Affirmed and Opinion filed September 7, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00525-CR

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MYRON JAMAN EAGLIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 798,083

O P I N I O N

Myron Jaman Eaglin appeals his conviction for the offense of aggravated robbery. *See* TEX. PEN. CODE ANN. § 29.03 (Vernon 1994). On February 12, 1999, appellant waived trial by jury, and without a plea bargain agreement, pled guilty to the offense. The trial court conducted a sentencing hearing on March 30, 1999. After examining a pre-sentence investigation report and hearing from a defense witness, the trial court rejected appellant's plea for community supervision. The trial court then proceeded to assess punishment at eight years confinement in the Texas Department of Criminal Justice, Institutional Division. In four points of error, appellant contends (1) the conviction is void where the trial judge reviewed

appellant's pre-sentence report prior to a finding of guilt in violation of appellant's federal constitutional right to due process of law; (2) the conviction is void where the trial judge reviewed appellant's pre-sentence report prior to a finding of guilt in violation of appellant's state constitutional right to due process of law; (3) the eight-year sentence for aggravated robbery constitutes cruel and unusual punishment under the United States Constitution; and (4) the eight-year sentence for aggravated robbery constitutes cruel and unusual punishment under the Texas Constitution. For the reasons given below, we affirm the judgment of the trial court.

POINTS OF ERROR ONE AND TWO

Appellant claims that the trial court violated the principle stated in *State ex. Rel. Turner v. McDonald*, 676 S.W.2d 375, 379 (Tex. Crim. App. 1984) and *State ex. Rel. Bryan v. McDonald*, 662 S.W.2d 5, 7 (Tex. Crim. App. 1983), that it is improper for the trial court to review a pre-sentence investigation report prior to a determination of guilt. However, the facts of this case are distinguishable from the above two cases and are analogous to the facts in *Blalock v. State*, 728 S.W.2d 135, 138 (Tex. App.–Houston [14th Dist.] 1987, pet. ref'd) and *Wissinger v. State*, 702 S.W.2d 261, 263 (Tex. App.–Houston [1st Dist.] 1985, no pet.). In the *Blalock* and *Wissinger* cases, the courts of appeals reasoned that when a defendant pleads guilty to the offense, a pre-sentence investigation report could not have influenced the judge except in deciding the appropriate punishment.

Further, the record reflects that appellant sought community supervision. Appellant requested that a pre-sentence investigation report be conducted in hopes that the report would persuade the judge to grant deferred adjudication. Thus, it was inevitable that the judge would consider the report before finding appellant guilty. Otherwise, deferred adjudication would not have been an option. The procedure followed in the instant case did not violate appellant's rights and did not risk any of the due process violations condemned in the *McDonald* cases. *See Blalock*, 728 S.W.2d at 138; *Wissinger*, 702 S.W.2d at 263. We see no reason to depart from this court's holding in *Blalock*, and we overrule appellant's first and second points of error.

POINTS OF ERROR THREE AND FOUR

In his third and fourth point of error, appellant contends that his eight-year prison sentence constitutes cruel and unusual punishment in violation of the United States and Texas Constitutions. It is well settled that where the punishment is within the statutory range, the punishment is not cruel and unusual. *See Harris v. State*, 656 S.W.2d 481, 486 (Tex. Crim. App. 1983). Appellant's punishment was within the statutory range for the first degree felony of aggravated robbery. *See* TEX. PEN. CODE ANN. § 12.32, 29.03 (Vernon 1994). Nothing in the record suggests that the punishment imposed by the trial court was grossly disproportionate to the crime under either the United States or Texas Constitutions. We overrule appellant's third and fourth points of error and affirm the judgment of the trial court.

Norman Lee
Justice

Judgment rendered and Opinion filed September 7, 2000.

Panel consists of Justices Anderson, Frost, and Lee.[1]

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

[1] Senior Justice Norman Lee sitting by assignment.