

No. 01-24-00834-CR

IN THE COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS

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DEBORAH M. YOUNG
Clerk of The Court

ROBERT CARNALL JONES,
APPELLANT

V.

THE STATE OF TEXAS,
APPELLEE

On Appeal from Criminal District Court #4, Tarrant County, Texas
Trial Court No. 1786994
Honorable Andy Porter, Judge Presiding

APPELLANT'S BRIEF

Oral argument is not requested

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IDENTITY OF PARTIES AND COUNSEL

The undersigned counsel of record certifies that the following listed persons and entities are the parties to the trial court's judgment and trial and appellate counsel as described in Texas Rule of Appellate Procedure 38.1(a).

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/s/ John Brender
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RECORD ON APPEAL

The Clerk’s Record on Appeal is cited as “CR at [page number]”

The Reporter’s Record on Appeal is identical in both appellate causes, so will be cited as “[volume number] RR at [page number]”

STATEMENT OF THE CASE

This case involves a judgment of the felony-level offense of aggravated robbery in Criminal District Court #4 of Tarrant County, Texas. CR at 6. Appellant plead guilty on November 16, 2023 to the agreed sentence of 10 years deferred adjudication probation to the charge of aggravated robbery with the felony enhancement of repeat offender on November 16th, 2023. CR at 33-46. On February 2, 2024, a petition to revoke probation was filed by the Appellee. CR at 56-59. The Appellant subsequently plead true to the motion to revoke on February 8, 2024, and the trial court ordered that a pre-sentence investigation report be prepared. 2 RR at 4-5. The trial court then conducted a punishment hearing on September 4, 2024. 2 RR at 1. After hearing the evidence and the arguments of counsel, the trial court sentenced Appellant to fifteen years in the Institutional Division of the Texas Department of Criminal Justice. CR at 78-81; 2 RR at 37.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not requested.

ISSUE PRESENTED

1. The trial court's assessment of fifteen years in prison violated Appellant's State and Federal protection against cruel and unusual punishment.

STATEMENT OF FACTS

Appellant was indicted for the offense of aggravated robbery. CR at 6. Appellant plead guilty to the charged offense on December 13, 2023 and was subsequently sentenced to the agreed plea bargain of 10 years deferred adjudication probation. CR at 33-52. The Appellee then filed a motion to revoke probation on February 2nd, 2024. CR at 73-75. The Appellant plead true to the motion to revoke probation on February 8th, 2024. CR at 64-71. The trial court then conducted a punishment hearing on September 4, 2024. 2 RR at 1.

During the sentencing hearing, the State moved to admit the presentence investigation report and a supplement to that report which was compiled by the Tarrant County Probation Department. 2 RR at 4-6. The Court admitted the presentence report and its supplement as exhibits 1 and 1A. 2 RR at 5-6.

The State then rested. 2 RR at 6.

Appellant then testified on his own behalf. 2 RR at 6. Appellant admitted to violating probation and asked to be reinstated on probation. 2 RR at 8. Appellant

stated that he struggled with drinking alcohol. 2 RR at 8. Appellant was apologetic and noted that that he would not violate probation in the future. 2 RR at 9. The Appellant further noted that he would no longer drink alcohol. 2 RR at 9. Appellant noted on cross examination that he had been attending Alcoholics Anonymous meetings in jail. 2 RR at 29. The defense rested. 2 RR at 31.

At the close of evidence, the Court had the option to reinstate the Appellant on the probation or sentence him to prison. The Court chose to sentence the Appellant to 15 years in prison. RR at 37.

SUMMARY OF THE ARGUMENT

The trial court's assessment of fifteen years in prison violated Appellant's State and Federal protection against cruel and unusual punishment.

POINT OF ERROR ONE

Appellant's punishment of fifteen years in prison constitutes cruel and unusual punishment prohibited by both the Texas and United States Constitutions.

I. Applicable Law

The Eighth Amendment to the Constitution of the United States provides that

"[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. AMEND. VIII. This provision was made applicable to the states by the Due Process Clause of the Fourteenth Amendment. *Meadoux v. State*, 325 S.W.3d 189, 193 (Tex.Crim.App. 2010) (citing *Robinson v. California*, 370 U.S. 660, 666-67 (1962)). Section 13 of the Texas Constitution also protects against "cruel or unusual punishment." TEX. CONST., Art. 1, Sec. 13.

It is simply a *general* rule that punishment imposed within the statutory limits is not excessive, cruel, or unusual. *See Jordan v. State*, 495 S.W.2d 949, 952 (Tex.Crim.App. 1973); *Dale v. State*, 170 S.W.3d 797, 799 (Tex.App.—Fort Worth 2005, no pet.). No penalty is *per se* constitutional. *Solem v. Helm*, 463 U.S. 277, 290 (1983). Instead, the constitutional prohibition of "cruel and unusual punishment" is measured by the "evolving standards of decency that mark the progress of a maturing society." *Roper v. Simmons*, 543 U.S. 551, 561 (2005) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)). The "applicability [of the Eighth Amendment's prohibition on cruel and unusual punishment] must change as the basic mores of society change." *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (citing *Furman v. Georgia*, 408 U.S. 238, 382 (1972)). In other words, sentences must be proportionate to the crime. *Solem v.*

Helm, 463 U.S. at 290.

II. Discussion

In the closing arguments, Appellant asked the judge to consider that the Appellant is “fixable” and “redeemable”. 2 RR 33. The Court could infer this meant the Appellant was asking to be reinstated on probation. Appellee did not ask for a particular sentence just that the Court do “justice”. 2 RR at 34.

Appellant’s sentence violates the principle of proportionality, as the sentence imposed was more severe than either side thought appropriate. *See Solem v. Helm*, 463 U.S. at 289-290. Even though the sentence was within the range of punishment, that is not enough to declare the punishment constitutional. *See Jordan v. State*, 495 S.W.2d at 952.

The trial court’s sentence of fifteen years was disproportionate. For these reasons, Appellant asks that his first point of appeal be sustained and his sentence vacated and remanded for further proceedings.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully prays that his issues on appeal be sustained, that his sentence vacated, and that he be acquitted of this offense. Appellant additionally prays for such other and further

relief to which he may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Brender, certify that on December 4, 2024, a true copy of this brief has been served upon the following persons in the following manners:

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Tex. R. App. 9.4 (i)(2) because it contains approximately 1,593 words, excluding the parts of the brief exempted by Tex. R. App. 9.4 (i)(1).
2. The electronic copy of this brief complies with Tex. R. App. 9.4 (i)(1) because it has been directly converted from Microsoft Word into a searchable document in Portable Document File (PDF) format.

/s/ John Brender
JOHN BRENDER

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JONES-APPELLANT'S BRIEF. Please contact me if there is a problem.

Thank you! Carolina (817 334-0171).

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