

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Raymond Philip Milligan v. the State of Texas

No. 01-24-00486-CR · No. 01-24-00486-CR · Decided March 19, 2026

SUMMARY

The First Court of Appeals of Texas affirmed Raymond Philip Milligan’s five-year prison sentences for three counts of sexual assault of a child following his open guilty plea. The court held that Milligan failed to preserve his challenges concerning the trial court’s consideration of an affirmative defense and statements made by the prosecutor during the sentencing hearing. Alternatively, the court concluded that the sentence was within the statutory range and did not constitute an abuse of discretion.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Amparo “Amy” Guerra; Chief Justice Adams; Justice Guerra; Justice Guiney
JURISDICTION	Court of Appeals for the First District of Texas
DECIDED	March 19, 2026
DOCKET	01-24-00486-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	After pleading guilty to three counts of sexual assault of a child and receiving a five-year prison sentence, appellant appealed only the punishment portion of the judgment.
STANDARD OF REVIEW	Preservation issues are reviewed under Texas Rule of Appellate Procedure 33.1. The assessment of punishment is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Unpublished, nonprecedential memorandum opinion; the court directed that it not be published under Texas Rule of Appellate Procedure 47.2(b).
PARTIES	Raymond Philip Milligan v. The State of Texas

TOPICS

- sentencing
- preservation of error
- standard of review
- criminal procedure
- appellate procedure

PRACTICE AREAS

Criminal law

Criminal procedure

Appellate practice

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by failing to consider or understand an affirmative defense that appellant conceded was inapplicable when assessing punishment.
2. Whether appellant preserved his challenge to statements made by the prosecutor during opening and closing arguments at the sentencing hearing.

HOLDINGS

1. A criminal defendant must timely and specifically object to an allegedly disproportionate or otherwise erroneous sentence in the trial court or in a post-trial motion to preserve the complaint for appellate review; Milligan failed to do so.
2. The trial court did not abuse its discretion by imposing five years' imprisonment and by failing to consider a concededly inapplicable affirmative defense.
3. Appellant's challenge to statements made by the prosecutor during opening statement and closing argument was not preserved because appellant made no timely and specific objection in the trial court.

KEY QUOTATIONS

“Except in the rare case of a meritorious Eighth Amendment gross-proportionality challenge, “punishment that falls within the legislatively prescribed range, and that is based upon the sentencer’s informed normative judgment, is unassailable on appeal.”” (5)

“A party properly preserves his complaint for appellate review by making a timely and specific request, objection, or motion in the trial court.” (3)

FACTUAL BACKGROUND

Milligan was approximately four years and nine months older than the fourteen-year-old complainant when the charged sexual assaults occurred. He pleaded guilty to three counts of sexual assault of a child, and the trial court held a sentencing hearing at which the complainant testified about Milligan's knowledge of her age and concern about their relationship being discovered. The trial court imposed five years' imprisonment, which was within the two-to-twenty-year range for a second-degree felony.

PROCEDURAL HISTORY

Milligan was indicted on six counts of sexual assault of a child and later entered an open guilty plea to three counts. Following a sentencing hearing, the trial court assessed five years' imprisonment. Milligan filed a timely appeal challenging the punishment assessment and statements made by the State during the sentencing hearing; the court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Mays v. State, 285 S.W.3d 884, 889 (Tex. Crim. App. 2009)
- Pearson v. State, 994 S.W.2d 176, 179 (Tex. Crim. App. 1999)
- Jacoby v. State, 227 S.W.3d 128, 130 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd)
- Nicholas v. State, 56 S.W.3d 760, 768 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd)
- Steadman v. State, 31 S.W.3d 738, 742 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd)
- Solis v. State, 945 S.W.2d 300, 301 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd)
- Harris v. State, 364 S.W.3d 328, 337-38 (Tex. App.—Houston [1st Dist.] 2012, no pet.)
- Montalvo v. State, No. 2-07-124-CR, 2007 WL 2963772, at *1 (Tex. App.—Fort Worth Oct. 11, 2007, no pet.) (mem. op., not designated for publication)
- Noland v. State, 264 S.W.3d 144, 151 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd)
- Wynn v. State, 219 S.W.3d 54, 61 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd)
- Perez v. State, 280 S.W.3d 886, 886-87 (Tex. App.—Amarillo 2009, no pet.)
- Lamerand v. State, 540 S.W.3d 252, 257 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd)
- Meadoux v. State, 325 S.W.3d 189, 193 n.5 (Tex. Crim. App. 2010)
- Butler v. State, 872 S.W.2d 227, 236 (Tex. Crim. App. 1994)
- Jackson v. State, 562 S.W.3d 717, 722 (Tex. App.—Amarillo 2018, no pet.)
- Jackson v. State, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984)
- Moore v. State, No. 11-13-00050-CR, 2014 WL 6997620, at *2 (Tex. App.—Eastland Dec. 11, 2014, no pet.) (mem. op., not designated for publication)
- Ex parte Chavez, 213 S.W.3d 320, 324 (Tex. Crim. App. 2006)
- Watts v. State, 645 S.W.2d 461, 463 (Tex. Crim. App. [Panel Op.] 1983)
- Laboriel-Guity v. State, 336 S.W.3d 754, 757 (Tex. App.—Fort Worth 2011, pet. ref'd)
- Estrada v. State, 313 S.W.3d 274, 302-03 (Tex. Crim. App. 2010)
- Thierry v. State, 288 S.W.3d 80, 84-85 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd)

OPINION

Raymond Philip Milligan v. the State of Texas

PER CURIAM.

Opinion issued March 19, 2026. In the Court of Appeals for the First District of Texas
NO. 01-24-00486-CR

RAYMOND PHILIP MILLIGAN, Appellant v. THE STATE OF TEXAS, Appellee On Appeal
from the 506th District Court Waller County, Texas Trial Court Case No. 21-10-17794

MEMORANDUM OPINION

Appellant Raymond Philip Milligan voluntarily entered an open plea of guilty to three counts of

sexual assault of a child. TEX. PENAL CODE § 22.011(a)(2). Following appellant's plea, the trial court held a sentencing hearing and sentenced appellant to five years' imprisonment. In his two issues, appellant challenges the trial court's assessment of punishment. We overrule appellant's first issue, in which he contends the trial court failed to consider a concededly inapplicable affirmative defense, because, assuming without deciding that appellant preserved the issue for our review, we hold that the trial court did not abuse its discretion when sentencing appellant to five years' imprisonment. We overrule appellant's second issue, in which he challenges statements made by the State during the sentencing hearing, because appellant failed to complain in the trial court and preserve that issue for appellate review. We affirm the trial court's judgment.

Background On October 14, 2021, appellant was charged by indictment with six counts of sexual assault of a child. On November 16, 2023, appellant entered an open plea of guilty to three counts of sexual assault of a child. At the time of each offense, appellant was 18 years old, and complainant was 14 years old. Appellant is approximately four years and nine months older than complainant. Appellant waived his right to appeal except as to punishment, and the trial court certified appellant's right of appeal as to punishment. On May 29, 2024, the trial court held a sentencing hearing. Counsel for the State and appellant made opening statements. In his opening statement, counsel for the State stated that appellant met complainant when she was 14 years old and had sex with her. He further stated: "The police were called, they responded to the crime, 2 talked to [appellant] and said, 'This is serious, don't let it happen again.'" Appellant's counsel argued in his opening statement that appellant and complainant's age gap was "about nine months" away from an "affirmative Romeo and Juliet defense." During the hearing, the State called complainant, who testified that appellant knew her age before he had sex with her because he had attended her fourteenth birthday party. She testified that he was concerned about her age because he did not want others to know of their relationship. She testified that he appeared "worried about getting caught" when they were together and that their sexual relationship had already been discovered once before. At the conclusion of the hearing, the trial court assessed punishment at five years' imprisonment. Appellant timely filed a notice of appeal. "Mistake of Law" Defense In his first issue, appellant contends that the trial court failed to consider or understand an affirmative defense that he recognizes is inapplicable. Under Texas law, it is an affirmative defense to the offense of sexual assault of a child that, among the other essential elements of the affirmative defense, "the actor was not more than three years older than the victim." TEX. PENAL CODE § 22.011(e)(2). Although appellant concedes that he is more than three years older than complainant, he contends that he believed a larger age gap applied and that the trial court failed to 3 consider his "mistake of law" when sentencing him. He also contends that the trial court misstated the law by implying that the affirmative defense cannot apply when the complainant is 14 years old. Although neither party raised the issue, we first consider whether appellant preserved this issue for our review. See *Mays v. State*, 285 S.W.3d 884, 889 (Tex. Crim. App. 2009) (noting that courts of appeals must "take up error preservation as a threshold issue" even if "neither party raised the

issue”). A party properly preserves his complaint for appellate review by making a timely and specific request, objection, or motion in the trial court. TEX. R. APP. P. 33.1(a). Generally, a criminal defendant must timely object in the trial court to preserve a complaint for appellate review. *Pearson v. State*, 994 S.W.2d 176, 179 (Tex. Crim. App. 1999). “The failure to specifically object to an alleged disproportionate sentence in the trial court or in a post-trial motion waives any error.” *Jacoby v. State*, 227 S.W.3d 128, 130 (Tex. App.—Houston [1st Dist.] 2006, pet. ref’d) (citing *Nicholas v. State*, 56 S.W.3d 760, 768 (Tex. App.—Houston [14th Dist.] 2001, pet. ref’d); *Steadman v. State*, 31 S.W.3d 738, 742 (Tex. App.—Houston [1st Dist.] 2000, pet. ref’d); *Solis v. State*, 945 S.W.2d 300, 301 (Tex. App.—Houston [1st Dist.] 1997, pet. ref’d)); see *Harris v. State*, 364 S.W.3d 328, 337-38 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (holding that appellant failed to preserve judicial-vindictiveness complaint by failing to object when sentence was imposed or in motion for new trial); *Montalvo v. State*, 4 No. 2-07-124-CR, 2007 WL 2963772, at *1 (Tex. App.—Fort Worth Oct. 11, 2007, no pet.) (mem. op., not designated for publication) (holding that, by failing to object to sentence, appellant failed to preserve complaint for appellate review that trial court abused its discretion in sentencing him to seven years’ imprisonment because he was elderly and in poor health). This general preservation-of-error rule applies even to appellate complaints that a criminal defendant’s sentence violates the Eighth Amendment’s prohibition against cruel and unusual punishments. E.g., *Noland v. State*, 264 S.W.3d 144, 151 (Tex. App.—Houston [1st Dist.] 2007, pet. ref’d); *Wynn v. State*, 219 S.W.3d 54, 61 (Tex. App.—Houston [1st Dist.] 2006, pet. ref’d). Although appellant’s challenge is non-constitutional, it is analogous to an Eighth Amendment complaint: appellant believes his sentence is disproportionate to the offense in light of the relative age difference between him and complainant. See *Perez v. State*, 280 S.W.3d 886, 886-87 (Tex. App.—Amarillo 2009, no pet.) (holding that appellant failed to preserve argument that sentence was “grossly disproportionate to the offense” by failing to object). To preserve this complaint for our review, appellant was required to object to his sentence before the trial court. Because he failed to do so, this issue was not properly preserved. However, assuming without deciding that this issue was preserved, we conclude that the trial court did not abuse its discretion in sentencing appellant to five years’ imprisonment. See *Lamerand v. State*, 540 S.W.3d 252, 257 (Tex. App.—5 Houston [1st Dist.] 2018, pet. ref’d) (assuming, without deciding, that appellant preserved error of inadmissible hearsay and concluding error was harmless); see also *Meadoux v. State*, 325 S.W.3d 189, 193 n.5 (Tex. Crim. App. 2010) (noting that court of appeals may affirm judgment without addressing error preservation but may not reverse judgment without addressing error preservation); *Butler v. State*, 872 S.W.2d 227, 236 (Tex. Crim. App. 1994) (addressing unpreserved argument in interest of justice). A trial court’s assessment of punishment is reviewed for abuse of discretion. *Jackson v. State*, 562 S.W.3d 717, 722 (Tex. App.—Amarillo 2018, no pet.) (citing *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984); *Moore v. State*, No. 11-13-00050-CR, 2014 WL 6997620, at *2 (Tex. App.—Eastland Dec. 11, 2014, no pet.) (mem. op., not designated for publication)). Except in the rare

case of a meritorious Eighth Amendment gross-proportionality challenge, “punishment that falls within the legislatively prescribed range, and that is based upon the sentencer’s informed normative judgment, is unassailable on appeal.” *Ex parte Chavez*, 213 S.W.3d 320, 324 (Tex. Crim. App. 2006) (citation modified). Here, appellant pled guilty to three counts of sexual assault of a child, a second-degree felony punishable by two to twenty years in prison. TEX. PENAL CODE § 22.011(f); see *id.* § 12.33(a) (prescribing punishment for second-degree felony). The trial court assessed appellant’s punishment at five years’ imprisonment, the lower end of the legislatively prescribed range. Nonetheless, appellant persists in 6 arguing that the trial court purportedly misunderstood that the fact that the complainant was 14 years old, as complainant was at the time of the offense, does not preclude application of the affirmative defense that the “actor was not more than three years older than the victim.” TEX. PENAL CODE § 22.011(e)(2). Appellant concedes he is more than three years older than complainant. Moreover, appellant’s purported belief that the law allowed a larger age difference is not a valid mistake-of-law defense.¹ See *id.* § 8.03(a) (“It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.”). Regardless of whether the trial court misunderstood one aspect of the defense’s application, the trial court does not abuse its discretion by failing to consider a concededly inapplicable affirmative defense when sentencing a defendant. See *Watts v. State*, 645 S.W.2d 461, 463 (Tex. Crim. App. [Panel Op.] 1983) (holding that trial court did not abuse its discretion to revoke probation and impose sentence where appellant failed to prove affirmative defense); cf. *Jackson*, 562 S.W.3d at 722-23 (holding that trial court did not abuse its discretion by sentencing appellant to prison instead of community supervision, despite argument that community supervision would better 1 The trial court heard testimony during the sentencing hearing that casts doubt on appellant’s purported belief. Complainant testified that appellant appeared concerned about her age because he did not want others to know of their relationship. She also testified that he appeared “worried about getting caught” when they were together and that their sexual relationship had already been discovered once before. 7 address appellant’s substance abuse); *Laboriel-Guity v. State*, 336 S.W.3d 754, 757 (Tex. App.—Fort Worth 2011, pet. ref’d) (rejecting argument that trial court abuses its discretion by failing to consider appellant’s “remorse and acceptance of responsibility”). We overrule appellant’s first issue. Opening Statements and Closing Arguments In his second issue, appellant contends that the trial court erred by relying on statements made by the prosecutor in his opening statement and closing argument that were not supported by the evidence. In his opening statement, the prosecutor stated, “The police were called, they responded to the crime, talked to the Defendant and said, ‘This is serious, don’t let it happen again.’ If it stopped there, it would be a completely different case, but it didn’t.” In his closing argument, he stated, “He was told not to see her, and he had her sneak out” Appellant challenges both statements. As the State points out, appellant did not object to either statement in the trial court, let alone do so timely and specifically. See TEX. R. APP. P. 33.1(a)(1)(A) (requiring complaint to be made “timely” and “with sufficient specificity” to

the trial court to preserve error). Accordingly, this issue is not preserved for our review. *Id.*; see, e.g., *Estrada v. State*, 313 S.W.3d 274, 302-03 (Tex. Crim. App. 2010) (holding that any challenge to statements in opening or closing was not preserved where appellant failed to object or move for mistrial); *Thierry v. State*, 288 S.W.3d 80, 84-85 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) (holding that challenge to opening statement was not preserved where appellant failed to obtain ruling on objection or object to trial court's failure to rule). We overrule appellant's second issue. Conclusion We affirm the judgment of the trial court. Amparo "Amy" Guerra Justice Panel consists of Chief Justice Adams and Justices Guerra and Guiney. Do not publish. TEX. R. APP. P. 47.2(b). 9