

**Affirmed and Opinion filed February 8, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00701-CR**  
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**ANDREW COBIO, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 339th District Court  
Harris County, Texas  
Trial Court Cause No. 688,186**

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**OPINION**

Appellant was charged by indictment with the felony offense of burglary of a habitation enhanced with two prior felony convictions. Appellant entered a plea of guilty without an agreed recommendation on punishment from the State. The court deferred adjudication of guilt and placed appellant on probation for eight years. Subsequently, the State filed a motion to adjudicate guilt. Upon appellant's plea of not true, the court adjudicated appellant's guilt and assessed punishment at confinement for thirty-two years in the Institutional Division of the Texas Department of Criminal Justice.

Appellant's appointed counsel filed a motion to withdraw from representation of appellant along with a supporting brief in which he concludes that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. As of this date, no *pro se* response has been filed.

Any complaint appellant may have had about the original plea proceeding should have been made when deferred adjudication community supervision was first imposed. *See Manuel v. State*, 994 S.W.2d 658, 662 (Tex. Crim. App. 1999). Appellant did not appeal any non-jurisdictional issues after the trial court placed him on deferred adjudication community supervision. His failure to do so precludes us from now hearing the merits of any non-jurisdictional complaints from that proceeding. Similarly, any complaints attacking the trial court's determination to proceed with adjudication of guilt may not be raised on appeal. The trial court's decision to proceed with an adjudication of guilt is one of absolute discretion and is not reviewable. *See TEX. CODE CRIM. PROC. ANN. art. 42.12, §5(b)* (Vernon Supp. 2000); *Connolly v. State*, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999).

Article 42.12 § 5(b) expressly allows an appeal of all proceedings after the adjudication of guilt on the original charge. *See TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b)* (Vernon Supp. 2000); *Olowosuko v. State*, 826 S.W.2d 940, 941-42 (Tex. Crim. App. 1992). Examples of proceedings after adjudication that may be appealed include the assessment of punishment and the pronouncement of sentence. *TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b)* (Vernon Supp. 2000); *Rodriquez v. State*, 972 S.W.2d 135, 138 (Tex. App.—Texarkana 1998), *aff'd on other grounds*, 992 S.W.2d 483 (Tex. Crim. App. 1999). We have carefully reviewed the

record and counsel's brief and agree with counsel that the punishment of thirty-two years assessed by the court does not constitute cruel and unusual punishment.

Appellant was convicted of the second degree felony offense of burglary of a habitation with intent to commit theft, enhanced with two prior felony convictions. *See* TEX. PENAL CODE ANN. § 30.02(c) (Vernon 1994). The range of punishment for a habitual offender is from twenty-five to ninety-nine years or life imprisonment. *See* TEX. PENAL CODE ANN. § 12.42 (Vernon 1994). A defendant given deferred adjudication who violates the conditions of his probation can be sentenced to the maximum term provided for the offense to which he pled guilty. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 8(a) (Vernon Supp. 2000); *Reed v. State*, 644 S.W.2d 479, 484 (Tex. Crim. App. 1983), *rev'd on other grounds*, 824 S.W.2d 568 (Tex. Crim. App. 1992). Once appellant violated the terms of his community supervision, the trial court was free to assess punishment within the parameters of the law. *See Watson v. State*, 924 S.W.2d 711, 714 (Tex. Crim. App. 1996). Thirty-two years' imprisonment was within the parameters of the law. A penalty assessed within the range of punishment established by the legislature will not be disturbed on appeal. *See State v. Kersh*, 2 S.W.3d 636, 637-38 (Tex. App.—Houston [14th Dist.] 1999, *pet. granted*). No arguable ground of error is presented for review.

Accordingly the motion to withdraw is granted and the judgment of the trial court is affirmed.

#### PER CURIAM

Judgment rendered and Opinion filed February 8, 2001.

Panel consists of Justices Anderson, Fowler and Edelman.

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