Opinion filed June 30, 2020

In The

Eleventh Court of Appeals

No. 11-18-00148-CR

KANYONI SEDEKIYA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 104th District Court
Taylor County, Texas
Trial Court Cause No. 21157B

MEMORANDUM OPINION

Kanyoni Sedekiya waived a jury and entered an open plea of guilty before the trial court to the first-degree felony offense of aggravated robbery. The trial court accepted Appellant's plea and ordered a presentence investigation (PSI) before it determined Appellant's punishment. After the disposition hearing, the trial court found Appellant guilty, made an affirmative deadly weapon finding, and assessed Appellant's punishment at confinement for fifteen years in the Institutional Division of the Texas Department of Criminal Justice.

Appellant challenges his punishment in two issues. In his first issue, Appellant contends that the trial court violated his Eighth Amendment right to be free from cruel and unusual punishment. He asserts in his second issue that the trial court abused its discretion by failing to take into consideration Appellant's mental health issues. We affirm.

Background Facts

Appellant executed a stipulation of evidence that provided as follows:

> That on or about the 4th day of August, 2017 in Taylor County, Texas, I, KANYONI SEDEKIYA while in the course of committing theft of property and with intent to obtain and maintain control of said property, used and exhibited a deadly weapon, to-wit: A FIREARM, and the said KANYONI SEDEKIYA did then and there intentionally and knowingly threaten and place [J.S.] a member of the said KANYONI SEDEKIYA's family and/or household, in fear of imminent bodily injury and death by the use of said deadly weapon[.]

The evidence offered at the disposition hearing expanded upon these facts. The victim was Appellant's roommate. Appellant had been living with the victim for approximately ten days when the aggravated robbery occurred. Appellant threatened the victim with a pistol and forced him to lie down on his bed whereupon Appellant duct-taped the victim facedown on the bed. Appellant told the victim that Appellant was going to kill him, and Appellant took money from him. The victim was only able to escape his confinement when Appellant passed out. Appellant was apprehended when the SWAT team made entry into the victim's home.

At the disposition hearing, the State relied on the PSI and presented no other evidence during its case-in-chief.[1] Appellant called his minister as a witness. The minister testified that he believed that Appellant could be helped "by some sort of drug programs." Appellant then testified on his own behalf. He stated that he was

[1]The PSI has been filed in this court in a sealed clerk's record. We will limit our discussion of its specific details to matters that were discussed at the disposition hearing.

ashamed of what he had done and that he was under the influence of alcohol and drugs at the time. Appellant stated that he had a drug problem and that he was willing to get help with it. He also asked the trial court for forgiveness. On cross-examination, the prosecutor established that Appellant had pending criminal charges in Tennessee for which the State of Tennessee had placed a detainer on Appellant.

During closing argument, the prosecutor advised the trial court that the victim was still traumatized from the incident and that he was still in fear of Appellant. Appellant's trial counsel argued that Appellant had a limited criminal record and that he was someone that could be saved with treatment.

Immediately after the trial court pronounced Appellant's sentence of imprisonment for fifteen years, it made the following explanation to Appellant for the sentence:

> Sir, this was a -- this was a bad offense. You committed a very violent offense here. And you hurt another person very, very significantly. You committed a serious crime against this community and also against this person, and I'm holding you accountable for your behavior. I'm holding you accountable for this crime.
>
> You are a young man. You have time in your life to learn from this. And I encourage you to do that. I encourage you to take advantage of all the programs that are offered to you in the state prison system. One of these days, you're going to get out of prison one way or the other. And at that point, I encourage you to be a good law-abiding, peaceful, nonviolent person.
>
> It's going to be very important for you to stay away from people who use and possess controlled substances.

The trial court also expressed that it was its hope that the sentence would make the victim feel safer.

Appellant did not object to the sentence imposed. Furthermore, Appellant did not challenge his sentence in a motion for new trial.

Analysis

In his first issue, Appellant argues that the sentence was excessive and violated his right under the Eighth Amendment to be free from cruel and unusual punishment. *See* U.S. CONST. amend. VIII. Appellant specifically asserts that the sentence was excessive because the victim was not physically injured and because the sentence did not take into consideration Appellant's mental health issues or the fact that he was intoxicated at the time of the offense.

To preserve a complaint that a sentence constitutes cruel and unusual punishment, a defendant must first raise the issue in the trial court. TEX. R. APP. P. 33.1(a); *Burt v. State*, 396 S.W.3d 574, 577 (Tex. Crim. App. 2013) ("In some instances, an appellant may preserve a sentencing issue by raising it in a motion for new trial."). Appellant did not object to his sentence in the trial court, either at the time of disposition or in a posttrial motion. Specifically, Appellant did not object, under constitutional or other grounds, that the sentence was cruel, unusual, excessive, or disproportionate to sentences that other individuals received for the same offense. Therefore, Appellant failed to preserve his complaint for our review. *See Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995) (failing to object at trial waives a claim of cruel and unusual punishment under the United States Constitution).

But, even if Appellant had preserved the issue, his sentence does not constitute cruel and unusual punishment. When we review a trial court's sentencing determination, "a great deal of discretion is allowed the sentencing judge." *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). We will not disturb a trial court's decision as to punishment "absent a showing of abuse of discretion and harm." *Id.* (citing *Hogan v. State*, 529 S.W.2d 515 (Tex. Crim. App. 1975)).

Appellant pleaded guilty to the first-degree felony offense of aggravated robbery. *See* TEX. PENAL CODE ANN. §§ 29.03, .02 (West 2019). Therefore, the

punishment range for the offense was imprisonment for life or five to ninety-nine years and an optional fine not to exceed $10,000. *See id.* § 12.32. Appellant's fifteen-year sentence falls within the statutory punishment range. Generally, "punishment assessed within the statutory limits . . . is not excessive, cruel, or unusual." *State v. Simpson*, 488 S.W.3d 318, 323 (Tex. Crim. App. 2016).

However, a sentence that is within the applicable range of punishment might be cruel or unusual in the "exceedingly rare" or "extreme" case in which the sentence is grossly disproportionate to the offense. *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring)); *Solem v. Helm*, 463 U.S. 277, 287 (1983). "The gross disproportionality principle reserves a constitutional violation for only the extraordinary case." *Lockyer*, 538 U.S. at 77.

"To determine whether a sentence for a term of years is grossly disproportionate for a particular defendant's crime, a court must judge the severity of the sentence in light of the harm caused or threatened to the victim, the culpability of the offender, and the offender's prior adjudicated and unadjudicated offenses." *Simpson*, 488 S.W.3d at 323 (citing *Graham v. Florida*, 560 U.S. 48, 60 (2010)). "In the rare case in which [the] threshold comparison leads to an inference of gross disproportionality, the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions." *Id.* (citing *Graham*, 560 U.S. at 60). "If this comparative analysis validates an initial judgment that the sentence is grossly disproportionate, the sentence is cruel and unusual." *Id.* (citing *Graham*, 560 U.S. at 60).

The evidence showed that Appellant committed a very serious offense that involved him threatening his roommate with a firearm, taking money from the victim, and then duct-taping the victim to his own bed. The victim, who only

escaped his confinement when Appellant passed out, remained traumatized at the time of sentencing from the incident. The sentence is near the low end of the applicable punishment range for a first-degree felony. Because of that, we disagree with Appellant's contention that the trial court did not consider mitigating factors in assessing Appellant's punishment.

One of the goals of the Penal Code is to ensure the public safety through deterrence, rehabilitation, and punishment. *See* PENAL § 1.02(1) (West 2011). On this record, the fifteen-year sentence assessed by the trial court is not grossly disproportionate to the offense, and it serves the goal of protecting the public safety. Consequently, we need not compare Appellant's sentence with the sentences received for similar crimes in this or other jurisdictions. *See Simpson*, 488 S.W.3d at 323. We overrule Appellant's first issue.

In his second issue, Appellant contends that the trial court did not take into consideration Appellant's mental health issues in sentencing him. We note that Appellant did not present testimony of his mental health issues at the disposition hearing other than to mention his substance abuse problems. However, the PSI makes reference to some mental health issues for which he had been treated, and the record from the disposition hearing indicates that the parties and the trial court relied on the PSI at sentencing. Additionally, the trial court asked Appellant at the earlier plea hearing if he had any mental problems, and Appellant advised the trial court that he took medication for depression, that he had wanted to kill himself in the past, and that he had "been hearing things."

At the punishment phase of trial, there are no discrete factual issues; instead, the task of deciding what punishment to assess is a normative process. *Rogers v. State*, 991 S.W.2d 263, 265 (Tex. Crim. App. 1999) (citing *Miller-El v. State*, 782 S.W.2d 892, 895–96 (Tex. Crim. App. 1990)). The factfinder is entitled to consider "any matter the court deems relevant to sentencing." TEX. CODE CRIM. PROC. ANN.

art. 37.07, § 3(a)(1) (West Supp. 2019). These matters include the defendant's character, the circumstances of the offense for which he is being tried, and evidence pertaining to the accused's "personal responsibility" and "moral culpability" for the crime charged. *See id.*; *Stavinoha v. State*, 808 S.W.2d 76, 79 (Tex. Crim. App. 1991) (per curiam).

The matters set out in the PSI were before the court at the time of sentencing. Furthermore, the sentence imposed by the trial court was near the low end of the applicable punishment range. Thus, the record does not support Appellant's contention that the trial court did not consider his mental health issues in sentencing him. We overrule Appellant's second issue.

This Court's Ruling

We affirm the judgment of the trial court.

JOHN M. BAILEY
CHIEF JUSTICE

June 30, 2020

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.[2]

Willson, J., not participating.

[2]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.