Affirmed and Opinion filed May 17, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00487-CR

ETHELL ARRON HENRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 824865

O P I N I O N

Ethell Arron Henry appeals a conviction for aggravated robbery[1] on the grounds that: (1) the trial court erred in including in the judgment an affirmative finding that a deadly weapon was used; and (2) his due process rights were violated by the severity of his sentence. We affirm.

Deadly Weapon Finding

[1] Appellant pled guilty to the offense of aggravated robbery, as charged in the indictment, and was sentenced by the trial court to six years confinement.

Appellant's first and second points of error contend that the trial court erred in entering an affirmative deadly weapon finding because: (1) the record does not show that he used a firearm or was a party to the offense and knew that a firearm would be used or exhibited in the commission of the offense; and (2) the judgment failed to recite that he was a party to the offense and knew that a deadly weapon would be used or exhibited.

However, appellant pled guilty and judicially confessed to committing aggravated robbery by using and exhibiting a deadly weapon. Because appellant's judicial confession is sufficient evidence to support the deadly weapon finding, the record need not otherwise show that he used a deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited.[2] Accordingly, appellant's first and second points of error are overruled.

Due Process

Appellant's third point of error contends that his due process rights were violated when the trial court rejected his application for probation and sentenced him to six years imprisonment for his first felony offense. Appellant claims that his six-year sentence constitutes a gross disparity in sentencing from other defendants who have been given lower sentences based on the same or similar circumstances as the facts in this case. Appellant argues that this court should not condone this purported wide disparity in sentencing, which appellant contends occurs based on the particular trial judge, the zealousness of the prosecutor, the effectiveness of the defense attorney, and the venue.

A penalty assessed within the range of punishment established by the Legislature will generally not be disturbed on appeal. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984). In this case, the trial court's assessment was within the range of

[2] *See Alexander v. State*, 868 S.W.2d 356, 361 (Tex. App.—Dallas 1993, no pet.) (holding that if a defendant pleads guilty to an indictment that includes an allegation that he used a deadly weapon, the trial court may make a deadly weapon finding) (*citing Ex parte Franklin*, 757 S.W.2d 778, 781 (Tex. Crim. App. 1988)); *Hunt v. State*, 967 S.W.2d 917, 919 (Tex. App.—Beaumont 1998, no pet.); *Campos v. State*, 927 S.W.2d 232, 235-236 (Tex. App.—Waco 1996, no pet.).

punishment authorized for a first degree felony.[3] Appellant has cited no authority holding that a disparity in sentencing among defendants within the applicable range of punishment for a particular criminal offense under state law, even if proved, is a due process violation. Accordingly, appellant's third point of error is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed May 17, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.[4]

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

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[3] *See* TEX. PEN. CODE ANN. § 29.03(b) (Vernon Supp. 2001) ("[Aggravated robbery] is a felony of the first degree."); *Id.* at § 12.32 ("An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the institutional division for life or for any term of not more than 99 years or less than 5 years.").

[4] Senior Chief Justice Paul C. Murphy sitting by assignment.