

Affirmed and Opinion filed October 7, 1999.



In The

Fourteenth Court of Appeals

NO. 14-99-00184-CR

JOHN RASHEED SHIKE

V.

THE STATE OF TEXAS

**On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 781256**

OPINION

John Rasheed Shike (Appellant) appeals from the district court's judgment, denying his application for post-conviction writ of habeas corpus. In his application, Appellant contends that he received ineffective assistance of counsel, causing his conviction for unwarranted mental health commitment of a person to a mental health facility. *See* TEX. HEALTH& SAFETY

CODE ANN. § 571.020 (Vernon 1992); *see also Shike v. State*, 961 S.W.2d 344, (Tex.App.–Houston [1st Dist.] 1997, pet. ref'd).¹

In evaluating a claim of ineffective assistance of counsel, we apply the *Strickland* test, which requires that the defendant demonstrate (1) counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Hernandez v. State*, 726 S.W.2d 53, 56 (Tex.Crim.App. 1986). These two prongs must be established by a preponderance of the evidence. *Moore v. State*, 694 S.W.2d 528, 531 (Tex.Crim.App. 1985). Accordingly, the allegation of ineffective assistance must be firmly founded and affirmatively demonstrated in the record. *McFarland v. State*, 928 S.W.2d 482, 500 (Tex.Crim.App. 1996); *Brown v. State*, 974 S.W.2d 289, 292 (Tex.App.–San Antonio 1998, pet. ref'd). Furthermore, we must indulge in a strong presumption that the counsel's conduct was reasonable. *Strickland*, 466 U.S. at 689.

This Court initially set the deadline for Appellant to file the reporter's record in this case for March 8, 1999. When the reporter's record was not filed on that date, this Court extended the deadline to May 23, 1999. When the reporter's record was not filed on that date, this Court extended the deadline to July 9, 1999. As of the date of this opinion, Appellant has failed to file a reporter's record, nor has he requested any extensions.² *See* TEX. R. APP. P. 35.3(b).

As noted above, an allegation of ineffective assistance must be firmly founded and affirmatively demonstrated in the record. *See McFarland*, 928 S.W.2d at 500; *Brown*, 974

¹ While "embroiled in a bitter divorce," Appellant had his wife committed to the Harris County Psychiatric Center. *See Shike*, 961 S.W.2d at 345-46.

² This Court indicated in its final notice letter to Appellant that if he desired an extension to file the reporter's record, he should request an extension for this Court to consider. This Court attached an extension form to the notice letter for Appellant's convenience.

S.W.2d at 292. Because this Court is without the benefit of a reporter’s record of his trial, Appellant’s claim of ineffective assistance of counsel in that proceeding is not “affirmatively demonstrated in the record” presented for our review. *See id.* Consequently, nothing is presented for our review. *See* TEX. R. APP. P. 37.3(a)(2); *see generally* *Smith v. State*, 957 S.W.2d 571, 576-77 (Tex.App.–Dallas 1997, no pet.).

The judgment is affirmed.

PER CURIAM

Judgment rendered and Opinion filed October 7, 1999.

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

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