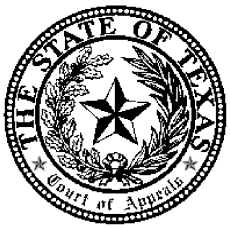
Affirmed and Opinion filed October 18, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00956-CR

ARTHUR TATES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 714,217

O P I N I O N

Without an agreed recommendation, appellant pleaded guilty to the charge of possession of a firearm by a felon and true to the enhancement paragraphs in the indictment, which alleged a prior conviction for felony possession of a controlled substance and a prior conviction for auto theft.[1] The trial court placed appellant on deferred adjudication community supervision for ten years and assessed a $1,000.00 fine. The State subsequently

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[1] *See* TEX. PEN. CODE ANN. § 46.04 (Vernon 1994); Act of May 29, 1993, 73d Leg., R.S., ch. 900, sec. 1.01, § 12.42(d), 1993 TEX. GEN. LAWS 3586, 3604 (since amended, current version at TEX. PEN. CODE ANN. § 12.42(d) (Vernon Supp. 2001)).

filed a motion to adjudicate appellant's guilt, alleging as one violation that appellant failed to participate in a community service program as ordered by the court. Without an agreed recommendation, appellant pleaded true to the allegations in the State's motion. The court found appellant violated the terms and conditions of his probation by failing to participate in a community service program as ordered by the court, adjudicated appellant guilty of the offense of possession of a firearm by a felon, and assessed punishment at 25 years confinement.[2] We affirm.

DISCUSSION

In a single point of error, appellant contends his sentence constituted cruel and unusual punishment under the Eighth Amendment of the United States Constitution. There is nothing in the record before this court to indicate he presented this claim to the trial court. *Cf. Steadman v. State*, 31 S.W.3d 738, 742 (Tex. App.—Houston [1st Dist.] 2000, pet. filed) (holding that, by not objecting at sentencing hearing to 40 year sentence on the basis of cruel or unusual punishment under the Texas Constitution, defendant waived argument). In addition, appellant waived a reporter's record on appeal. *See Diaz-Galvan v. State*, 942 S.W.2d 185, 186 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd) (holding that, because a threshold proportionality analysis requires a comparison of the gravity of the crime with the severity of the sentence, an appellate court without a presentence investigation report or reporter's record from the guilt or punishment hearing has insufficient record for review). Appellant has not preserved his point of error.

Were we to reach the merits of appellant's Eighth Amendment claim, we would overrule his point of error. Contrary to appellant's perception, he was not sentenced for having committed minor, technical, violations of the conditions of his community

[2] There is no reporter's record. The judgment does not set forth a finding regarding the prior offenses, but designates the class of the present offense as a third-degree felony, "habitual." Without a reporter's record, there is nothing to rebut the presumption of regularity of the judgment. *See Ford v. State*, 848 S.W.2d 776, 777 (Tex. App.—Houston [14th Dist.] 1993, no pet.) (citing *Breazeale v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984)).

supervision. After being adjudicated guilty, he was sentenced for having committed the offense of being a felon in possession of a firearm, as an habitual offender.

Unlike *Solem v. Helm*, on which appellant relies, the present case does not involve an automatic life sentence without parole. *See* 463 U.S. 277, 281-82, 103 S. Ct. 3001, 3005 (U.S. 1983). A twenty-five year sentence for possession of a firearm by a felon with two prior convictions is not cruel and unusual punishment.[3] *Cf. Rummel v. Estelle*, 445 U.S. 263, 285, 100 S. Ct. 1133, 1145 (1980) (holding it did not constitute cruel and unusual punishment to impose life sentence, under previous version of Texas recidivist statute, on defendant convicted, successively, of fraudulent use of credit card to obtain $80 worth of goods or services, passing forged check in amount of $28.36, and obtaining $120.75 by false pretenses); *Hicks v. State*, 15 S.W.3d 626, 632-33 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd) (holding 25 year sentence for sexual assault—a felony punishable by two to 20 years—enhanced with two prior convictions not so grossly disproportionate to constitute cruel and unusual punishment); *Nowling v. State*, 909 S.W.2d 121, 122 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd) (holding 50 year sentence for unauthorized use of a motor vehicle, enhanced with two prior convictions, not so grossly disproportionate to constitute cruel and unusual punishment).

We overrule appellant's single point of error. We affirm the judgment of the trial court..

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed October 18, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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[3] Indeed, appellant's brief cites three felony convictions—possession of a controlled substance, auto theft, and burglary—prior to this last offense for possession of a firearm.