

COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT AT AMARILLO

Joseph Anthony Johnson v. The State of Texas

No. 07-20-00053-CR (Tex. App.—Amarillo Dec. 21, 2021) (mem. op.) · No. No. 07-20-00053-CR · Decided December 21, 2021

SUMMARY

The Seventh Court of Appeals of Texas at Amarillo reviewed the adjudication of guilt and revocation of community supervision following the appellant's guilty pleas to two counts of sexual assault of a child. The court upheld the findings of community-supervision violations and consecutive 75-year sentences, rejecting the gross-disproportionality challenge. It modified the judgments to correctly identify the offenses as second-degree felonies punished at the first-degree-felony level and affirmed as modified.

CASE DETAILS

COURT	Court of Appeals of Texas, Seventh District at Amarillo
WRITING FOR THE COURT	Per Curiam; Quinn, C.J.; Pirtle, J.; Doss, J.
JURISDICTION	Texas
DECIDED	December 21, 2021
DOCKET	No. 07-20-00053-CR
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from orders adjudicating guilt and revoking deferred-adjudication community supervision after an evidentiary hearing, imposing two consecutive seventy-five-year sentences and a fine, and entering judgments that incorrectly identified the offenses as first-degree felonies.
STANDARD OF REVIEW	The decision to revoke community supervision and adjudicate guilt is reviewed for abuse of discretion. The State must prove by a preponderance of the evidence that the defendant violated at least one condition of supervision, and the evidence is viewed in the light most favorable to the trial court's ruling. A gross-disproportionality challenge begins with a comparison of the gravity of the offense and the severity of the sentence.
PRECEDENTIAL VALUE	unpublished, not designated for publication
PARTIES	Joseph Anthony Johnson v. The State of Texas

TOPICS

criminal procedure

probation

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cruel and unusual punishment

appellate procedure

PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by finding that Johnson violated conditions of community supervision and by adjudicating his guilt.
2. Whether two consecutive seventy-five-year sentences were grossly disproportionate to the sexual-assault offenses and therefore violated the Eighth Amendment prohibition against cruel and unusual punishment.
3. Whether the judgments should be reformed to identify the convictions as second-degree felonies whose punishment was enhanced to the level applicable to first-degree felonies.

HOLDINGS

1. The trial court did not abuse its discretion in revoking Johnson's community supervision and adjudicating his guilt because the State proved by a preponderance of the evidence that he violated at least one condition of supervision.
2. The sentences were not cruel and unusual or grossly disproportionate because they fell within the statutorily authorized punishment range and the record did not present the rare case warranting further proportionality review.
3. The judgments had to be reformed to reflect that Johnson was convicted of two second-degree felonies whose punishments were enhanced to the level applicable to first-degree felonies.

KEY QUOTATIONS

“Implicit therein is the State’s obligation to prove by a preponderance of the evidence that appellant violated at least one term or condition of his community supervision.” (at 4)

“Subject only to a very limited, ‘exceedingly rare,’ and somewhat amorphous Eighth Amendment gross-disproportionality review, a punishment that falls within the legislatively prescribed range, and that is based upon the sentencer’s informed normative judgment, is unassailable on appeal.” (at 5–6)

FACTUAL BACKGROUND

Johnson pleaded guilty to two counts of sexual assault of a child involving a fifteen-year-old girl and pleaded true to a prior felony burglary conviction that enhanced the punishment range. While on deferred-adjudication community supervision, he failed to make required reports and payments, completed only four of 100 required community-service hours, failed to complete sex-offender counseling, and was rejected from the counseling program after aggressive and threatening conduct. The trial court also considered his extensive criminal history, absconding from prosecution, assault of a deputy, lack of remorse, and failure to accept responsibility.

PROCEDURAL HISTORY

Johnson pleaded guilty to two counts of second-degree sexual assault of a child and pleaded true to a prior-felony enhancement. The trial court deferred adjudication and placed him on eight years of community supervision. After the State moved to adjudicate based on multiple supervision violations, the trial court found six violations, adjudicated Johnson guilty on both counts, and imposed consecutive seventy-five-year sentences. On appeal, the court overruled seven issues, sustained Johnson's challenge to the judgment descriptions, reformed the judgments, and affirmed them as modified.

DISPOSITION

other

CASES CITED

- Adame v. State, No. 07-19-00007-CR, 2019 Tex. App. LEXIS 10765, at *6–7 (Tex. App.—Amarillo Dec. 11, 2019, no pet.) (mem. op.)
- Buster v. State, No. 07-20-00099-CR, 2021 Tex. App. LEXIS 2169, at *5–6, *8–9 (Tex. App.—Amarillo Mar. 22, 2021, pet. ref'd) (mem. op.)
- Ex parte Chavez, 213 S.W.3d 320, 323–24 (Tex. Crim. App. 2006)
- Ramirez v. State, 336 S.W.3d 846, 852 (Tex. App.—Amarillo 2011, pet. ref'd)
- Sharp v. State, No. 07-19-00409-CR, 2020 Tex. App. LEXIS 7124, at *1 n.2 (Tex. App.—Amarillo 2020, pet. ref'd) (mem. op.)
- Oliva v. State, 548 S.W.3d 518, 526 (Tex. Crim. App. 2018)