



NUMBER 13-19-00561-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ERIC FLORES,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 117th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

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

Appellant Eric Flores appeals from his conviction for one count of sexual assault of a child, a second-degree felony, arguing that his sentence of seven years' imprisonment was disproportionate. See U.S. CONST. amend, VIII, XIV; TEX. PENAL CODE ANN. § 22.011(a)(2). We affirm.¹

¹ Any pending motions will be dismissed as moot.

I. BACKGROUND

In 2017, Flores pleaded guilty to sexual assault of a child and the trial court deferred adjudication and placed him on five years' community supervision. Flores was required to register as a sex offender, participate in the sex offender stabilization specialized caseload, and participate in treatment, as well as the usual conditions applicable to persons on community supervision.

In September 2018, the State sought to revoke Flores's community supervision on the following grounds: (1) he was in arrears in the payments of fees and fines, (2) he failed to attend sex offender treatment as required; and (3) he failed to submit to two required polygraph examinations. In December 2018, the trial court sanctioned Flores by sending him to an intermediate sanction facility but continued him on community supervision.

The State filed a first amended motion to revoke Flores's community supervision in October 2019 in which it alleged that Flores failed to (1) comply with his sex offender registration; (2) perform a required urinalysis in August 2019; (3) report as required in August and September 2019; (4) pay fees and fines as required; (5) complete sex offender treatment; and (6) submit to a required polygraph in July 2019.

At the hearing on the motion to revoke, Flores pleaded true to each alleged violation but argued that he should be continued on community supervision. The trial court adjudicated his guilt and imposed a sentence of seven years' imprisonment. Flores appeals.

II. PUNISHMENT

By his sole issue, Flores argues his sentence was disproportionate to the seriousness of the alleged offense, in violation of the Eighth and Fourteenth Amendments of the United States Constitution. See U.S. CONST. amend, VIII, XIV.

Flores's seven-year sentence falls within the legal range set by the state legislature for sexual assault of a child, which is a second-degree felony punishable by imprisonment for a term between two and twenty years. See TEX. PENAL CODE ANN. §§ 12.33(a), 22.011(a)(2). Thus, his sentence was not prohibited as per se excessive, cruel, or unusual. See *Trevino v. State*, 174 S.W.3d 925, 927 (Tex. App.—Corpus Christi—Edinburg 2005, pet. ref'd); see also *Campbell v. State*, No. 13-18-00503-CR, 2019 WL 3953109, at *1–2 (Tex. App.—Corpus Christi—Edinburg Aug. 22, 2019, no pet.) (mem. op., not designated for publication).

Flores did not object to his sentence at the time it was imposed and did not file any post-trial motions. Flores argues that he “raised this specific issue to ensure there was no waiver of an anticipatory claim for habeas review.” To preserve an issue for appeal, the appellant must timely object and specifically state the legal basis for the objection. See TEX. R. APP. P. 33.1(a); *Layton v. State*, 280 S.W.3d 235, 238–39 (Tex. Crim. App. 2009). Even constitutional claims can be waived by failure to object.² *Smith v. State*, 721 S.W.2d

² Flores cites two civil cases for the proposition that this Court can review the sentence for disproportionality despite Flores's failure to object. *Lovejoy v. Lillie*, 569 S.W.2d 501, 503 (Tex. App.—Tyler 1978, writ ref'd n.r.e.); *Hous. Chronicle Publ. Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976). This Court has previously rejected that argument. See e.g. *Gomez v. State*, No. 13-11-00349-CR, 2012 WL 3041313, at *2 (Tex. App.—Corpus Christi—Edinburg July 26, 2012, pet. ref'd) (mem. op., not designated for publication); *Gaytan v. State*, No. 13-08-00196-CR, 2009 WL 2914465, at *2 (Tex. App.—Corpus Christi—Edinburg Aug. 27, 2009, pet. ref'd) (mem. op., not designated for publication).

844, 855 (Tex. Crim. App. 1986); *Richardson v. State*, 328 S.W.3d 61, 72 (Tex. App.—Fort Worth 2010, pet. ref'd); *Trevino*, 174 S.W.3d at 927; *Solis v. State*, 945 S.W.2d 300, 301 (Tex. App. —Houston [1st Dist.] 1997, pet. ref'd).

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*, 174 S.W.3d at 927–29 (concluding that failure to object to the sentence as cruel and unusual forfeits error). Because Flores failed to object, he has forfeited his complaint on appeal, and we conclude this issue has been waived. See TEX. R. APP. P. 33.1(a). Moreover, Flores’s sentence is not excessive.

We overrule Flores’s sole issue.

III. CONCLUSION

We affirm the trial court’s judgment.

GINA M. BENAVIDES
Justice

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

Delivered and filed the
13th day of August, 2020.