



IN THE
TENTH COURT OF APPEALS

No. 10-19-00296-CR

TERRY LANCE MCELYEA,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 249th District Court
Johnson County, Texas
Trial Court No. DC-F201800568

MEMORANDUM OPINION

Terry Lance McElyea pled guilty to the offense of driving while intoxicated, a third-degree felony. *See* TEX. PENAL CODE ANN. §§ 49.04; 49.09(b)(2). After a hearing on punishment, the trial court sentenced McElyea to six years in prison. Because McElyea's issues are either not preserved or nonreviewable, the trial court's judgment is affirmed.

In his first issue, McElyea complains that his sentence of six years is grossly disproportionate under the U.S. and Texas Constitutions. *See* U.S. CONST. amend. VIII; *see also* TEX. CONST. art. I, § 13. A disproportionate-sentence claim must be preserved for

appellate review. See TEX. R. APP. P. 33.1(a)(1); *Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996); *Noland v. State*, 264 S.W.3d 144, 151 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd). At trial, McElyea did not object to the imposed sentence. Further, McElyea did not file a motion for new trial or otherwise present a post-trial objection to the imposed sentence. Thus, McElyea's complaint is not preserved, and his first issue is overruled.

In his second issue, McElyea contends the trial court abused its discretion in not suspending McElyea's six-year sentence and placing him on community supervision. The granting of community supervision is a privilege, not a right; and the decision whether to grant community supervision is "wholly discretionary and nonreviewable." *Speth v. State*, 6 S.W.3d 530, 533 (Tex. Crim. App. 1999). Accordingly, McElyea's second issue is overruled.

Having overruled each issue on appeal, we affirm the trial court's judgment.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed
Opinion delivered and filed July 20, 2020
Do not publish
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