

Affirmed and Opinion filed March 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-01074-CR

NO. 14-99-01075-CR

CLARENCE EUGENE HOLMES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause Nos. 98CR1915 & 98CR1916**

OPINION

This is a consolidated appeal from appellant's convictions for the offenses of delivery of cocaine in a drug-free zone. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.134 (Vernon Supp. 2000). After the jury found appellant guilty in both causes, the court assessed punishment at two concurrent terms of 28 years confinement. Challenging his conviction, appellant now raises a single issue for review. We affirm

Background

On September 2, 1998, officers Reyna and Watson, in response to complaints of drug dealing, drove through the Menard Park area of Galveston County. Operating undercover, the officers spotted appellant sitting near an apartment building and made eye contact. Both officers then flashed \$20 bills, causing appellant to instruct them to “make the block.” After rounding the block, appellant and another individual approached the officers and exchanged two quantities of crack for \$40. On appeal from his conviction, appellant now argues that he received ineffective assistance of counsel during trial.

Standard

The right to effective assistance of counsel is guaranteed to criminal defendants by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Texas Constitution. The standard established in *Strickland v. Washington*, is utilized when reviewing ineffective assistance of counsel claims under either the United States or the Texas constitutions. 466 U.S. 668, 684 (1984); *Hernandez v. State*, 988 S.W.2d 770, 772 (Tex. Crim. App. 1999). The Supreme Court in *Strickland* outlined a two-step analysis. First, the reviewing court must decide whether trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. *Strickland*, 466 U.S. at 687. If counsel's performance fell below this standard, the reviewing court must decide whether there is a “reasonable probability” the result of the trial would have been different but for counsel's deficient performance. *Id.* A reasonable probability is a “probability sufficient to undermine confidence in the outcome.” *Id.* at 694. Absent both showings, an appellate court cannot conclude the conviction resulted from a breakdown in the adversarial process that renders the result unreliable. *Id.* at 687.

The defendant bears the burden of proving ineffective assistance of counsel by a preponderance of the evidence. *Jackson v. State*, 973 S.W.2d 954, 956 (Tex. Crim. App. 1998); *Riascos v. State*, 792 S.W.2d 754, 758 (Tex. App—Houston [14th Dist] 1990, pet. ref'd). Allegations of ineffective assistance of counsel will be sustained only if they are

firmly founded and affirmatively demonstrated in the appellate record. *McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996). When examining a claim of ineffective assistance of counsel, any judicial review must be highly deferential to trial counsel and avoid the deleterious effects of hindsight. *Ingham v. State*, 679 S.W.2d 503, 509 (Tex. Crim. App. 1984). Therefore, we must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Jackson*, 877 S.W.2d at 771.

Failure To Challenge Juror

Supporting his claim of ineffective assistance of counsel, appellant first argues that counsel failed to challenge a prospective juror for cause during voir dire. Assuming that this omission caused counsel's performance to fall below an objective standard of reasonableness, thus satisfying the first prong of *Strickland*, appellant nevertheless fails to direct us to evidence or argument demonstrating a reasonable probability that, but for this error, the result of the proceeding would have been different. *See Strickland*, 466 U.S. at 694. Therefore, the second prong of the *Strickland* inquiry is not met relative to appellant's challenge for cause sub-issue. *Id.* at 687.

Failure To Object

The second and third grounds upon which appellant attempts to prove ineffective assistance of counsel are similarly defective. Here, appellant points to counsel's failure to make appropriate objections to the testimony of State's witnesses Barbara Sanderson and officer Michael Reyna. Specifically, appellant argues that trial counsel failed to make relevance and hearsay objections in response to Sanderson's testimony regarding the frequency of drug sales in a park located near the situs of appellant's arrest. Regarding the testimony of State's witness Reyna, appellant asserts that he has identified at least fifty instances where objections would have been proper. Because of the failure to make these objections, appellant argues that trial counsel allowed Reyna to embark on nonresponsive narratives replete with irrelevant and prejudicial facts.

Taken together, appellant contends that these failures demonstrate trial counsel's representation as falling below an objective standard of reasonableness. Assuming this were accurate, appellant nevertheless fails to direct us to evidence and a reasoned argument demonstrating a probability that the result of the trial would have been different. *See Strickland*, 466 U.S. at 687; *Guilder v. State*, 794 S.W.2d 765, 768 (Tex. App.—Dallas 1990, no writ). Therefore, appellant fails to meet the second prong of the *Strickland* inquiry as to his second and third grounds for ineffective assistance of counsel. Accordingly, we overrule appellant's sole issue for review and affirm the judgment of the trial court.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed March 1, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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