

Affirmed and Opinion filed June 7, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01235-CR

JOHN KENT STREETY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 94-20856**

O P I N I O N

Appellant, John Kent Streety, complains the trial court failed to conduct a separate punishment hearing after revoking his deferred adjudication probation and entering an order adjudicating his guilt. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant pled guilty to the felony offense of robbery. The trial court deferred adjudication of guilt, placed the appellant on probation for six years, and assessed a fine of \$1,000.00. At the time of sentencing in June 1996, the trial court made the appellant aware

of his probation conditions and the consequences that would follow if he violated any condition of his probation. In August 1999, the State filed a motion to adjudicate the appellant's guilt, claiming appellant had violated the terms and conditions of his probation. The following month appellant entered a plea of not true to the motion to adjudicate. After conducting a hearing, the trial court found the allegations in the State's motion to adjudicate to be true, revoked appellant's probation, and found appellant guilty of the charged offense of robbery. Without a separate punishment hearing, the trial court assessed appellant's punishment at four years' confinement in the Institutional Division of the Texas Department of Criminal Justice and a fine of \$1,000.00. Appellant now challenges his conviction raising one point of error.

II. ISSUE PRESENTED

In his sole ground of error, appellant claims the trial court erred by not conducting a separate punishment hearing after adjudicating his guilt and before assessing punishment.

III. ANALYSIS

Generally, when a trial court finds that an accused has committed a violation, as alleged by the State, and adjudicates a previously deferred finding of guilt, the court must then conduct a second phase to determine punishment. *Issa v. State*, 826 S.W.2d 159, 161 (Tex. Crim. App. 1992). Moreover, article 42.12, § 5(b) of the Texas Code of Criminal Procedure states:

After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and [your] appeal continue as if the adjudication of guilt had not been deferred.

TEX. CODE CRIM. P. art. 42.12, § 5(b) (Vernon Supp. 2001). Thus, under this statute, the defendant is entitled to a punishment hearing after the adjudication of guilt, and the trial court must allow appellant the opportunity to present evidence. *See id.*

Appellant made no trial objection to the court's failure to hold a separate punishment

hearing after the adjudication of his guilt, nor did he raise the matter in a motion for new trial. Thus, appellant failed to preserve this issue for appellate review. *See Hardeman v. State*, 1 S.W.3d 689, 690 (Tex. Crim. App. 1999) (reiterating that, to preserve error, the complaining party must make a timely objection at trial or file a motion for new trial where he was not given an opportunity to object); *Issa v. State*, 826 S.W.2d at 161 (finding that appellant must normally object at trial to court's failure to conduct punishment hearing unless having no opportunity to object, he files a motion for new trial raising his objection); *Salinas v. State*, 980 S.W.2d 520, 521 (Tex. App.—Houston[14thDist.] 1998, pet.ref'd) (finding that appellant waived complaint about lack of punishment hearing, although he filed motion for new trial, because motion failed to apprise trial court of additional evidence that would have been offered).

Appellant's sole point of error is overruled, and the judgment of the trial court is affirmed.

/s/ Kem Thompson Frost
 Justice

Judgment rendered and Opinion filed June 7, 2001.

Panel consists of Justices Edelman, Frost, and Lee.¹

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

¹ Senior Justice Norman R. Lee sitting by assignment.