Affirmed and Opinion filed February 10, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00925-CR

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WILLIAM JAMES JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 777,610

O P I N I O N

Appellant William James Jackson was found guilty by a jury of possession of cocaine with intent to deliver, and sentenced to twenty-five years' confinement. He presents two points of error on appeal, raising ineffectiveness of counsel. We affirm.

Narcotics officers obtained and executed a search warrant for drugs at a house in Houston, Texas. They arrested the occupants of the house, and, as they were leaving, spotted appellant in a bedroom. Appellant was startled by the officers, and according to the officers, dropped a small bottled that contained nine "rocks" of crack cocaine. Officers found $1900

cash in a dresser drawer in the bedroom, and were of the opinion that appellant was selling the drugs.

In two points of error, appellant complains that he was denied effective assistance of counsel at the guilt-innocence phase of trial. While his first point of error alleges counsel failed to object to the admission of the search warrant and evidence seized during the raid, his actual argument as briefed is that his attorney should have filed a pretrial motion attacking the search warrant and the evidence in order to "test" their validity and admissibility. He further contends that his attorney should have "investigated" the warrant, affidavit and related legal issues.

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient, and that this deficiency was so prejudicial that it rendered the trial unfair. *Strickland v. Washington*, 446 U.S. 668, 687 (1984). Appellant carries the burden of proving his claim of ineffective assistance of counsel by a preponderance of the evidence. *Cannon v. State*, 668 S.W.2d 401, 403 (Tex. Crim. App. 1984). The claim of ineffectiveness must be firmly grounded in the record. *Thompson v. State*, ___S.W.3d___, 1999 WL 812394 *5-6 (Tex. Crim. App. 10/13/99); *McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996).

We note from the onset that the complained-of search warrant and affidavit do not appear in the record before us. It is the appellant's burden to see that the warrant is included in the record if the warrant or affidavit are to be reviewed on appeal. *Moreno v. State*, 858 S.W.2d 453, 461 (Tex. Crim. App. 1993). Appellant's claim is not supported by the record because there is no evidence that the search warrant or affidavit was invalid, nor is there anything to support appellant's contention that his attorney failed to investigate the validity of these items. Likewise, nothing supports appellant's position that the seized evidence was inadmissible for any particular reason, or that his counsel failed to investigate potential grounds for inadmissibility. Where the record is silent as to counsel's trial strategy, we cannot speculate as to why counsel acted as he did. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex.

Crim. App. 1994). Appellant has failed to meet his burden of proving ineffectiveness of counsel, and his first point of error is overruled.

Under his second point of error, appellant argues his trial counsel was ineffective when he failed to object to the State's closing argument statement that it was appellant who sold the crack cocaine to the confidential informant. Proper jury argument must fall into one of four general areas: (1) summation of the evidence; (2) reasonable deduction from the evidence; (3) answer to argument of opposing counsel, and (4) plea for law enforcement. *Coble v. State*, 871 S.W.2d 192, 204 (Tex. Crim. App. 1993). Even if the argument complained of is outside these four areas, however, it will not constitute reversible error unless, in light of the record as a whole, the argument is extreme, manifestly improper, injects new and harmful facts into the case or violates a mandatory statutory provision. *Long v. State*, 823 S.W.2d 259, 257 (Tex. Crim. App. 1991), *cert. den'd*, 112 S. Ct. 3042 (1992).

As a prerequisite to appellant's ineffective assistance of counsel argument, he must first show that the State's argument was improper. We note that appellant himself during his closing argument commented on the State's failure to prove it was appellant who sold cocaine to the informant, by arguing that the $20 bill used by the informant to purchase the cocaine was not found on appellant, and by arguing that the informant never identified appellant as the person who sold him the cocaine. We find that the State's argument was a proper response to appellant's own closing argument, and appellant's trial counsel was not ineffective in failing to object to proper argument. Appellant's second point of error is overruled.

The judgment is affirmed.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed February 10, 2000.

Panel consists of Justices Robertson, Sears, Cannon.*

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

* Senior Justices Sam Robertson, Ross A. Sears and Bill Cannon sitting by assignment.