Affirmed and Opinion filed December 16, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00527-CR

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THOMAS SOTO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 773,630

O P I N I O N

Appellant was charged by indictment with the offense of burglary of a habitation. Appellant pled guilty to the charged offense without the benefit of a plea bargain agreement. The trial court assessed punishment at seven years confinement in the Texas Department of Criminal Justice--Institutional Division and a fine of $8,000.00. Appellant's motion for new trial was denied. Appellant raises two points of error. We affirm.

I. Factual Summary

As there is not a statement of facts in this case, we reconstruct the following facts from the clerk's record. Appellant and the State were not able to reach an agreement as to punishment. Consequently, on February 17, 1998, appellant pled guilty to the charged offense of burglary of a habitation and left the determination of punishment to the trial court.[1] Appellant filed a motion establishing his eligibility for and requesting community supervision. On April 14, 1998, the trial court assessed punishment at seven years confinement in the Texas Department of Criminal Justice--Institutional Division and a fine of $8,000.00. On April 20, 1998, appellant's trial counsel filed a motion for new trial. The trial judge denied the motion on May 5, 1998. On that date, appellant gave notice of appeal.

II. Motion for New Trial

The first point of error contends the trial court erred in failing to hold a hearing on appellant's motion for new trial. The motion for new trial alleged the following:

> The defendant's plea of guilty was entered improvidently on the advice of counsel and without full understanding that he could seek to petition the Court to permit him to withdraw his plea of guilty if the Court was of the opinion that defendant was not eligible or a true candidate for community supervision.
>
> The defendant's plea of guilty was entered as a result of persuasion that he could withdraw his plea if the Court would not consider granting him community supervision.

Attached to the motion is an affidavit signed by appellant which states: "My name is Thomas Soto. I am the defendant in the above entitled and numbered cause. I have read the above and foregoing motion for a new trial and hereby state that it is true and correct."

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[1] Both the plea papers and judgment state: "without an agreed recommendation, unlimited argument."

Under our law, a defendant need only assert reasonable grounds for relief, which are not determinable from the record, to be entitled to a hearing on a motion for new trial. *See Reyes v. State*, 849 S.W.2d 812, 816 (Tex. Crim. App. 1993). As a matter of pleading, such a motion must be supported by an affidavit of either the accused or someone else specifically showing the truth of the grounds asserted. *Ibid*, (quoting *Hicks v. State*, 75 Tex. Crim. 461, 171 S.W. 755 (1914)). However, such an affidavit is deficient if it is so conclusory in nature that it does not put the trial judge on notice that reasonable grounds for relief existed. *See Jordan v. State*, 883 S.W.2d 664, 665 (Tex. Crim. App. 1994).

We overrule this point of error for two reasons. First, we do not read the motion itself as asserting reasonable grounds for relief. The fact that appellant could have petitioned the trial court to withdraw his plea is only pertinent if appellant was not eligible for community supervision. And there is no evidence from any source that appellant was ineligible for community supervision. Indeed, appellant's sworn motion seeking community supervision establishes his eligibility. On the other hand, there is no evidence from any source that the trial court did not consider according appellant community supervision. Secondly, the affidavit in support of the motion is conclusory and does not specifically establish the truth of the grounds asserted in the motion. Point of error one is overruled.

III. Effective Assistance of Counsel

The second point of error contends trial counsel was ineffective in failing to advise appellant that he could withdraw his plea if certain conditions existed. Allegations of ineffective assistance of counsel will be sustained only if they are firmly founded and affirmatively demonstrated in the record. *See McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996). We can find no evidence supporting this allegation, even when the motion

for new trial is read in the light most favorable to appellant.[2] Consequently, we overrule the second point of error.

The judgment of the trial court is affirmed.

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed December 16, 1999.

Panel consists of Justices Fowler, Frost and Baird.[3]

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[2] We pause here to note that even if appellant had requested permission to withdraw his plea of guilty, the trial judge would not have been required to grant the request. *See Thomas v. State*, 599 S.W.2d 823, 824 (Tex. Crim. App. [Panel Op.] 1980).

[3] Former Justice Charles F. Baird sitting by assignment.