



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-08-00018-CR

MARLA AMELIA RODRIGUEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 124th Judicial District Court
Gregg County, Texas
Trial Court No. 35775-B

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Marla Amelia Rodriguez has appealed from her open plea of guilty to the offense of burglary of a habitation. *See* TEX. PENAL CODE ANN. § 30.02(c)(2) (Vernon 2003). She was sentenced by the trial court to five years' confinement.

On appeal, Rodriguez contends her sentence is disproportionate to the crime and violates societal norms, thus violating the Eighth Amendment, citing *Kennedy v. Louisiana*, ___ U.S. ___, 128 S.Ct. 2641 (2008). To preserve such complaint for appellate review, Rodriguez must have presented to the trial court a timely request, objection, or motion that stated the specific grounds for the desired ruling, or the complaint must be apparent from the context. *See* TEX. R. APP. P. 33.1(a)(1); *Harrison v. State*, 187 S.W.3d 429, 433 (Tex. Crim. App. 2005); *Williams v. State*, 191 S.W.3d 242, 262 (Tex. App.—Austin 2006, no pet.) (claims of cruel and unusual punishment must be presented in timely manner); *Nicholas v. State*, 56 S.W.3d 760, 768 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (failure to complain to trial court that sentences were cruel and unusual waived claim of error for appellate review). We have reviewed the record of the trial proceeding. No relevant request, objection, or motion was made. And, while this Court has held that a motion for new trial is an appropriate way to preserve this type of claim for review,¹ Rodriguez' motion for new trial did not contain an allegation that the sentence was disproportionate to the offense. She has not preserved such an issue for appeal.

¹*See Williamson v. State*, 175 S.W.3d 522, 523–24 (Tex. App.—Texarkana 2005, no pet.); *Delacruz v. State*, 167 S.W.3d 904 (Tex. App.—Texarkana 2005, no pet.).

Therefore, we affirm the trial court's judgment.

Josh R. Morriss, III
Chief Justice

Date Submitted: August 28, 2008
Date Decided: August 29, 2008

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