Affirmed and Opinion filed January 13, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00263-CR

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MARCO ANTONIO MELENDEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 766,385

O P I N I O N

Appellant was charged by indictment with the felony offense of manslaughter. Appellant entered a plea of guilty, and the case was reset for punishment until a presentence investigation could be completed. The State and appellant agreed that punishment would not exceed five years. The court assessed punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for five years.

Appellant's court-appointed attorney filed a 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). The brief presents 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, 811 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of his right to examine the appellate record and to file a *pro se* response. Appellant has filed a *pro se* response to the *Anders* brief alleging two interrelated points of error. Appellant claims that his guilty plea was involuntary and he received ineffective assistance of counsel because trial counsel led him to believe the judge would sentence him to probation.

Texas has adopted the *Strickland* standard in evaluating ineffective assistance of counsel claims. *See Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Hernandez v. State*, 726 S.W.2d 53 (Tex. Crim. App. 1986). To demonstrate ineffectiveness, an appellant must show his counsel's representation fell below an objective standard of reasonableness and that it was reasonably probable that a different outcome would have resulted had counsel not committed professional error. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). An appellant must show that his counsel was ineffective by a preponderance of evidence on the record. *See Weeks v. State,* 894 S.W.2d 390 (Tex. App.–Dallas 1994, no pet). An appellant must overcome a strong presumption that trial counsel's performance was effective. *See Moffat v. State,* 930 S.W.2d 823, 826 (Tex. App.–Corpus Christi 1996, no pet.).

When attacking a guilty plea on grounds of ineffective assistance, appellant must show the alleged deficiencies caused the plea to be unknowing and involuntary. *See Santos v. State,* 877 S.W.2d 15, 17 (Tex. App.–Dallas 1994, no pet.). When a record does not affirmatively reflect ineffective assistance of counsel, we cannot say that a trial counsel's performance was defective. *See Weeks,* 894 S.W.2d at 391. Often, a trial record on a direct appeal will not contain the evidence necessary to support a claim of ineffective assistance of counsel. *See Ex Parte Torres*, 943 S.W.2d 469, 475 (Tex. Crim. App. 1997).

Appellant contends his trial counsel convinced him to plead guilty in spite of his innocence by promising that appellant would receive a probated sentence from the trial judge upon the return of the presentence investigation report. Appellant does not cite any portion of the record to support his allegation, and we are unable to find support in the record for appellant's contention. The record does not reflect what discussions, if any, appellant had with his trial counsel prior to the proceedings. Instead, the record reveals appellant was adequately admonished as to the consequences of his guilty plea.

The record contains written admonishments that substantially comply with Article 26.13 of the Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13 (Vernon 1989 & Supp. 1999). Appellant, in writing, claimed to understand the admonishments. When a defendant is admonished in substantial compliance with article 26.13, a guilty plea made by that defendant will be presumed to have been made freely and voluntarily. *See Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). In the face of such admonishments, a defendant must show he did not understand the consequences of his plea. *See id.* On the record before this court, appellant has failed to overcome the presumption created by the trial court's compliance with article 26.13.

Appellant has not sustained his burden of showing that his guilty plea was entered unintelligently or involuntarily, nor has he shown that trial counsel's performance fell below an objective standard of reasonableness. Therefore, appellant has not presented any arguable grounds of error.

We have reviewed the record, counsel's brief, and appellant's response. We agree with appellate counsel that the appeal is frivolous and without merit. We find nothing in the record that might arguably support the appeal.

Therefore, we grant appellate counsel's motion to withdraw and affirm the judgment of the trial court.

PER CURIAM

Judgment rendered and Opinion filed January 13, 2000.
Panel consists of Justices Yates, Fowler, and Frost.
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