



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

No. 06-10-00074-CR

FREDDIE LEE FOUNTAIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 4th Judicial District Court
Rusk County, Texas
Trial Court No. CR10-023

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

MEMORANDUM OPINION

Freddie Lee Fountain appeals his conviction for felony DWI enhanced to a second degree felony by a prior felony conviction. Fountain waived his right to a jury trial, waived his right to have a jury assess punishment,¹ and entered an open plea of guilty before the trial court. The trial court assessed punishment and sentenced Fountain to twelve years' imprisonment.

Fountain's sole issue on appeal² is that the trial court abused its discretion in failing to sentence the defendant to a substance abuse felony punishment (SAFP) facility as a condition of community supervision.

Fatal to his issue on appeal is the fact that Fountain did not complain about the sentence at the time of sentencing and did not file a motion for new trial complaining about the sentence.³ Thus, the error, if any, is not preserved for appellate review. TEX. R. APP. P. 33.1; *Mullins v. State*, 208 S.W.3d 469, 470 n.2 (Tex. App.—Texarkana 2006, no pet.).⁴

¹Given Fountain's prior felony conviction, a jury could not have placed him on community supervision.

²Fountain's appellate attorney, at Fountain's request, attached to his brief a letter from Fountain complaining of a number of alleged errors. There is no right to hybrid representation, and we will not address the complaints contained in the letter. See *Robinson v. State*, 240 S.W.3d 919, 921 (Tex. Crim. App. 2007).

³Fountain filed a motion to set aside the judgment, but did not complain about the sentence in that motion.

⁴Even if the issue had been preserved, the trial court did not err. If a trial court places a defendant on community supervision, the trial court may require as a condition of community supervision "that the defendant serve a term of confinement and treatment in a substance abuse treatment facility" for a term of "not more than one year or less than 90 days." TEX. CODE CRIM. PROC. ANN. art. 42.12, § 14(a) (Vernon Supp. 2009). However, Fountain was not eligible for community supervision. A defendant is not eligible for community supervision if he or she "is sentenced to a term of imprisonment that exceeds 10 years." TEX. CODE CRIM. PROC. ANN. art. 42.12, § 3(e)(1) (Vernon Supp. 2009). Because Fountain was sentenced to twelve years, Fountain could not be placed on community supervision.

For the reasons stated, we affirm.

Josh R. Morriss, III
Chief Justice

Date Submitted: July 30, 2010
Date Decided: August 6, 2010

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A defendant must be on community supervision to be eligible for SAFF. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 14(b)(1) (Vernon Supp. 2009).