Body

Year 2004 Case Summaries

By
Robert O. Dawson
Bryant Smith Chair in Law
University of Texas School of Law

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Trial counsel was not ineffective in asking the court to disregard the defendant's juvenile record in the presentence report [Medlin v. State] (04-2-15).

On April 8, 2004, the Eastland Court of Appeals held that in a criminal trial counsel was not ineffective in asking the court at sentencing to disregard his client's juvenile record as included in the presentence investigation report.

04-2-15. Medlin v. State, UNPUBLISHED, No. 11-03-00111-CR, 2004 WL 743950, 2004 Tex.App.Lexis ___ (Tex.App.-Eastland 4/8/04) Texas Juvenile Law (5th Ed. 2000).

Facts: In each case, Franklin David Medlin entered an open plea of guilty to the offense of aggravated assault with a deadly weapon-a motor vehicle-as charged in each indictment. The trial court convicted appellant of these offenses and assessed punishment in each case at confinement for 10 years.

Held: Affirmed.

Opinion Text: In his second point of error, appellant contends that he was denied the effective assistance of counsel at the punishment phase of trial. Appellant specifically complains that trial counsel failed to object to the lack of an alcohol and drug evaluation, failed to demonstrate an understanding of the law regarding the use of prior juvenile adjudications, failed to object to testimony regarding the victims' desires as to appellant's punishment, and referred to appellant as "stupid" and "hard headed" in closing argument.

In order to determine whether appellant's trial counsel rendered ineffective assistance at trial, we must first determine whether appellant has shown that counsel's representation fell below an objective standard of reasonableness and, if so, then determine whether there is a reasonable probability that the result would have been different but for counsel's errors. Strickland v. Washington, 466 U.S. 668 (1984); Hernandez v. State, 988 S.W.2d 770 (Tex.Cr.App.1999). In order to assess counsel's performance, we must make every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances, and to evaluate the conduct from counsel's perspective at the time. We must indulge a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance; and appellant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. Stafford v. State, 813 S.W.2d 503, 508-09 (Tex.Cr.App.1991).

Appellant has not shown that trial counsel's failure to object to the lack of an alcohol and drug evaluation constituted ineffective assistance. Appellant's alcohol and substance abuse was considered by the community supervision officer, and he recommended drug and alcohol treatment. Nothing in the record suggests that the result of the proceeding would have been different if trial counsel had objected to the failure of the trial court to order an alcohol and drug evaluation.

Furthermore, with respect to appellant's juvenile record, trial counsel was not ineffective. The record shows that trial counsel objected to the inclusion of appellant's juvenile record in the PSI report because, "in 1994, at the time, State law did not allow for that to be used and those records were sealed at the time." Trial counsel asked the trial court to disregard any reference to the juvenile records in the PSI report. The trial court responded: "All right. All right. With that understanding, you may be seated ." Appellant's juvenile record included misdemeanors for which confinement was a possible punishment. Under the current version of TEX. CODE CRIM. PRO. ANN. art. 37.07, § 3(a) (Vernon Supp.2004), appellant's juvenile adjudications for such offenses would be admissible. However, trial counsel was correct in that, under previous versions of that article, these juvenile adjudications would not have been admissible. See Murphy v. State, 860 S.W.2d 639, 643-44 (Tex.App.-Fort Worth 1993, no pet'n); In the Matter of O.L., 834 S.W.2d 415, 420 (Tex.App.--Corpus Christi 1992, no writ). Although the current version was applicable in this case, we cannot hold that trial counsel

was ineffective for requesting that the trial court disregard appellant's juvenile adjudications. It appears that the trial court may well have disregarded appellant's juvenile record. With respect to this issue, appellant asserts that, but for trial counsel's misunderstanding of the law, appellant would not have entered an open plea of guilty. There is nothing in the record to support such a proposition.

Next, two of the victims and two of the victims' fathers testified at the punishment hearing. All four said that they would like to see the trial court sentence appellant to some time in prison. We cannot hold that trial counsel's failure to object to these sentencing requests constituted ineffective assistance. Such sentencing recommendations could properly have been included in the PSI report and, thus, were appropriate for the trial court to consider. Fryer v. State, 68 S.W.3d 628, 633 (Tex.Cr.App.2002).

Finally, we also disagree with appellant's contention that trial counsel was ineffective for referring to appellant as "stupid" and "hard headed." The record shows that, during his closing argument to the court, trial counsel stated:

Judge, he he's admitted his guilt. He's been straightforward. He's he's a hard working blue collar kid. He's stupid. He's hard headed. Well, I don't know if he's stupid or not, but he's shown bad judgment. But he's not stupid, but he's hard headed.

Trial counsel was not ineffective for admitting fault, bad judgment, or obstinacy on the part of appellant. There was evidence before the trial court that appellant violated the conditions of his bond by driving, by having positive alcohol results show up on the Guardian Interlock system on his vehicle, and by smoking marihuana. Trial counsel's argument acknowledged appellant's faults and requested mercy. We cannot hold that such an argument does not constitute sound trial strategy. Because appellant has not shown that trial counsel's performance fell below an objective standard of reasonableness or that the result of the proceeding would have been different but for counsel's errors, we must overrule appellant's second point of error.

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