Affirmed and Opinion filed January 27, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00733-CR

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HANI HUSSEIN AL-RUB, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 99CR0566

O P I N I O N

Appellant entered a plea of nolo contendere to the second degree felony offense of theft of United States currency in an amount equal to or greater than $100,000.00 and less than $200,000.00. *See* TEX. PENAL CODE ANN. § 31.03. The court assessed punishment pursuant to a plea bargain agreement at confinement in the Institutional Division of the Texas Department of Criminal Justice for seventeen (17) years. The appellant was also ordered to pay restitution in the amount of $135,700.00. Appellant filed a timely amended notice of appeal stating that the trial court granted permission to appeal. *See* TX.R.APP.P. 25.2(b)(3)(C), (d).

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 of error to be advanced. *See High v. State,* 573 S.W.2d 807, 811 (Tex. Crim. App. 1978).

A copy of appellant'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. In a single point of error, appellant claims that his plea was involuntary and his counsel at trial was ineffective because counsel was ill-prepared for trial and forced appellant under duress to sign the plea papers.

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). Essentially, an appellant must show by a preponderance of evidence on the record (1) that his counsel's representation fell below an objective standard of reasonableness, based on prevailing professional norms, and (2) that there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. *See Hathorn v. State,* 848 S.W.2d 101, 118 (Tex.Crim.App.1992). A reasonable probability is defined as probability sufficient to undermine confidence in the outcome. *See Miniel v. State,* 831 S.W.2d 310, 323 (Tex.Crim.App.1992). Judicial scrutiny of counsel's performance must be highly deferential. A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *See Strickland,* 466 U.S. at 689.

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 v State,* 894 S.W.2d 390, 391-392 (Tex. App.–Dallas 1994, no pet.).

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's vague allegation that trial counsel failed to adequately prepare for trial is without merit. Based on the record before us, we find that appellant has not met his burden of proving that trial counsel's performance was defective based on the totality of the representation. Appellant's assertion that his attorney was inadequately prepared for trial is unsubstantiated by affirmative facts preserved in the record. Since appellant has failed to demonstrate that the record reflects a failure to prepare for trial, appellant's argument must fail. *See McFarland v. State,* 928 S.W.2d 482, 500 (Tex. Crim. App. 1996).

Appellant's contention that threats made by trial counsel coerced him into entering a plea is similarly without merit. 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. From the record before us, appellant has failed to prove by a preponderance of the evidence that his plea of nolo contendere was involuntary because it was induced by threats, misrepresentations or improper promises. *See Ex parte Morrow,* 952 S.W.2d 530, 534 (Tex. Crim. App. 1997). Instead, the record reveals appellant was adequately admonished as to the consequences of his 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 admonishment, 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. He has not shown there was a reasonable probability that, were it not for counsel's errors, he would not have pleaded nolo contendere and would have insisted on going to trial. *See Ex parte Morrow*, 952 S.W.2d at 536. 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.

We affirm the judgment of the trial court.

PER CURIAM

Judgment rendered and Opinion filed January 27, 2000.
Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.
Do Not Publish — TEX. R. APP. P. 47.3(b).