

**NOS. 12-13-00278-CR
12-13-00279-CR
12-13-00280-CR**

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***RODERICK CREAG, SR.,
APPELLANT***

§ ***APPEAL FROM THE 349TH***

V.

§ ***JUDICIAL DISTRICT COURT***

***THE STATE OF TEXAS,
APPELLEE***

§ ***HOUSTON COUNTY, TEXAS***

MEMORANDUM OPINION

Roderick Demetrius Creag, Sr. appeals his convictions for murder, unlawful possession of a firearm by a felon, and aggravated assault with a deadly weapon, for which he was sentenced to imprisonment for life, twenty years, and life respectively. In one issue, Appellant argues that his sentences are excessive and grossly disproportionate to the crimes of which he was convicted. We affirm.

BACKGROUND

Appellant was charged by separate indictments with murder, unlawful possession of a firearm by a felon, and aggravated assault with a deadly weapon. Appellant pleaded “not guilty” to these charges, and the matters proceeded to a jury trial, following which the jury found Appellant “guilty” as charged of each offense. Following a trial on punishment, the jury assessed Appellant’s punishments at imprisonment for life for murder, imprisonment for twenty years for unlawful possession of a firearm by a felon, and imprisonment for life for aggravated assault with a deadly weapon. The trial court sentenced Appellant accordingly, and this appeal followed.

CRUEL AND UNUSUAL PUNISHMENT

In his sole issue, Appellant argues that each of his sentences amounts to cruel and unusual punishment in violation of the United States and Texas constitutions. However, Appellant made no timely objection to the trial court raising the issue of cruel and unusual punishment and has, therefore, failed to preserve any such error. See *Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996) (waiver with regard to rights under the Texas Constitution); *Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995) (waiver with regard to rights under the United States Constitution); see also TEX R. APP. P. 33.1. Even so, we conclude that the sentences about which Appellant complains do not constitute cruel and unusual punishment.

The legislature is vested with the power to define crimes and prescribe penalties. See *Davis v. State*, 905 S.W.2d 655, 664 (Tex. App.—Texarkana 1995, pet. ref'd); see also *Simmons v. State*, 944 S.W.2d 11, 15 (Tex. App.—Tyler 1996, pet. ref'd). Courts have repeatedly held that punishment which falls within the limits prescribed by a valid statute is not excessive, cruel, or unusual. See *Harris v. State*, 656 S.W.2d 481, 486 (Tex. Crim. App. 1983); *Jordan v. State*, 495 S.W.2d 949, 952 (Tex. Crim. App. 1973); *Davis*, 905 S.W.2d at 664. In the case at hand, Appellant was convicted of murder, the punishment range for which is five to ninety-nine years, or life. See TEX. PENAL CODE ANN. §§ 12.32(a), 19.02(c) (West 2011). Appellant was also convicted of unlawful possession of a firearm by a felon, the punishment range for which, considering enhancements, is two to twenty years. See TEX. PENAL CODE ANN. §§ 12.33(a), 12.42(a), 46.04(e) (West 2011 & Supp. 2013). Further still, Appellant was convicted of aggravated assault with a deadly weapon, the punishment range for which is five to ninety-nine years, or life. See TEX. PENAL CODE ANN. §§ 12.32(a), 22.02(b)(1) (West 2011). Here, each sentence imposed by the trial court falls within the applicable range of punishment set forth by the legislature. Therefore, none of Appellant's sentences is prohibited as cruel, unusual, or excessive per se.

Nonetheless, Appellant urges the court to perform the three part test originally set forth in *Solem v. Helm*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983). Under this test, the proportionality of a sentence is evaluated by considering (1) the gravity of the offense and the harshness of the penalty, (2) the sentences imposed on other criminals in the same jurisdiction, and (3) the sentences imposed for commission of the same crime in other jurisdictions. *Solem*, 463 U.S. at 292, 103 S. Ct. at 3011. The application of the *Solem* test has been modified by Texas courts and the Fifth Circuit Court of Appeals in light of the Supreme Court's decision in *Harmelin*

v. Michigan, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) to require a threshold determination that the sentence is grossly disproportionate to the crime before addressing the remaining elements. See, e.g., *McGruder v. Puckett*, 954 F.2d 313, 316 (5th Cir.), cert. denied, 506 U.S. 849, 113 S. Ct. 146, 121 L. Ed. 2d 98 (1992); see also *Jackson v. State*, 989 S.W.2d 842, 845–46 (Tex. App.–Texarkana 1999, no pet.).

We must first determine whether Appellant’s sentences are grossly disproportionate. In so doing, we are guided by the holding in *Rummel v. Estell*, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980). In *Rummel*, the Supreme Court addressed the proportionality claim of an appellant who had received a mandatory life sentence under a prior version of the Texas habitual offender statute for a conviction of obtaining \$120.75 by false pretenses. *Id.*, 445 U.S. at 266, 100 S. Ct. at 1135. A life sentence was imposed because the appellant also had two prior felony convictions—one for fraudulent use of a credit card to obtain \$80.00 worth of goods or services and the other for passing a forged check in the amount of \$28.36. *Id.*, 445 U.S. at 266, 100 S. Ct. at 1134–35. After recognizing the legislative prerogative to classify offenses as felonies and, further, considering the purpose of the habitual offender statute, the court determined that the appellant’s mandatory life sentence did not constitute cruel and unusual punishment. *Id.*, 445 U.S. at 285, 100 S. Ct. at 1145.

In the instant case, the offenses committed by Appellant—murder, unlawful possession of a firearm by a felon, and aggravated assault with a deadly weapon—were each more serious than any of the offenses committed by the appellant in *Rummel*, while none of Appellant’s sentences are more severe than the life sentence upheld by the Supreme Court in *Rummel*. Thus, it is logical that if the sentence in *Rummel* was not unconstitutionally disproportionate, then neither are any of the sentences assessed against Appellant in the case at hand. Therefore, since we do not find the threshold test to be satisfied, we need not apply the remaining elements of the *Solem* test. Appellant’s sole issue is overruled.

DISPOSITION

Having overruled Appellant’s sole issue, we *affirm* the trial court’s judgment.

BRIAN HOYLE
Justice

Opinion delivered June 30, 2014.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 30, 2014

NO. 12-13-00278-CR

RODERICK CREAG, SR.,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 349th District Court
of Houston County, Texas (Tr.Ct.No. 12CR-145)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 30, 2014

NO. 12-13-00279-CR

RODERICK CREAG, SR.,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 349th District Court
of Houston County, Texas (Tr.Ct.No. 12CR-146)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 30, 2014

NO. 12-13-00280-CR

RODERICK CREAG, SR.,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 349th District Court
of Houston County, Texas (Tr.Ct.No. 12CR-147)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.