Affirmed as Reformed and Opinion filed January 20, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-01243-CR

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EDWARD R. BEARD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 761,125

O P I N I O N

Appellant, Edward R. Beard, pled guilty to aggravated robbery and was sentenced to imprisonment for twelve years. On appeal, he contends that his plea was not intelligently, voluntarily, or knowingly entered due to ineffective assistance of counsel. He also asserts the judgment is void because it recites the wrong date for the offense. We reform the judgment and affirm.

On July 24, 1997, appellant and an accomplice entered an adult bookstore with guns drawn. They ordered the staff to lie on the floor. An alarm sounded, which panicked appellant and his accomplice. As they retreated, appellant turned and fired one shot which struck a television. Appellant fled to Washington state, where he was arrested on unrelated charges. He waived extradition, returned to Texas and pled

guilty pursuant to a plea agreement. At sentencing, a pre-sentence report containing some exculpatory comments by the complainant was presented. A motion to set aside the plea of guilty and for a new trial was filed, but overruled by operation of law.

Involuntariness of the Guilty Plea

In his first point of error, appellant contends his plea was tainted by the ineffective assistance of his counsel. A counsel's ineffectiveness may render a plea of nolo contendere or guilty involuntary. *See Hayes v. State*, 790 S.W.2d 824, 828 (Tex. App.–Austin 1983, no pet.). Claims of ineffective assistance of counsel are evaluated under the two-step analysis articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). The first step requires appellant to demonstrate that trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. *See Strickland*, 466 U.S. at 688. To satisfy this step, appellant must identify the acts or omissions of counsel alleged as ineffective assistance and affirmatively prove they fell below the professional norm of reasonableness. *See McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996). The reviewing court will not find ineffectiveness by isolating any portion of trial counsel's representation, but will judge the claim based on the totality of the representation. *See Strickland*, 466 U.S. at 695.

The second step requires appellant to show prejudice from the deficient performance of his attorney. *See Hernandez v. State*, 988 S.W.2d at 770, 772 (Tex. Crim. App. 1999). To establish prejudice, an appellant must prove that but for counsel's deficient performance, the result of the proceeding would have been different. *See Strickland*, 466 U.S. at 694.

In any case analyzing the effective assistance of counsel, we begin with the strong presumption that counsel was effective. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994) (en banc). We must presume counsel's actions and decisions were reasonably professional and were motivated by sound trial strategy. *See id.* Appellant has the burden of rebutting this presumption by presenting evidence illustrating why trial counsel did what he did. *See id.* Appellant cannot meet this burden if the record does not affirmatively support the claim. *See Jackson v. State*, 973 S.W.2d 954, 955 (Tex. Crim. App. 1998) (inadequate record on direct appeal to evaluate whether trial counsel provided ineffective assistance); *Phetvongkham v. State*, 841 S.W.2d 928, 932 (Tex. App.–Corpus Christi 1992, pet.

ref'd, untimely filed) (inadequate record to evaluate ineffective assistance claim); *see also Beck v. State*, 976 S.W.2d 265, 266 (Tex. App.–Amarillo 1998, pet. ref'd) (inadequate record for ineffective assistance claim, citing numerous other cases with inadequate records to support ineffective assistance claim). A record that specifically focuses on the conduct of trial counsel is necessary for a proper evaluation of an ineffectiveness claim. *See Kemp v. State*, 892 S.W.2d 112, 115 (Tex. App.–Houston [1st Dist.] 1994, pet. ref'd).

In our case, the record is completely silent as to the reasons appellant's trial counsel chose the course he did. The first prong of *Strickland* is not met in this case because we are unable to conclude that appellant's trial counsel's performance was deficient without evidence in the record.[1] Because appellant did not produce evidence concerning trial counsel's reasons for choosing the course he did, we cannot find that appellant's trial counsel was ineffective. Appellant's first point of error is overruled.

Date of Judgment

Appellant, in his second point of error, contends the trial court erred in entering a judgment which lists the date of the offense as after the date of the judgment. The judgment, dated July 16, 1998, recites that the offense occurred on July 24, 1998. The actual date of the offence was on or about July 24, 1997. Appellant asks this court to void the judgment or, alternatively, to modify it to reflect the correct date of the offense.

If a judgment improperly reflects the findings of the jury, the proper remedy is the reformation of the judgment. *See Hardin v. State*, 951 S.W.2d 208, 212. (Tex. App.–Hous. (14 Dist.) 1997, no pet.); *Weaver v. State*, 855 S.W.2d 116, 123 (Tex. App.–Hous. (14 Dist.) 1993, no pet.); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.–Dallas 1991, pet. ref'd).;TEX. R. APP. P. 43.2 (b).

We agree with appellant and the State that the judgment should be reformed to reflect that the offense was committed on July 24, 1997. In all other respects, the judgment of the trial court is affirmed.

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[1] Since the first step of *Strickland* is not met, it is not necessary to engage in the second step.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed January 20, 2000.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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