

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-04-00216-CR

Randall Wynn Blue, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF TOM GREEN COUNTY, 119TH JUDICIAL DISTRICT
NO. B-03-0543-S, HONORABLE BEN WOODWARD, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Randall Wynn Blue pleaded guilty to two counts of assault against a family member, enhanced by a previous family assault. *See* Tex. Pen. Code Ann. § 22.01(a)(1), (b)(2) (West Supp. 2004-05). After hearing testimony relevant to sentence, the court assessed a seven-year prison term. We affirm the judgment.

Appellant contends that his Sixth Amendment confrontation right was violated by the admission in evidence of the complainant's out-of-court statements to a police officer and to a hospital nurse.¹ U.S. Const. amend. VI. The statements were admitted over appellant's hearsay objections under the excited utterance and medical treatment exceptions. *See* Tex. R. Evid. 803(2), (4). Appellant did not object on confrontation grounds, and thus failed to preserve his Sixth

¹ The complainant did not testify.

Amendment contention for appeal. Tex. R. App. P. 33.1(a); Tex. R. Evid. 103(a). Even constitutional error may be waived by a failure to object. *Briggs v. State*, 789 S.W.2d 918, 924 (Tex. Crim. App. 1990). Point of error two is overruled.

Appellant's other complaint is that the seven-year sentence is excessive and thus an abuse of the trial court's discretion. He concedes that as a general rule, a sentence within the range prescribed for the offense will not be disturbed on appeal. See *Nunez v. State*, 565 S.W.2d 536, 538 (Tex. Crim. App. 1978); *Samuel v. State*, 477 S.W.2d 611, 614 (Tex. Crim. App. 1972). Appellant does not explain why his case should be an exception to this rule. Point of error one is overruled.

The judgment of conviction is affirmed.

Jan P. Patterson, Justice

Before Chief Justice Law, Justices Patterson and Puryear

Affirmed

Filed: July 12, 2005

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