Affirmed and Opinion filed January 17, 2002.

In The

Fourteenth Court of Appeals

NOS. 14-00-01482-CR
14-00-01483-CR
14-00-01484-CR

BRYANT ALEXANDER GROVER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause Nos. 835,451, 835,452 & 850,564

O P I N I O N

Appellant, Bryant Alexander Grover, pleaded guilty to possession of a controlled substance and to two counts of felony assault on a public servant. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(b) (Vernon Pamph. 2002); TEX. PEN. CODE ANN. § 22.01(b)(1) (Vernon Supp. 2002). The trial court assessed punishment at ten years' confinement. In two points of error, appellant claims his plea was involuntary because (1) his trial counsel rendered ineffective assistance of counsel and (2) appellant lacked a complete understanding of the charges and of the consequences of pleading guilty. We

affirm.

Appellant was charged by indictment with the state jail felony offense of possession of less than one gram of cocaine. Appellant was also charged by indictment with two counts of the third degree felony offense of assault upon a public servant. All three indictments included allegations that appellant had twice previously been convicted of felony offenses. *See* TEX. PEN. CODE ANN. § 12.42 (Vernon Supp. 2002).

Prior to trial, appellant's trial counsel requested that the trial court discuss appellant's rejection of a plea bargain offer. During this discussion, the range of punishment was clarified by the trial court and appellant was informed that a prior indictment would be dismissed and that he would not be tried under the old indictment. After the clarification and prior to jury selection, appellant pleaded guilty to each indictment without an agreed recommendation as to punishment. The State abandoned one of the enhancement paragraphs in each of the aggravated assault indictments, and appellant pleaded true to the remaining enhancement allegations. After a pre-sentence investigation report, the trial court assessed punishment at ten years' confinement. This appeal followed.

In two related points of error, appellant claims that his plea was involuntary because (1) his trial counsel rendered ineffective assistance and (2) appellant did not understand the charges or the consequences of pleading guilty.

The standard for determining claims of ineffective assistance of counsel under the Sixth Amendment is the standard adopted by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). Our Court of Criminal Appeals adopted the *Strickland* standard in *Hernandez v. State*, 726 S.W.2d 53, 57 (Tex. Crim. App. 1986). In challenging the voluntariness of a guilty plea on grounds that an appellant did not receive effective assistance of counsel, appellant must prove that (1) trial counsel's advice fell outside the range of competence demanded of attorneys in criminal cases and (2) there is a reasonable probability that, but for counsel's erroneous advice,

appellant would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S.Ct. 366, 369–70 (1985); *Ex parte Morrow*, 952 S.W.2d 530, 536 (Tex. Crim. App. 1997).

The review of counsel's representation is highly deferential and we must indulge a strong presumption that counsel's conduct falls within a wide range of reasonable representation. *McFarland v. State*, 928 S.W.2d 428, 500 (Tex. Crim. App. 1996). Appellant must also affirmatively prove prejudice. *Id*. The failure of appellant to make the required showing of deficient representation or sufficient prejudice defeats an ineffective assistance claim. *Id*.

Appellant first argues his trial counsel was ineffective, claiming that counsel did not have a full understanding of the charges and punishment range appellant faced. This allegation is based in part on the discussion noted above wherein, prior to the plea, the trial court clarified both the range of punishment and the indictments on which the State was proceeding. During this conference at the bench, trial counsel questioned the court about a dispute over appellant's range of punishment. In response, the trial court stated "the punishment range is two to 20 according to what [the State's attorney is] representing to the Court now." Appellant's trial counsel responded: "Yes. I want to make sure that's where we are going." The trial court then allowed appellant's trial counsel an opportunity to review the pen packet and further discussion occurred off the record. The communications between appellant and his trial counsel, if any, are not contained in the record. Thus, while it does appear from the record that there was some initial disagreement over the applicable range of punishment, it also appears that trial counsel cleared up any confusion over the indictment, the charges and the punishment range prior to the plea. Accordingly, even if counsel incorrectly advised appellant as to the range of punishment, appellant has failed to show that but for counsel's erroneous advice he would not have entered a plea of guilty. Appellant's first point of error is overruled.

Appellant next argues his plea was involuntary because he did not understand the

nature of the charges or the consequences of his plea. However, the record indicates that before trial began, the trial court informed appellant he was charged with one count of possession and two counts of assault on a public servant and then asked: "Do you understand what you're charged with in each case?" Appellant replied "Yes, ma'am." Appellant then pleaded guilty, informing the trial court that (1) he was pleading guilty for no other reason than that he was guilty, (2) he was not forced or threatened to enter the plea, and (3) he had not been promised anything in exchange for his plea. Appellant pleaded "true" to the prior convictions. Both appellant and his trial counsel stated they understood the State was abandoning the last enhancement paragraph on each of the assault cases but not on the possession case.

In addition to the oral admonishments given by the trial court, appellant also signed written admonishments. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13 (Vernon 2001). These written admonishments were further discussed with appellant by the trial court.

THE COURT:	Throughout each set of papers there are some spots with initials as to each of the paragraphs; are those your initials?
[APPELLANT]:	Yes, ma'am.
THE COURT:	Did you place them there yourself?
[APPELLANT]:	Yes, ma'am.
THE COURT:	Did you do that only after [trial counsel] explained each of the paragraphs to you?
[APPELLANT]:	Yes, ma'am.
THE COURT:	Do you have any questions about anything at all that is included in here?
[APPELLANT]:	No ma'am.
THE COURT:	And did he go over each set of papers with you?
[APPELLANT]:	Yes, ma'am.
THE COURT:	Did you sign those papers freely and voluntarily?
[APPELLANT]:	Yes, ma'am.

Appellant also acknowledged by his initials that he was "totally satisfied with the

representation provided by my counsel and [he] received effective and competent representation." A showing in the record that the defendant received an admonishment on punishment is prima facie evidence that his guilty plea was knowing and voluntary. *Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App. 1985). The burden shifts to the defendant to show that he entered his plea without understanding the consequences of the plea. *Id*.

Appellant has failed to overcome the presumption that his plea was knowing and voluntary. Indeed, the record before this court supports a finding that appellant's plea was voluntary, and that he fully understood the nature of the charges against him and the possible punishment. Accordingly, we overrule appellant's second point of error.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed January 17, 2002.
Panel consists of Justices Yates, Edelman, and Wittig[1].
Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Justice Don Wittig sitting by assignment.