Affirmed and Opinion filed October 21, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00156-CR

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MANUAL LARGEL MONGOY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 755,420

O P I N I O N

Appellant, Manual Mongoy, pled guilty to aggravated robbery and was sentenced to ten years imprisonment. On appeal, he contends his plea of guilty was involuntarily entered as a result of ineffective assistance of counsel. We affirm.

In his only point of error, appellant contends his plea of guilty was involuntarily entered as a result of ineffective assistance of counsel. A counsel's ineffectiveness may render a plea of 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 at 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.

We begin our analysis 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).

Appellant argues that counsel failed to ensure that appellant understood how the facts of the case related to the applicable law. Specifically, appellant argues that trial counsel erroneously believed and advised appellant that he was eligible for probation. Appellant contends that, but for this advice, he would not have pled guilty. As evidence of counsel's erroneous belief, appellant points to an application for probation in the record.

Appellant was ineligible for probation. *See* TEX. CODE CRIM. PROC. ANN. Art. 42.12, §3(g) (Vernon 1997) (naming aggravated robbery as an offence for which community supervision is not available). However, the record contains nothing to indicate that trial counsel thought otherwise. The record contains nothing to indicate that counsel advised appellant incorrectly. The application for probation would also act as an application for deferred adjudication, for which appellant was eligible. *See* TEX. CODE CRIM. PROC. ANN. Art. 42.12, §5(d) (Vernon 1997) (listing the restrictions on deferred adjudication). The record does contain, however, appellant's signed "Statements and Waivers" stating he was advised by counsel about the plea and was pleased with the representation received. This Court cannot find evidence of the serious errors required by the first prong of the *Strickland* test. Because the record does not indicate appellant's plea was deficient in any way, appellant's point of error is overruled.

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 21, 1999.
Panel consists of Chief Justice Murphy and Justices Hudson and Edelman.
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