Affirmed and Opinion filed November 10, 1999.

In The

Fourteenth Court of Appeals

NO. 14-96-01117-CR

CYNTHIA MARIE WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 716,361

OPINION

Appellant, Cynthia Marie Williams, pleaded guilty to the offense of injury to a child. *See* TEX. PEN. CODE ANN. § 22.04(a)(1) (Vernon 1994). The judge sentenced her to three years of confinement in the Texas Department of Criminal Justice. In one point of error, appellant complains her attorney provided ineffective assistance. We affirm.

Appellant placed her daughter in a tub of hot water and beat her with a brush to prevent her from escaping. Appellant did not call 911 or seek medical care for her daughter

after the incident. In her sole point of error, appellant contends that she received ineffective assistance of counsel because her attorney failed to object to or correct the trial judge's misunderstanding as to the culpable mental state for the offense. Specifically, at appellant's punishment hearing, the State argued that appellant did not take full responsibility for her daughter's injuries. The court asked her whether she believed she was guilty, and she responded, "Yes, sir; I think I'm guilty because I was—I didn't attend to her the way I was properly supposed to." The court responded, "That's not what you're charged with, though, ma'am. What you pled guilty to, though, was intentionally forcing your child into that hot water." Appellant asserts that these statements establish that the trial judge believed the offense required intent, and this misunderstanding caused her harm because the judge sentenced her to three years imprisonment instead of the deferred adjudication she requested.

To establish ineffective assistance of counsel during the punishment phase of a noncapital offense, a plaintiff must show (1) his counsel's performance was deficient, and (2) his counsel's errors were so egregious as to deprive him of a fair trial. *See Young v. State*, 991 S.W.2d 835, 837 (Tex. Crim. App. 1999). Under the first prong, the plaintiff must show counsel made errors do deficient that he was not functioning as the "counsel" guaranteed by the Sixth Amendment. *See id.* However, we presume counsel made all decisions in the exercise of reasonable professional judgment. *Id.* To establish the second prong, the plaintiff must show that there is a reasonable probability that, but for counsel's errors, the result in the proceeding would have been different. *Id.*

The indictment in the present case alleged that appellant recklessly caused serious bodily injury to her daughter. Texas Penal Code section 22.04 states that "[a] person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child . . . serious bodily injury . . . ." TEX. PEN. CODE ANN. § 22.04(a)(1). Section (e) states that a

violation of section 22.04(a)(1) is a felony in the first degree when the conduct is committed intentionally or knowingly, and it is a second degree felony when it is committed recklessly. *Id.* § 22.04(e). A first degree felony requires five to ninety-nine years of imprisonment. *Id.* § 12.32(a). A second degree felony requires two to twenty years imprisonment. *Id.* § 12.33(a). The sentence the trial judge imposed was less than that allowed for intentional injury to a child but was appropriate for reckless injury to a child; therefore, the trial judge did not misunderstand the culpable mental state.

Because any objection counsel might have made would have been properly overruled, trial counsel was not ineffective for failing to object. *See, e.g.*, *Ex Parte Davis*, 866 S.W.2d 234, 240-41 (Tex. Crim. App. 1993) (holding that counsel was not ineffective for failing to object to prosecutor's argument that intentional and deliberate mean the same thing when the case law at the time of the argument did not hold otherwise); *Parks v. State*, 960 S.W.2d 234, 239 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd) (holding that counsel was not ineffective for failing to object to admissible evidence). Similarly, there is not a reasonable probability of a different result, as the trial court assessed punishment within the guidelines of the Penal Code. Accordingly, appellant cannot establish either prong of the *Strickland* test, and her ineffective assistance claim is without merit.

We overrule appellant's point of error and affirm the judgment of the trial court.

PER CURIAM

Judgment rendered and Opinion filed November 10, 1999.

Panel consists of Justices Amidei, Edelman, and Wittig.

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