

Affirmed and Opinion filed October 7, 1999.



In The

Fourteenth Court of Appeals

NO. 14-97-01405-CR

PEDRO ZAVALA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 712,395**

OPINION

Appellant Pedro Zavala was indicted for aggravated sexual assault of a child, to which he pleaded guilty and was placed on deferred adjudication. A motion to adjudicate guilt was subsequently filed alleging various violations of probation, to which appellant pleaded "true." The trial court accepted appellant's plea, adjudicated his guilt and assessed punishment at 25-years' confinement. We affirm.

As his sole point on appeal, appellant contends that the trial court failed to consider all the evidence at the punishment phase.

It is a denial of due process for the court to arbitrarily refuse to consider the entire range of punishment for an offense or to refuse to consider the relevant evidence. *McClenan v. State*, 661 S.W.2d 108, 110 (Tex. Crim. App. 1983). However, in absence of a clear showing to the contrary, it is presumed that the trial judge acted properly and considered the full range of punishment and all the evidence. *Earley v. State*, 855 S.W.2d 260, 262 (Tex. App. – Corpus Christi 1993), *pet. dismiss'd, improv. granted*, 872 S.W.2d 758 (Tex. Crim. App. 1994). An appellant waives error with regard to punishment if he does not object in the trial court. *Rogers v. State*, 640 S.W.2d 248, 263-64 (Tex. Crim. App. 1981).

Appellant failed to object to the punishment assessed by the court, or to the court's alleged failure to consider evidence. Appellant pleaded "true" to the charges of violating his community supervision and testified to the circumstances surrounding these violations of conditions. He failed to complain of his punishment in a motion for new trial. Appellant cannot complain on appeal of any alleged failures of the trial court when he did not preserve error by making some type of objection.

Moreover, appellant's argument is not supported by citations to any evidence in the record that he alleges the court failed to consider, and will not be considered on appeal. *Franklin v. State*, 693 S.W.2d 420, 431 (Tex. Crim. App. 1985).

Appellant's sole point of error is overruled.

We affirm the judgment below.

Bill Cannon
Justice

Judgment rendered and Opinion filed October 7, 1999.

Panel consists of Justices Sears, Cannon, and Lee.¹

Do Not Publish — TEX.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

¹ Senior Justices Ross A. Sears, Bill Cannon, and Lee sitting by assignment.

