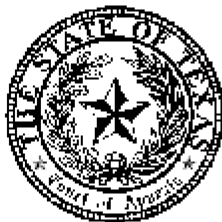
Affirmed and Opinion filed November 22, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-98-01059-CR

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ETHAN ROCKWELL ROGERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 764, 963

O P I N I O N

As a result of an agreed plea bargain, appellant was sentenced to two years' confinement for indecency with a child by exposure. In three points of error, appellant contends his plea was entered involuntarily. We affirm.

To be constitutionally valid, a guilty plea must be knowing and voluntary. *See* TEX. CODE. CRIM. PROC. ANN. art. 26.13(b) (Vernon 1989); *Brady v. United States*, 397 U.S. 742, 749, 90 S. Ct. 1463, 25 L. Ed.2d 747 (1970). In determining the voluntariness of a plea, the entire record must be considered. *See Williams v. State*, 522 S.W.2d 483, 485 (Tex. Crim. App. 1975). A guilty plea is voluntary if it is an intelligent admission that the accused

committed the offense. *See McGowin v. State*, 912 S.W.2d 837, 839 (Tex. App.—Dallas 1995, no pet.). When the record shows that the trial court admonished the defendant in substantial compliance with article 26.13 of the *Texas Code of Criminal Procedure*, the State establishes a prima facie showing that the plea was knowing and voluntary. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(c); *Crawford v. State*, 890 S.W.2d 941, 944 (Tex. App.—San Antonio 1994, no pet.). The burden then shifts to the defendant to show that he pleaded guilty without understanding the consequences of his guilty plea, and as a result, suffered harm. *See Fuentes v. State*, 688 S.W.2d 542, 544 (Tex. Crim. App. 1985).

In his first point of error, appellant argues that his attorney failed to sign the final page of the plea papers in violation of article 26.13 of the *Texas Code of Criminal Procedure*. This failure to sign the plea papers, he argues proves he was not sufficiently admonished prior to entering his plea. We disagree.

In circumstances where the trial court admonishes a defendant in writing, the code of criminal procedure requires:

> [The court] must receive a statement signed by the defendant and the defendant's attorney that he understands the admonitions and is aware of the consequences of his plea.

TEX. CODE CRIM. PROC. ANN. art. 26.13(d). Substantial compliance, not strict compliance, will satisfy the these requirements for admonishments. *See id.*; *Edwards v. State*, 921 S.W.2d 477, 480-81 (Tex. App.—Houston [1st Dist.] 1996, no pet.). As part of the plea papers in this case, appellant's attorney signed the following statement:

> I represent the defendant in this case and I believe that this document was executed by him knowingly and voluntarily and after I fully discussed it and its consequences with him. I believe that he is competent to stand trial. I agree to the prosecutors [sic] recommendation as to punishment. I waive any further time to prepare for trial to which I or the defendant may be entitled.

Appellant also signed a statement acknowledging he was "satisfied that the attorney representing me today in court has properly represented me and I have fully discussed this case

with him." The clerk's record also contains a waiver of constitutional rights, agreement to stipulate, stipulation, and a plea of no contest signed by appellant. Additionally there is a seven-page admonishment form, signed and initialed by appellant. Therefore, we find, after reviewing the entire record, the trial court substantially complied with the statutory admonishment requirements. Accordingly, we overrule appellant's first point of error.

In his second point of error, appellant argues his plea was involuntary because the trial court failed to inform him of the requirement that he register as a sex offender following his release from prison. To substantially comply with article 26.13, the trial court need not advise the defendant of every aspect of law relevant to his case or sentencing, only the direct consequences of entering a guilty plea. *See State v. Vasquez*, 889 S.W.2d 588, 590 (Tex. App.—Houston [14th Dist.] 1994, no pet.). Direct consequences of a plea are generally held to be those listed in the article 26.13 admonishments. *See id.* Because a guilty plea is voluntary if the defendant is advised of all direct consequences of the plea, his ignorance of a collateral consequence does not render the plea involuntary. *See Brady*, 397 U.S. at 755; *Vasquez*, 889 S.W.2d at 590.

Because the statutory duty to register as a sexual offender is a collateral consequence of a guilty plea, a trial court does not have an affirmative duty to inform the accused of such duty prior to accepting the guilty plea. *See Ruffin v. State*, 3 S.W.3d 140, 144-45 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). Thus, because the trial court was not required to admonish defendant about this collateral consequence of his plea, we overrule appellant's second point of error.

In his third point of error, appellant argues his plea was involuntary because it was entered under erroneous advice of his trial counsel. In reviewing claims of ineffective assistance of counsel, we employ the standard of review set out in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984). *See Hernandez v. State*, 988 S.W.2d 770 (Tex. Crim. App. 1999) (holding *Strickland* two prong test applies to ineffective assistance claims throughout trial, including punishment). To reverse a conviction based on

ineffective assistance of counsel, the appellate court must find: (1) counsel's representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *See Strickland*, 466 U.S. at 695, 104 S. Ct. 2052. This two-prong standard applies to challenges of guilty pleas.[1] *See Ex parte Morrow*, 952 S.W.2d 530, 536 (Tex. Crim. App. 1997) (*citing Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed.2d 203 (1985)). To satisfy the second prong of the test enunciated in *Strickland*, appellant must show there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial. *See id*; *Ex parte Moody*, 991 S.W.2d 856, 857-58 (Tex. Crim. App. 1999).

When appellant entered his plea of nolo contendere, there was no constitutional or statutory requirement to inform him of the registration requirement. Even so, "[m]isinformation concerning a matter, such as probation, about which a defendant is not constitutionally or statutorily entitled to be informed, may render a guilty plea involuntary if the defendant shows *that his guilty plea was actually induced by the misinformation*." *Brown v. State*, 943 S.W.2d 35, 42 (Tex. Crim. App. 1997) (emphasis added). Additionally, "a defendant's claim he was misinformed by counsel, standing alone, is not enough for us to hold his plea was involuntary." *Fimberg v. State*, 922 S.W.2d 205, 208 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd); *see Tabora v. State*, 14 S.W.3d 332, 336 (Tex. App.—Houston [14th Dist.] 2000, no pet.). A claim for ineffective assistance of counsel must be affirmatively supported by the record. *See Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). To determine the voluntariness of a plea, we must examine the record as a whole. *See Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). The record should focus specifically on the conduct of trial counsel. *See Kemp v. State*, 892 S.W.2d 112, 115 (Tex. App.—Houston [1st Dist.] 1994 pet. ref'd). "Such a record is best developed in the context

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[1] A plea of *nolo contendere* (no contest) has the same legal effect as that of a plea of guilty except that such plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based. *See* TEX. CODE CRIM. PROC. ANN. art. 27.02(5) (Vernon 1989).

of [an evidentiary] hearing on application for writ of habeas corpus or motion for new trial." *Id*.

At the motion-for-new-trial hearing, appellant testified that his attorney did not tell him of the requirement that he register as a sex offender, and would not have pled guilty if he had known of the registration requirement. However, appellant's trial counsel testified he had handled more than one thousand criminal cases and he habitually informs defendants about the registration requirement in sex offender cases.

From this conflicting testimony, we are unable to conclude appellant's trial counsel failed to inform appellant of the registration requirement. *See Tucker v. State*, 15 S.W.3d 229, 234 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *Reyes v. State*, 3 S.W.3d 623, 626 (Tex. App.—Houston [1st Dist.] 1999, no pet.). Accordingly, we hold appellant's trial counsel's representation was reasonable, thus, he has not satisfied *Strickland*'s first prong. We overrule appellant's third point of error.

Having overruled each of appellant's points of error, we affirm the trial court's judgment.

/s/ Sam Robertson
Justice

Judgment rendered and Opinion filed November 22, 2000.

Panel consists of Justices Robertson, Sears and Hutson-Dunn.[**]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[**] Senior Justices Sam Robertson, Ross A. Sears, and D. Camille Hutson-Dunn sitting by assignment.