Affirmed and Opinion filed June 15, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-01005-CR and 14-98-01006-CR

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THOMAS E. GULLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 769,776 & 769,777

O P I N I O N

Thomas E. Gulley appeals his convictions for forgery. Appellant entered pleas of guilty to the charges without an agreed recommendation of punishment. The trial court assessed his punishment at two years' confinement in a state jail facility for each offense, and placed him on community supervision for three years. In one point of error, appellant contends he received ineffective assistance of counsel which rendered his pleas involuntary. We affirm.

Appellant contends his trial counsel was ineffective because he failed to advance a motion for hearing on the defense of entrapment. He further contends counsel was ineffective for assuring him that he would go to trial when the appeal was finished. Appellant also asserts

his trial counsel failed to advise him of the rule against conflicts of interest by representing both him and his co-defendant, Kenneth Marshall Gulley. Because counsel was ineffective for these reasons, appellant contends his pleas were involuntary. No record was made of the plea hearings because appellant waived the need for a court reporter to record his pleas. There is nothing in the record before us to show why trial counsel failed: (1) to go forward on his motion on entrapment; (2) to advise appellant he would have a trial following appeal; and (3) to advise appellant of a possible conflict of interest and obtain a waiver of the conflict.

Involuntariness of the Guilty Plea

A counsel's ineffectiveness may render a plea of nolo contendere or guilty involuntary. *See Hayes v. State*, 790 S.W.2d 824, 828 (Tex.App.–Austin 1983, no pet.). Claims of ineffective assistance of counsel are evaluated under the two-step analysis articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). The first step requires 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 step, appellant must identify the acts or omissions of counsel alleged as ineffective assistance and affirmatively prove they fell below the professional norm of reasonableness. *See McFarland 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 Strickland*, 466 U.S. at 695.

The second step requires appellant to show prejudice from the deficient performance of his attorney. *See Hernandez v. State*, 988 S.W.2d 770, 772 (Tex.Crim.App. 1999). To establish prejudice, an appellant must prove that but for counsel's deficient performance, the result of the proceeding would have been different. *See Strickland*, 466 U.S. at 694.

In any case analyzing the effective assistance of counsel, we begin with the strong presumption that counsel was effective. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim.App.1994) (en banc). We must presume counsel's actions and decisions were reasonably professional and were motivated by sound trial strategy. *See id.* Appellant has the burden of

rebutting this presumption by presenting evidence illustrating why trial counsel did what he did. *See id.* Appellant cannot meet this burden if the record does not affirmatively support the claim. *See Jackson v. State,* 973 S.W.2d 954, 955 (Tex.Crim.App. 1998) (inadequate record on direct appeal to evaluate whether trial counsel provided ineffective assistance); *Phetvongkham v. State,* 841 S.W.2d 928, 932 (Tex.App.–Corpus Christi 1992, pet. ref'd, untimely filed) (inadequate record to evaluate ineffective assistance claim); *see also Beck v. State*, 976 S.W.2d 265, 266 (Tex.App.–Amarillo 1998, pet. ref'd) (inadequate record for ineffective assistance claim, citing numerous other cases with inadequate records to support ineffective assistance claim). A record that specifically focuses on the conduct of trial counsel is necessary for a proper evaluation of an ineffectiveness claim. *See Kemp v. State*, 892 S.W.2d 112, 115 (Tex.App.–Houston [1st Dist.] 1994, pet. ref'd).

In our case, the record is completely silent as to the reasons appellant's trial counsel chose the course he did. Therefore, the first prong of *Strickland* is not met in this case. Because appellant did not produce evidence concerning trial counsel's reasons for choosing the course he did, we cannot find that appellant's trial counsel was ineffective. Appellant's point of error is overruled.

We affirm the judgment of the trial court.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed June 15, 2000.
Panel consists of Justices Robertson, Sears, and Lee.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Sam Robertson, Ross A. Sears, and Norman Lee sitting by assignment.