Affirmed and Opinion filed August 16, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00875-CR

KARL NOEL PEACOCK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 827,217

M E M O R A N D U M O P I N I O N

The parties are already familiar with the background of the case and the evidence adduced at trial, therefore, we limit recitation of the facts. We issue this memorandum opinion pursuant to Texas Rule of Appellate Procedure 47.1 because the law to be applied in the case is well settled.

Appellant was charged with aggravated sexual assault of a child. He pled guilty without an agreed recommendation for punishment, and trial court sentenced him to 30 years' confinement. We address appellant's claims that (1) he did not have effective assistance of counsel during the time in which a motion for new trial should have been

filed, and (2) his due process rights and his right to be free from cruel and unusual punishment were violated when the court denied his motion for probation and sentenced him to 30 years for his first felony conviction. We affirm.

Effective Assistance of Counsel

Appellant was represented by appointed counsel at the trial stage. He was sentenced on May 31, 2000. On June 20, 2000, he filed a *pro se* notice of appeal, unsigned by trial counsel. On July 21, 2000, his affidavit of indigence and request for appointment of counsel was filed by the clerk. The court appointed appellate counsel that same day. Appellant now complains that he was unrepresented by counsel during the timetable in which a motion for new trial could have been filed. Though the record does not contain any notice that trial counsel had withdrawn, appellant argues that his *pro se* notice of appeal, unsigned by counsel, should have triggered the court to have inquired into the status of appellant's representation. The *pro se* notice, he argues, rebuts the presumption that he was adequately represented during the critical time period where a motion for new trial could have been filed (to develop a record for ineffective assistance of counsel). We disagree. This question has been squarely addressed in *Smith v. State*, 17 S.W.3d 660 (Tex. Crim. App. 2000). There, the court held that an appellant's *pro se* notice of appeal, unsigned by counsel, did not, in itself, rebut the presumption. *Id.* at 661. Appellant cites *Ex Parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988) for the proposition that a *pro se* notice of appeal, unsigned by counsel, is an "indication" that trial counsel does not wish to pursue his client's appeal. *Id.* at 374. That may be so, but such a notice, by itself, does not rebut the presumption. *Smith*, 17 S.W.3d at 661. We also note that *Axel* was a habeas case in which a record showing counsel's intentions was developed. Here, as in *Smith*, we have no such record. Accordingly, we overrule this issue.

Due Process / Cruel and Unusual Punishment

Appellant next argues that his 30-year sentence violated his "due process" rights under the Texas Constitution. He also claims that 30 years' imprisonment for aggravated sexual assault of a child is "so grossly disproportionate to the offense as judged by the standards of decency that mark the progress of a maturing society, and also so grossly disproportionate to the sentences for similar crimes in this jurisdiction, as to be violative of the Eighth Amendment proscription against cruel and unusual punishment." He asserts that "it is almost a matter of judicial notice" that crimes for the offense he was sentenced "not infrequently" result in much less severe sentences. Appellant notes that this was his "very first felony conviction."

Appellant's constitutional claims are meritless for several reasons. First, we note that appellant's 30-year sentence was well within the range permitted by statute. TEX. PEN. CODE ANN. § 22.021(e) (aggravated sexual assault of a child a first degree felony); *Id.* at § 12.32(a) (punishment for first degree felony up to term of 99 years). Second, appellant's factual claims of sentence disparities for like crimes are utterly without support. Finally, the record contains evidence of appellant's having sexually assaulted complainant – his eleven-year-old niece – numerous times. There is also evidence that, as a result of appellant's criminal acts, this young girl was treated at an inpatient psychiatric facility, was reported to have intentionally cut herself, hit herself with a hammer, and expressed a desire to die. In short, the record indicates appellant severely and permanently damaged the life of a child for his own sexual gratification. We find that appellant's sentence was in proportion to the gravity of his offense and the harm he caused. Accordingly, we overrule appellant's constitutional issues.

The judgment of the trial court is affirmed.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed August 16, 2001.

Panel consists of Justices Yates, Fowler, and Sears.*

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* Senior Justice Ross A. Sears sitting by assignment.