



NUMBERS
13-15-00617-CR
13-15-00618-CR

COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI – EDINBURG

FRANK POSES,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 28th District Court of
Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Garza and Longoria
Memorandum Opinion by Justice Longoria**

Appellant Frank Poses was charged in two separate cases with assault causing bodily injury to a family member with a prior conviction for family violence, a third-degree felony. See TEX. PENAL CODE ANN. § 22.01 (West, Westlaw through 2015 R.S.). In one

issue, Poses argues that the sentence he received in each case was unusual and disproportionate in violation of his Eighth and Fourteenth Amendment rights. See U.S. CONST. amend. VIII, XIV. We affirm.

I. BACKGROUND

On August 21, 2013, in trial court cause No. 13-CR-1859-A, Poses was placed on deferred probation for twelve months for one count of assault causing bodily injury to a family member. The State originally charged Poses with the third-degree felony of assault causing bodily injury with a prior conviction for family violence, but as part of a plea bargain the State prosecuted Poses on the lesser-included offense of family assault, a class-A misdemeanor. See TEX. PENAL CODE ANN. § 22.01. On January 16, 2014, in trial court cause No. 13-CR-3528-A, Poses was placed on deferred probation for four years for assault causing bodily injury to a family member with a prior conviction for family violence. See *id.*

The State filed motions to revoke Poses's probation in both cases. Both motions to revoke were identical and included four allegations that Poses violated the terms of his probation, including an allegation that Poses recently committed a new assault against a non-family member. On December 8, 2015, at a hearing before the trial court, Poses pled true to all of the allegations except for the allegation of assault. At the end of the hearing, the trial court found that all of the allegations were true, revoked Poses's probation in both cases, and sentenced Poses to concurrent sentences of nine months' incarceration in county jail on cause No. 13-CR-1859-A, and three years' incarceration in the state-jail division of the Texas Department of Criminal Justice—Institutional Division on cause No. 13-CR-3528-A. This appeal followed.

II. CRUEL AND UNUSUAL PUNISHMENT

In his sole issue, Poses argues that both of his sentences are cruel and unusual because the sentences are grossly disproportionate to the offenses committed. See U.S. CONST. amend. VIII.

The Eighth Amendment of the United States Constitution requires that a criminal sentence be proportionate to the crime which was committed. See *id.*; *Noland v. State*, 264 S.W.3d 144, 151 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd). “However, in order to preserve for appellate review a complaint that a sentence is grossly disproportionate, constituting cruel and unusual punishment, a defendant must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling desired.” *Noland*, 264 S.W.3d at 151; see TEX. R. APP. P. 33.1(a).

In the present case, Poses never raised the issue to the trial court that his punishment was excessive, disproportionate, or cruel and unusual. During the hearing on December 8, 2015, Poses only argued that he did not commit the alleged assault. He also did not file any post-trial motion to object to his sentences. In other words, Poses complains that his sentence is unusual and disproportionate for the first time on appeal. We hold that Poses failed to preserve his Eighth and Fourteenth Amendment complaint. See *Noland*, 264 S.W.3d at 151; see also TEX. R. APP. P. 33.1(a).

Moreover, even disregarding the issue of preservation, we note that Poses received a nine-month sentence for the class-A misdemeanor and a four-year sentence for the third-degree felony. See *id.* § 12.21 (a class-A misdemeanor has a maximum sentence of one year); see *id.* § 12.34 (a third-degree felony carries a punishment range of two to ten years). Punishment which falls within the limits prescribed by a valid statute is generally not excessive, cruel, or unusual. *Trevino v. State*, 174 S.W.3d 925, 928 (Tex. App.—Corpus Christi 2005, pet. ref'd). Therefore, we overrule Poses’s sole issue.

III. CONCLUSION

We affirm the trial court's judgment.

Nora L. Longoria
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
28th day of July, 2016.