

**Affirmed and Opinion filed March 9, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-00289-CR**

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**KENNETH JAMES BURRAGE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 183<sup>rd</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 760,527**

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**MEMORANDUM OPINION**

Appellant, Kenneth James Burrage, was sentenced to ten years deferred adjudication community supervision following his plea of guilty to the aggravated sexual assault of a child. After appellant several violations of the terms of his community supervision, the trial court adjudicated him guilty of the offense, sentencing him to five years in the Texas Department of Corrections, Criminal Justice Division. On appeal, appellant claims the trial court adjudicated him guilty based upon a predetermined rule which denied him due process and due course of law. Because appellant failed to preserve this error, however, we affirm the judgment of the trial court.

Appellant's complaint arises from a comment made by the judge before he ruled on appellant's guilt. After hearing evidence from the State and the defendant, the judge stated to appellant and his father, "I want to let you both know I am sympathetic to your position and your situation. However, you must be treated like everyone else in this courtroom is treated." The court then proceeded to find appellant guilty and sentenced him to five years imprisonment.

Appellant argues that the judge's statement proves that the court had predetermined that appellant and all others brought into court for violations of community supervision would be given jail time without regard for the possibility of placing them back on community supervision. Appellant, however, raises this complaint for the first time on appeal. He failed to object to the trial court's statement or its sentence at the hearing. Also, though appellant filed a motion for new trial, he failed to raise this complaint in that motion. Because he failed to object to the judge's comments or any unfairness in his sentencing, appellant has waived this complaint on appeal. See TEX. R. APP. P. 33.1; *Cole v. State*, 931 S.W.2d 578, 580 (Tex. App.—Dallas 1995, pet. ref'd).

Since no error has been preserved for us to review, the judgment of the trial court is affirmed.

/s/ Paul C. Murphy  
Chief Justice

Judgment rendered and Opinion filed March 9, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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