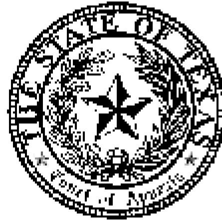
Affirmed and Opinion filed October 19, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-01016-CR

ANTHONY TIERAIL JOHNSON, Appellant

V.

THE STATE OF TEXAS , Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 781,758

O P I N I O N

Over his plea of not guilty, a Harris County jury found appellant guilty of aggravated robbery. The trial court, after finding he had previously been convicted of two felony offenses, sentenced him to sixty years' confinement in the Texas Department of Justice, Institutional Division.

In his sole point of error, appellant argues that the trial court erred in failing to correctly instruct the jury as to the state's burden of proof regarding evidence of extraneous conduct. Appellant claims that the admission, during the punishment phase, of three letters he wrote from jail to three different girls constituted evidence of extraneous offenses. This extraneous offense evidence, appellant argues, required the trial

court to submit a reasonable doubt jury instruction during the punishment phase —even though he neither requested an instruction nor objected to the lack of such an instruction. We disagree.

Reasonable-doubt instructions are not required to be given at the punishment phase of a trial, absent a request. *See Fields v. State*, 1 S.W.3d 687, 688 (Tex. Crim. App. 1999).

> At the punishment phase, the defendant has already been found guilty beyond a reasonable doubt of each element of the offense charged. For purposes of assessing punishment, the prosecution may offer evidence of any extraneous crime or bad act that is shown, beyond a reasonable doubt, either to have been (1) an act committed by the defendant or (2) an act for which he could have been held criminally responsible. TEX. CODE CRIM. PROC. art. 37.07, § 3(a). Prior crimes or bad acts are introduced to provide additional information which the jury may use to determine what sentence the defendant should receive. The statute requires that such evidence may not be considered in assessing punishment until the fact-finder may use the evidence however it chooses *in assessing punishment*. Thus, this evidence serves a purpose very different from evidence presented at the guilt-innocence phase.

1 S.W.3d at 688 (emphasis in original).

Accordingly, we overrule appellant's sole point of error and affirm the trial court's judgment.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed October 19, 2000.

Panel consists of Justices Robertson, Sears, and Hutson-Dunn.[*]

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

[*] Senior Justices Sam Robertson, Ross A. Sears, and Camille Hutson-Dunn sitting by assignment.