

Affirmed and Opinion filed February 10, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00799-CR & 14-98-00800-CR

DANIEL FERMIN TAVERA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 668,724 & 668,725**

OPINION

Daniel Fermin Tavera appeals his convictions for aggravated kidnaping and aggravated sexual assault. Appellant pleaded guilty to the charges, and the trial court placed him on deferred adjudication probation for ten years. The trial court subsequently adjudicated his guilt in both cases for probation violations, and sentenced him to 40 years imprisonment in each case, with the sentences to run concurrently. In one point of error, appellant contends he did not receive a fair and impartial punishment hearing after his adjudication of guilt. We affirm.

A recitation of the facts is unnecessary because appellant complains only of the failure of the trial court to hold a fair and impartial punishment hearing. Appellant contends his

punishment hearing did not comport with the minimal standards of due process because: (1) the trial court failed inquire if appellant understood English; (2) appellant's trial counsel failed to present evidence on behalf of appellant; (3) the trial court was impatient with the parties and displayed an attitude showing he had "his mind made up;" (4) appellant's trial counsel seemed intimidated; and (5) the prosecutor seemed very confident of the trial court's decision because he presented no evidence and did not argue at the punishment stage.

After adjudicating appellant guilty, the trial court conducted a punishment hearing. The prosecutor presented no evidence at the punishment phase, and appellant expressly told the trial judge that he had no punishment evidence. Appellant did not object to the lack of a punishment hearing, nor did he make a due process objection on the grounds he now raises on appeal. Appellant did not file a motion for new trial court.

"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). Although the accused may waive this right by failure to object, the error can be preserved for review in a motion for new trial. *See Borders v. State*, 846 S.W.2d 834, 836 (Tex.Crim.App.1992); *Issa*, 826 S.W.2d at 161; *Salinas v. State*, 980 S.W.2d 520, 521 (Tex.App.–Houston[14th Dist.] 1998, pet. ref'd). The contemporaneous objection rule applies to alleged due process violations in the probation revocation process. *Rogers v. State*, 640 S.W.2d 248, 265 (Tex.Crim.App.1982) (Second Opinion on Rehearing). By failing to object, or file a motion for new trial, appellant has failed to preserve any error for review. We overrule appellant's sole point of error.

We affirm the judgment of the trial court.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed February 10, 2000.

Panel consists of Justices Robertson, Sears, and Cannon.¹

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

¹ Senior Justices Sam Robertson, Ross A. Sears, and Bill Cannon sitting by assignment.