tex. App. LEXIS 13782, at *4-5 (must object to PSI omitting psychological evaluation and information regarding military service or waived); *Harris*, 416 S.W.3d at 52 (claim that extraneous offenses identified in PSI lack sufficient evidence must be asserted at the time of the sentencing hearing or waived); *Welch v. State*, 335 S.W.3d 376, 381-82 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) (substitute op.) (omission of psychological evaluation from PSI must be preserved by timely objection). Agreeing with our sister courts that material inaccuracies in or omissions from a PSI are not fundamental error and are waived if not raised at the time of the sentencing hearing, we overrule appellant's sole issue.

Having overruled appellant's sole issue, we affirm the judgment of the trial court.

Mackey K. Hancock
Senior Justice

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