Affirmed and Opinion filed November 22, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00773-CR

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CLINTON WAYNE BASS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 772,566

O P I N I O N

Appellant was charged by indictment with the felony offense of attempted capital murder of a peace officer. After the State reduced the charge to aggravated assault on a public servant with a deadly weapon, appellant entered a plea of guilty without an agreed recommendation on punishment. Following the return of a pre-sentence investigation report, the court assessed punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for twenty-two years.

Appellant's appointed counsel filed a motion to withdraw from representation of

appellant along with a supporting 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).

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 a *pro se* response to the *Anders* brief. Having reviewed both briefs, we find no arguable grounds of error are presented. However, we will address appellant's argument which complains of ineffective assistance of counsel at trial. Specifically, appellant contends that counsel rejected a twelve year plea bargain offer from the State, and promised appellant he would receive either probation or a maximum of ten years in prison. Appellant argues that if he had known he could receive more than ten years in prison, he would have accepted the twelve year offer. Thus, appellant complains he entered his plea involuntarily.

The standard by which we review the effectiveness of counsel at all stages of a criminal trial was articulated in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *See 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. *See Strickland*, 466 U.S. at 686, 104 S.Ct. 2052. If counsel's performance fell below the objective standard, the reviewing court then must determine whether there is a "reasonable probability" the result of the trial would have been different but for counsel's deficient performance. *See id.* A reasonable probability is a "probability sufficient to undermine the confidence in the outcome." *See id.* at 694, 104 S.Ct. 2052. Absent both showings, an appellate court cannot conclude the conviction resulted from a breakdown in the adversarial process that renders the result unreliable. *See id.* at 687, 104 S.Ct. 2052. *See also Ex parte Menchaca*, 854 S.W.2d 128, 131 (Tex. Crim. App. 1993);

Boyd v. State, 811 S.W.2d 105, 109 (Tex. Crim. App. 1991).

To be constitutionally valid, a guilty plea must be knowing and voluntary. *See Ruffin v. State,* 3 S.W.3d 140, 145 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). The Sixth Amendment guarantees the effective assistance of counsel at the time the defendant enters a plea to the charging instrument. *See id.* The defendant bears the burden of proving an ineffective assistance of counsel claim by a preponderance of the evidence. *See Jackson v. State*, 973 S.W.2d 954, 956 (Tex. Crim. App. 1998). Allegations of ineffective assistance of counsel will be sustained only if they are firmly founded and affirmatively demonstrated in the appellate record. *See McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996), *cert. denied*, 519 U.S. 1119, 117 S.Ct. 966, 136 L.Ed.2d 851 (1997).

At the time of his guilty plea, appellant executed a document entitled "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession." In this document, appellant stated: "I am satisfied that the attorney representing me today in court has properly represented me and I have fully discussed this case with him." In another portion of that document, trial counsel stated: "I represent [appellant] in this case and I believe that this document was executed by him knowingly and voluntarily and after I fully discussed it and its consequences with him." Further, the written admonishments also show appellant was aware of the consequences of pleading guilty. Following sentencing, appellant did not file a motion for new trial alleging ineffective assistance of counsel. Therefore, that vehicle was not utilized to develop this claim. Appellant failed to meet his burden of presenting an adequate record to prove his trial counsel failed to inform him about the consequences of entering a guilty plea. *See Rivera v. State*, 981 S.W.2d 336, 340 (Tex. App.—Houston [14th Dist.]) 1998).

Appellant does not direct us to any portion of the appellate record from which we can decide "whether trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms." Additionally, we have reviewed the record and find nothing to support the claim that trial counsel's representation was deficient

in any manner. Accordingly, we find appellant's allegation of ineffective assistance is neither firmly founded, nor affirmatively demonstrated in the record. *See McFarland*, 928 S.W.2d at 500; *Stephens v. State*, 15 S.W.3d 278, 280 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). Without support in the record, a defendant's claim he was misinformed by counsel is not enough for us to hold his plea was involuntary. *See Fimberg v. State*, 922 S.W.2d 205, 208 (Tex. App.–Houston [1st Dist.] 1996, pet. ref'd). Such a record is best developed in the context of an evidentiary hearing on application for writ of habeas corpus or motion for new trial. *See Thompson v. State,* 9 S.W.3d 808, 813-814 (Tex. Crim. App. 1999); *Tabora v. State*, 14 S.W.3d 332, 336 (Tex. App—Houston [14th Dist.] 2000, no pet.).

The record before us does not reveal what advice appellant was given by his attorney, nor does it explain defense counsel's strategy. Without conclusive support in the record, we cannot presume that the decisions originated with the attorney and were not the result of acquiescence to the client's wishes. *See Pinkston v. State*, 744 S.W.2d 329, 332-333 (Tex. App–Houston [1st Dist.] 1988, no pet.). The record that appellant brought to this court fails to rebut the strong presumption of reasonable counsel. No arguable ground of error is presented for review.

Accordingly, the judgment of the trial court is affirmed and the motion to withdraw is granted.

PER CURIAM

Judgment rendered and Opinion filed November 22, 2000.
Panel consists of Justices Anderson, Fowler and Edelman.
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