In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00463-CR

MICHELLE ARAUJO, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 110th District Court
Floyd County, Texas
Trial Court No. 4337, Honorable William P. Smith, Presiding

September 5, 2017

MEMORANDUM OPINION

Before QUINN, CJ., and CAMPBELL and PIRTLE, JJ.

Appellant, Michelle Araujo, appeals the trial court's decision to revoke her probation and sentence her to ten years' imprisonment. We affirm.

Issues One and Two – Evidence of Prior Violations of Probation

Appellant contends through her first two issues that the "trial court erred and abused its discretion by allowing the State to present evidence of alleged violations of probation" and "previously adjudicated violations" by her. According to the record, though, it did not do that. Instead, it sustained appellant's objection to the State's effort.

To the extent that the supposedly objectionable evidence became part of the record, that happened when the trial court took judicial notice of the file developed in the cause. More importantly, appellant did not object to the trial court's decision to judicially notice the file. Given the lack of an objection to that, appellant's complaint about the court's consideration of her prior misadventures while on probation was not preserved. *Thomas v. State*, 505 S.W.3d 916, 924 (Tex. Crim. App. 2016) (stating that, to preserve error, a party must object and state the grounds for the objection with enough specificity to make the trial judge aware of the complaint). We overrule the issues.

Issue Three – Excessive Punishment

In her final issue, appellant questions the trial court's sentence. Apparently, she believes the trial court erred in sentencing her to the ten-year term assessed before she was granted probation. This is error, in her view, because it did not take into consideration the time she spent on probation and because the trial court had the discretion to levy a shorter term. We overrule the issue for several reasons.

First, appellant failed to accompany her rather terse argument with citation to legal authority. Thus, the issue was inadequately briefed and, therefore, waived. *See* TEX. R. APP. P. 38.1(i) (requiring the brief to contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record); *Lucio v. State*, 351 S.W.3d 878, 896–97 (Tex. Crim. App. 2011) (stating that an inadequately briefed issue presents nothing for review and holding the issue inadequately briefed because the appellant provided neither argument nor citation to authority to support the contention).

Second, appellant did not complain about the length of her sentence below. Nor did she suggest it was excessive. Thus, her complaint was waived. *See Little v. State*, No. 07-12-00042-CR, 2012 Tex. App. LEXIS 3763, at *1 (Tex. App.—Amarillo May 11, 2012, no pet.) (per curiam) (mem. op., not designated for publication) (holding that appellant waived his complaint about his sentence being excessive when he did not raise it with the trial court).

Third, upon revoking probation, a trial judge has the discretion to levy the original sentence assessed before placing the appellant on probation. This is so because it may dispose of the case as if there had been no community supervision. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 23(a) (West Supp. 2016).[1] Here, the trial judge opted to do just that—impose the ten-year sentence originally pronounced.

Having overruled appellant's issues, we affirm the trial court's judgment.

Brian Quinn
Chief Justice

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[1] The Texas Legislature repealed article 42.12, effective January 1, 2017, and enacted Chapter 42A, as part of a nonsubstantive revision of community-supervision laws. *See* Act of May 26, 2015, 84th Leg., R.S., ch. 770, §§ 1.01, 3.01, 4.01–.02, 2015 Tex. Gen. Laws 2321, 2321–2395 (codified at TEX. CODE CRIM. PROC. ANN. arts. 42A.001–.757). The judgment in the case at bar was signed on November 21, 2016, prior to the effective date of Chapter 42A ,and we have, therefore, cited to the article applicable at the time the judgment was signed.