

Affirmed and Opinion filed January 11, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-01363-CR

KEVIN EARL HARGROVE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 728,505**

OPINION

The appellant entered an open plea of guilty to aggravated robbery. After a pre-sentence investigation, the trial court assessed punishment at forty years confinement in the Texas Department of Criminal Justice. The appellant contends that these sentences amount to cruel and unusual punishment under the Eighth and Fourteenth Amendments of the United States Constitution and under Article I, section 13 of the Texas Constitution and Article 1.09 of the Texas Code of Criminal Procedure. He acknowledges the law is well settled in this area. Punishment is within the statutory range is not cruel and unusual. *See*

Harris v. State, 656 S.W.2d 481, 486 (Tex. Crim. App. 1983); *Reed v. State*, 894 S.W.2d 806, 811 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd). The appellant's punishment was within the statutory range provided by law. *See* TEX. PEN. CODE ANN. §§ 29.03(b), 12.32 (Vernon 1994). Further, nothing in the record suggests that the punishment the trial imposed was grossly disproportionate to the crime under either the United States or Texas Constitutions. We overrule appellant's point of error.

Accordingly, the judgment of the trial court is affirmed.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed January 11, 2000.

Panel consists of Justices Robertson, Sears, and Lee.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

*Senior Justices San Robertson, Ross A. Sears, and Norman Lee sitting by assignment.