Affirmed and Opinion filed February 21, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-00146-CR

ROBERT CURRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 836,554

O P I N I O N

Appellant appeals his conviction for sexual assault. Appellant pled guilty without an agreed recommendation from the State regarding sentencing and the court sentenced appellant to fifteen years imprisonment.

Appellant's appointed counsel filed an *Anders* brief in which he concludes that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978). Along with his

brief, appellant's appointed counsel on appeal filed a motion to withdraw.

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. Appellant has filed his *pro se* response. This court notified the State that it had 30 days to file a brief or request for an extension of time. The State filed a waiver of any remaining statutory time in which to file its brief and asked that the conviction be affirmed

In his *pro se* response, appellant asserts that both his trial counsel and appellate counsel rendered ineffective assistance rendering his guilty plea involuntary. He contends that his trial counsel was ineffective because: (1) he misled appellant into pleading guilty by promising that appellant would get deferred adjudication probation; and, (2) he refused to investigate the facts of the case to determine if appellant had a viable defense. He contends his appointed appellate counsel was ineffective for failing to "file an ineffective assistance of counsel claim."

Appellant's counsel on appeal states he cannot identify any error supported by the record. In his *Anders* brief, counsel notes there was no motion for new trial filed nor any hearing conducted to explore appellant's assertions of ineffective assistance of trial counsel. At the time of his guilty plea, appellant executed a document entitled, "Admonishments," in which appellant read and initialed statements that he understood the consequences of his plea and that he was totally satisfied with the representation provided by counsel. Additionally, appellant agreed that he had received effective and competent representation.

To prove a plea was involuntary because of ineffective assistance of counsel, appellant must show: (1) that counsel's representation fell below an objective standard, and (2) this deficient performance prejudiced the defense by causing him to give up his right to a trial. *Kober v. State*, 988 S.W.2d 230, 232 (Tex. Crim. App. 1999). We must begin with the strong presumption that counsel was competent. *See Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). We presume counsel's actions and decisions were reasonably

professional and were motivated by sound trial strategy. *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). Appellant has the burden of rebutting this presumption by presenting evidence that trial counsel's conduct fell outside the range of reasonable professional assistance. *Garcia v. State*, 57 S.W.3d 436, 440 (Tex. Crim. App. 2001). Appellant cannot meet this burden if the record does not show the reasons for the conduct of trial counsel. *Kegler v. State*, 16 S.W.3d 908, 911-12 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). This kind of record is best developed in a hearing on an application for writ of habeas corpus or a motion for new trial. *Id.* at 912. When the record is silent regarding the reasons for counsel's conduct, finding counsel ineffective would cause the court to engage in mere speculation. *Id.*

Appellant has presented no evidence that his attorney's actions misled him as to the grounds of his plea bargain or prevented him from making a voluntary and informed decision to enter the plea of guilty. Appellant asserts that his attorney misled him into waiving his rights to trial by jury by promising him deferred adjudication probation in exchange for his plea, failed to discuss potential defenses with him, was not prepared to provide appellant with a meaningful defense at trial, and threatened to withdraw as counsel if he chose to reject the plea. These assertions are not supported by the record. Based on this record, we cannot conclude that appellant met his burden of proving that his plea was made as a result of ineffective assistance of counsel. *Thompson*, 9 S.W.3d at 814.

Appellant further contends his appellate counsel was ineffective for failing "to file an ineffective assistance of counsel claim on his trial counsel upon appellant's request to do so." Appellant asserts that he informed his appointed appellate counsel by a letter that his trial counsel had promised him probation for his guilty plea. Appellant further asserts that "the record it self [sic] reveals a meritorious claim of ineffective assistance of counsel at trial."

Neither retained nor appointed counsel may consume the time and energy of the appellate court and the opposing party by asserting frivolous grounds. *See id.* An attorney,

whether appointed or retained, is under an ethical obligation to refuse to prosecute a frivolous appeal. *See McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S. 429, 435, 108 S.Ct. 1895, 1900, 100 L.Ed.2d 440 (1988); *Pena v. State*, 932 S.W.2d 31, 32 (Tex.App.-El Paso 1995, no pet.); TEX. DISCIPLINARY R. PROF. CONDUCT 3.01(1989). Because the record does not support appellant's claim of ineffective assistance by trial counsel, appellant's counsel properly filed an *Anders* brief asserting that the appeal was frivolous and without merit.

Appellant has provided no evidence to support his claim of ineffective assistance of counsel. We have carefully reviewed the record, counsel's brief, and appellant's response, and we agree that the appeal is wholly frivolous and without merit. Further, we find no reversible error in the record. The record shows that appellate counsel has complied with *Anders*, and appellant has no arguable grounds for appeal. Accordingly, we affirm the judgment of the trial court.

PER CURIAM

Judgment rendered and Opinion filed February 21, 2002.
Panel consists of Justices Yates, Seymore and Guzman.
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