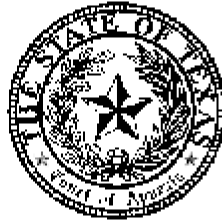
Affirmed and Opinion filed July 13, 2000.



In The

Fourteenth Court of Appeals

____

NO. 14-99-00416-CR

____

JUAN GARCIA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 783,636

O P I N I O N

After pleading guilty without an agreed recommendation from the State, the trial court found Juan Garcia, appellant, guilty of aggravated robbery. *See* TEX. PEN. CODE ANN. § 29.03 (Vernon 1994). The trial court assessed appellant's punishment at twelve years' confinement in the Texas Department of Criminal Justice, Institutional Division. Appellant appeals his conviction on one point of error. We affirm the judgment of the trial court.

BACKGROUND FACTS

After appellant entered his guilty plea for aggravated robbery, the trial court deferred a finding of guilt to conduct a pre-sentence investigation upon appellant's request. Once it heard the evidence in the pre-sentence investigation report, the trial court found appellant guilty of aggravated robbery. The trial court continued the punishment hearing to complete a substance abuse evaluation pursuant to TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 9 (h) (Vernon Supp. 2000).[1] However, the court later determined that a substance abuse evaluation was not necessary because appellant was ineligible for community supervision. The court then proceeded to assess appellant's punishment at twelve years' confinement.

DISCUSSION AND HOLDINGS

In his sole point of error, appellant argues that the trial court erred in sentencing him without conducting a substance abuse evaluation. We disagree.

Almost every right, constitutional and statutory, may be waived by failing to object. *See Smith v. State*, 721 S.W.2d 844, 855 (Tex.Crim.App.1986). To preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling. *See* TEX. R. APP. P. 33.1(a). This rule allows opposing counsel an opportunity to remove the objection, or the trial court to cure any harm. *See Zillender v. State*, 557 S.W.2d 515, 517 (Tex.Crim.App.1977).

Appellant has not preserved any error for our review. During the punishment hearing, the trial court determined that article 42.12 was not applicable to appellant's conviction; the court determined that community supervision was no longer an option for an aggravated

---

[1] The relevant part of article 42.12 states: "On a determination by the judge that alcohol or drug abuse may have contributed to the commission of the offense, the judge shall direct a supervision officer approved by the community supervision and corrections department or the judge or a person, program, or other agency approved by the Texas Commission on Alcohol and Drug Abuse, to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report that evaluation to the judge." TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 9 (h) (Vernon Supp. 2000).

robbery conviction. The record shows that appellant did not object during this hearing to the absence of a substance abuse evaluation. He has, therefore, waived any error by failing to object.

Even if appellant had timely objected in the trial court to the absence of the report, we would find no error, for article 42.12 did not apply to appellant. Because appellant was convicted of aggravated robbery, the trial court was statutorily precluded from placing him on community supervision. *See* TEX. CODE CRIM. PROC. ANN. Art. 42.12 § 3g (a)(1)(F) (listing aggravated robbery as an offense ineligible for community supervision). The purpose of a substance abuse evaluation is to assist the court in making its decision on community supervision. *See Overton v. State*, 815 S.W.2d 895, 898 (Tex. App.—Fort Worth 1991, no pet.). Here, the trial court could not have considered community supervision for appellant even if it had ordered a substance abuse evaluation.[2] Thus, the trial court did not err in sentencing appellant without conducting an evaluation. Appellant's sole point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed July 13, 2000.

Panel consists of Justices Fowler, Edelman, and Baird[3]

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

---

[2] Appellant relies on *Overton*, which held that the trial court was required to consider a substance abuse evaluation before deciding the question of community supervision. *See Overton*, 815 S.W.2d at 898. However, there, the defendant was convicted of driving while intoxicated and was eligible for community supervision. In our case, as we stated, the trial court was statutorily precluded from giving appellant community supervision. Thus, *Overton* is inapplicable to appellant's case.

[3] Former Justice Baird sitting by assignment.