

Affirmed and Opinion filed August 9, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01317-CR

PEGGY WILLIAMSON SAVAGE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 3
Harris County, Texas
Trial Court Cause No. 9933854**

OPINION

A jury found appellant, Peggy Williamson Savage, guilty of the misdemeanor offense of driving while intoxicated. The trial court assessed punishment at thirty days confinement in the Harris County Jail. In two points of error, appellant alleges: (1) the trial court erred by overruling her objection to the State's character evidence; and (2) she was denied the effective assistance of counsel. We affirm.

In her first point of error, appellant contends the trial court erred in overruling her relevancy objection to the prosecutor's question which, she contends, improperly attacked her character. Contrary to the representation made in her brief, the record reflects her

objection was sustained. Because appellant's complaint is not predicated upon an adverse ruling, no error is shown. *In re G.A.T.*, 16 S.W.3d 818, 828 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Appellant's first point of error is overruled.

In her second point of error, appellant contends she was not afforded effective assistance of counsel. Appellant asserts that her trial counsel's deficient performance violated her right to counsel guaranteed by the Sixth Amendment to the United States Constitution. Appellant alleges that her counsel "was guilty of numerous instances of grossly deficient performance."

When asked to determine whether a defendant received the effective assistance of counsel, we apply the two-prong test articulated by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Court of Criminal Appeals in *Hernandez v. State*, 726 S.W.2d 53, 57 (Tex. Crim. App. 1986). Initially, *Strickland* requires appellant to demonstrate that her counsel's performance was so deficient that it fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687. If appellant satisfies the first prong, she must then establish that her counsel's deficient performance prejudiced her defense. *Id.* at 689. When reviewing an attorney's performance, we must indulge a strong presumption that the attorney's conduct fell within the wide range of reasonable professional assistance. *Id.* at 689. Thus, to prevail on her ineffective assistance claim, appellant must rebut the presumption that the challenged actions are considered sound trial strategy. *Id.*

Appellant enumerates five examples of her counsel's allegedly grossly deficient performance, but the record is silent regarding her attorney's trial strategy. When confronted with a silent record, we will not engage in a speculative analysis of an attorney's actions unless the record clearly demonstrates that no reasonable attorney could have made such trial decisions. *McCoy v. State*, 996 S.W.2d 896, 900 (Tex. App.—Houston [14th Dist.] 1999, no pet.). We have reviewed the entirety of the record, and it fails to demonstrate that appellant's attorney's decisions were outside the scope of

reasonableness. Appellant's failure to satisfy *Strickland's* first prong abrogates the need to review *Strickland's* second prong. *Strickland*, 466 U.S. at 697. Accordingly, appellant's second point of error is overruled.

We affirm the judgment of the trial court.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 9, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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