Affirmed and Opinion filed June 8, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00593-CR

MICHAEL WADE TRAMBLE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 766,009

O P I N I O N

Appellant, Michael Wade Tramble, who had two prior felony convictions, entered a not guilty plea to the charge of possession of cocaine weighing between one gram and four grams. The jury found him guilty and assessed his punishment at forty-five years' confinement. In his sole point of error, appellant argues he was denied the effective assistance of counsel because his trial counsel did not communicate the State's plea offer to him.

Both the federal and state constitutions guarantee an accused the right to have assistance from counsel. *See* U.S. CONST. AMEND. VI; TEX. CONST. art. I, § 10; TEX. CODE CRIM. PROC. ANN. art. 1.05 (Vernon 1977). The right to counsel includes the right to reasonably effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984); *Ex parte Gonzales*, 945 S.W.2d 830, 835 (Tex. Crim. App. 1997). Both state and federal claims of ineffective assistance of counsel are evaluated under the two prong analysis articulated in *Strickland*. *See Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999).

The first prong requires an appellant to demonstrate that trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. *See Strickland*, 466 U.S. at 688. To satisfy this prong, the appellant must (1) rebut the presumption that counsel is competent by identifying the acts and/or omissions of counsel that are alleged as ineffective assistance and (2) affirmatively prove that such acts and/or omissions fell below the professional norm of reasonableness. *See MacFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996). The reviewing court will not find ineffectiveness by isolating any portion of trial counsel's representation, but will judge the claim based on the totality of the representation. *See Thompson*, 9 S.W.3d at 813.

The second prong of *Strickland* requires the appellant to show prejudice resulting from the deficient performance of his attorney. *See Hernandez v. State*, 988 S.W.2d 770, 772 (Tex. Crim. App. 1999). To establish prejudice, the appellant must prove there is a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. *See Jackson v. State*, 973 S.W.2d 954, 956 (Tex. Crim. App. 1998). A reasonable probability is "a probability sufficient to undermine confidence in the outcome of the proceeding." *Id*. The appellant must prove his claims by a preponderance of the evidence. *See id*.

In any case analyzing the effective assistance of counsel, we begin with the strong presumption that counsel was competent. *See Thompson*, 9 S.W.3d at 813; *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). We presume counsel's actions and decisions were reasonably professional and were motivated by sound trial strategy. *See Jackson*, 877 S.W.2d at 771. The appellant has the burden of rebutting this presumption. *See id*. The appellant cannot meet this burden if the record does not

specifically focus on the reasons for the conduct of trial counsel. *See Osorio v. State*, 994 S.W.2d 249, 253 (Tex. App.–Houston [14th Dist.] 1999, pet. ref'd); *Kemp v. State*, 892 S.W. 2d 112, 115 (Tex. App.–Houston [14th Dist.] 1994, pet. ref'd).

When the record is silent as to counsel's reasons for his conduct, finding counsel ineffective would call for speculation by the appellate court. *See Gamble v. State*, 916 S.W.2d 92, 93 (Tex. App.–Houston [1st Dist.] 1996, no pet.). An appellate court will not speculate about the reasons underlying defense counsel's decisions. For this reason, it is critical for an accused relying on an ineffective assistance of counsel claim to make the necessary record in the trial court. Even though the appellant may file a motion for new trial, failing to request a hearing on a motion for new trial may leave the record bare of trial counsel's explanation of his conduct. *See Gibbs v. State*, 7 S.W.3d 175, 179 (Tex. App.–Houston [1st Dist.] 1999, pet. ref'd).

Appellant argues his attorney did not make him aware of a five year offer made by the State. The attorney for the State represented to the trial court that appellant had been offered five years' confinement on three separate occasions. Appellant's counsel initially advised the trial court that he had communicated the State's offer to appellant on several occasions, but later modified that representation and said that if an offer had been made, he would have passed it on to his client. The trial court summoned another attorney for the State, previously assigned to the prosecution of appellant's case, who advised the trial court that appellant's attorney rejected her offer of five years for appellant's guilty plea. Based on the foregoing representations of counsel for the State and counsel for appellant, and particularly appellant's "demeanor . . . and his conduct today at this trial setting," the trial court concluded that the State offered five years to appellant through his attorney, but appellant rejected the offer.

Accordingly, the record before the court does not support appellant's point of error, and he has failed to carry his burden. We hold that appellant did not defeat the strong presumption that the decisions of his counsel during trial fell within the wide range of reasonable professional assistance. We overrule appellant's sole point of error.

Having overruled appellant's sole point of error, we affirm the judgment of the trial court.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed June 8, 2000.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.*

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

* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.