



NUMBER 13-18-00503-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

BRYAN CAMPBELL,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 156th District Court
of Bee County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Hinojosa
Memorandum Opinion by Chief Justice Contreras**

Appellant Bryan Campbell appeals his conviction for burglary of a habitation with intent to commit murder with a deadly weapon, a first-degree felony. See TEX. PENAL CODE ANN. §§ 1.07(a)(17), 19.02, 30.02(d). The jury assessed punishment at eighty years' imprisonment. By one issue, Campbell argues that the punishment assessed by

the jury was disproportionate to the severity of the crime and in violation of the Eighth and Fourteenth Amendments of the United States Constitution. We affirm.

I. BACKGROUND

On August 21, 2018, Campbell pleaded guilty to the offense of burglary of a habitation with intent to commit murder, and he pleaded true to the allegation that he used a deadly weapon during the commission of the burglary. There was no plea bargain between Campbell and the State, and Campbell elected for the jury to assess punishment.

At the punishment phase of trial, the evidence showed that Campbell went to the house of Stephanie Kelley, his ex-girlfriend and mother of his two children, during the early hours of May 30, 2017. Kris Stewart, a friend of Kelley, was at Kelley's home housesitting her pets while she was out of town. Stewart noticed a dark silhouette outside of the house and opened the door. Campbell then charged at Stewart, pushed him down, and entered the home. Stewart testified that Campbell was wearing a black ski mask and a long-sleeve black shirt and holding a machete and an axe, and that Campbell asked him where Kelley was. Stewart told Campbell that Kelley was not there, and Campbell got in a car and left. Stewart then called the police.

Sergeant Baldo Salazar of the Beeville Police Department testified that he responded to Stewart's call. Salazar noticed a car matching the description Stewart gave to police and initiated a traffic stop; Campbell was behind the wheel. Campbell stated to Salazar that he went to Kelley's home to kill her and his kids. A body cam video of Salazar's interaction with Campbell was introduced into evidence. The jury assessed punishment at eighty years' imprisonment and a \$10,000 fine. Campbell did not object to the sentence assessed by the jury. This appeal followed.

II. DISCUSSION

By his sole issue, Campbell argues that the sentence assessed was disproportionate to the crime.

For an issue to be preserved on appeal, there must be a timely objection that specifically states the legal basis for the objection. TEX. R. APP. P. 33.1(a); *Layton v. State*, 280 S.W.3d 235, 238–39 (Tex. Crim. App. 2009). Additionally, when the sentence imposed is within the punishment range and not illegal, the failure to specifically object in open court or in a post-trial motion waives any error on appeal. See *Noland v. State*, 264 S.W.3d 144, 151 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd); *Trevino v. State*, 174 S.W.3d 925, 927–29 (Tex. App.—Corpus Christi–Edinburg 2005, pet. ref'd) (concluding that failure to object to the sentence as cruel and unusual forfeits error). Here, Campbell did not object to the sentence imposed by the jury. Thus, Campbell has forfeited his complaint on appeal, and we conclude this issue has been waived. See TEX. R. APP. P. 33.1(a).

Furthermore, even if Campbell had preserved error, his sentence falls within the legal range set by the state legislature for burglary of a habitation with intent to commit murder. Burglary of a habitation with a deadly weapon with intent to commit murder is a first-degree felony punishable by imprisonment for a term between five and ninety-nine years. See TEX. PENAL CODE ANN. §§ 12.32(a), 30.02. Here, Campbell received a sentence of eighty years, which is below the ninety-nine year maximum prescribed for the offense by the Legislature. Thus, Campbell's sentence was not prohibited as per se excessive, cruel, or unusual. See *Trevino*, 174 S.W.3d at 928.

Nevertheless, Campbell argues that the jury's sentence was disproportionate given the gravity of the offense. See *Solem v. Helm*, 463 U.S. 277, 288 (1983); *McGruder v. Puckett*, 954 F.2d 313, 315–16 (5th Cir. 1992). We disagree.

An individual's sentence may constitute cruel and unusual punishment, despite falling within the statutory range, if it is grossly disproportionate to the offense. See *id.* at 287. To determine whether a sentence for a term of years is grossly disproportionate for a defendant's crime, a court must judge the severity of the sentence in light of the harm caused or threatened to the victim, the culpability of the offender, and the offender's prior adjudicated and unadjudicated offenses. *State v. Simpson*, 488 S.W.3d 318, 323 (Tex. Crim. App. 2016). In the rare case in which a sentence is grossly disproportionate to the crime, the court should then compare the defendant's sentence with sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions. *Id.* Only twice has the United States Supreme Court held that a non-capital sentence imposed on an adult was constitutionally disproportionate. See *Solem*, 463 U.S. at 3013–16 (concluding that life imprisonment without parole was grossly disproportionate sentence for crime of uttering a no-account check for \$100); *Weems v. United States*, 217 U.S. 349, 358, 382 (1910) (concluding that fifteen years punishment in prison camp was grossly disproportionate to falsifying a public record).

Here, the evidence showed that Campbell forced his way into his ex-girlfriend's home dressed in black with an axe and a machete intending to murder his two children and their mother. Campbell pleaded guilty to burglary of habitation with intent to commit murder, a first-degree felony, which is the second most serious category of offenses in Texas, and the offense Campbell intended to carry out—the murder of his children and

their mother during the commission of a burglary—is a capital felony, the most serious category. See TEX. PENAL CODE ANN. §§ 19.03(2), 30.02(d); *Moore v. State*, 54 S.W.3d 529, 542 (Tex. App.—Fort Worth 2001, pet. ref'd). The harm threatened to the potential victims in their own home was death, and it was only prevented because they were not home when Campbell expected them to be. The evidence also showed Campbell premeditated the attack.

Comparing the gravity of the offense against the severity of the sentence, and based on our review of the record, we cannot conclude that Campbell's eighty-year sentence is grossly disproportionate. See *Moore*, 54 S.W.3d at 542; see also *Valdez v. State*, No. 10-12-00410-CR, 2014 WL 505306, at *4 (Tex. App.—Waco Feb. 6, 2014, pet. ref'd) (mem. op., not designated for publication); *Ayala v. State*, No. 13-04-00380-CR, 2005 WL 1981512, at *3 (Tex. App.—Corpus Christi—Edinburg Aug. 18, 2005, pet. ref'd) (mem. op., not designated for publication). Finally, Campbell presents no argument on appeal comparing his sentence to those received by other offenders in the same and different jurisdictions, see TEX. R. APP. P. 38.1(i), and we need not consider them after having concluded that his sentence was not grossly disproportionate to the offense. See *Simpson*, 488 S.W.3d at 323. Accordingly, we overrule Campbell's sole issue.

III. CONCLUSION

We affirm the trial court's judgment.

DORI CONTRERAS
Chief Justice

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

Delivered and filed the
22nd day of August, 2019.