Juvenile Law Case Summaries

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

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Failure of counsel to object to omission of juvenile record admonition was ineffective assistance of counsel but no prejudice to respondent shown [In re T.D.S.] (01-4-38).

On October 4, 2001, the Texarkana Court of Appeals held that the failure of defense counsel to object to the juvenile court's not admonishing the respondent as to the admissibility of a juvenile record in criminal proceedings was ineffective assistance of counsel. However, the respondent failed to prove that but for that ineffective assistance he would not have plead true and would have gone to trial.

01-4-38. In the Matter of T.D.S., UNPUBLISHED, No. 06-01-00051-CV, 2001 WL 1249851, 2001 Tex.App.Lexis ___ (Tex.App.-Texarkana 10/4/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: T.D.S., a juvenile, appeals from his adjudication as a child who has engaged in delinquent conduct. T.D.S. pleaded true to possession of less than two ounces of marihuana. He was adjudicated and placed on one year of community supervision pursuant to a plea bargaining agreement, which was reached as a jury waited to commence the trial.

Held: Affirmed.

Opinion Text: T.D.S. raises a single contention of error, claiming that trial counsel rendered constitutionally ineffective assistance of counsel and that, but for the deficiency, the result of the proceeding would have been different. Specifically, he contends the trial court did not provide one of the mandatory admonishments for this type of proceeding as set out by the Legislature in TEX. FAM. CODE ANN. § 54 .03(b)(2) (Vernon Supp.2001). That section requires the trial court to explain that a juvenile record can be used in future criminal proceedings. The Texas Supreme Court has explicitly held that the failure to provide this information is error. In re C.O.S., 988 S.W.2d 760, 763 (Tex.1999) (although not reversible error in that case).

Although the Texas Supreme Court has not directly addressed whether appellants in juvenile cases may attack the effectiveness of their trial counsel, the United States Supreme Court has held that a juvenile is entitled to representation by counsel. In re Gault, 387 U.S. 1, 41, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). The right to representation includes the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Numerous appellate courts in Texas, including this one, have held a juvenile is entitled to raise on appeal the issue of his trial counsel's effectiveness. In re R.D.B., 20 S.W .3d 255, 259 (Tex.App.-Texarkana 2000, no pet.). [FN1] We agree that although a juvenile delinquency trial is a civil proceeding, it is quasi-criminal in nature; therefore, the juvenile is guaranteed the constitutional right to effective assistance of counsel which he would have as an adult in a criminal proceeding.

FN1. See also In re M.S., 940 S.W.2d 789, 791 (Tex.App.-Austin 1997, no writ); R.X.F. v. State, 921 S.W.2d 888, 902 (Tex.App.-Waco 1996, no writ); M.B. v. State, 905 S.W.2d 344, 346 (Tex.App.-El Paso 1995, no writ); M.R.R. v. State, 903 S.W.2d 49, 51-52 (Tex.App.-San Antonio 1995, no writ).

A defendant has the burden on appeal of proving his claim of ineffective assistance of counsel, i.e., proving that counsel's representation fell below an objective standard of reasonableness based on prevailing norms and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is defined as a probability sufficient to undermine confidence in the outcome of the

proceeding. Further, T.D.S.'s burden required him to establish his claims by a preponderance of the evidence. Jackson v.. State, 973 S.W.2d 954, 956 (Tex.Crim.App.1998); In re K.J.O., 27 S.W.3d 340, 342- 43 (Tex.App.-Dallas 2000, pet. denied); In re R.D.B., 20 S.W.3d at 258.

This proceeding is analogous to a plea of guilty in a criminal case, as shown both by the type of admonishments required before a plea of true may be accepted and by the nature of the punishment flowing from the adjudication. Thus, we find it appropriate to apply the two-pronged test of Strickland as adapted to the review of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985); Ex parte Pool, 738 S.W.2d 285, 286 (Tex.Crim.App. 1987). In that situation, we look to see (1) whether counsel's advice was within the range of competence demanded of attorneys in criminal cases and if not, (2) whether there is a reasonable probability that, but for counsel's errors, appellant would not have entered his plea and would have insisted on going to trial. Hill, 474 U.S. at 59; Ex parte Morrow, 952 S.W.2d 530, 536 (Tex.Crim.App.1997).

In this case, the advice of counsel is not at issue. The question is whether counsel was shown to be outside the range of competence by failing to object to the trial court's failure to properly admonish the juvenile as required by statute about a potential consequence of the proceeding. The failure of the trial court is error. In re D.I.B., 988 S.W.2d 753, 755-56 (Tex.1999). Thus, counsel should have objected to the inadequate admonishment.

That does not, however, address the second prong of Strickland, which in this context is whether, but for that error, the juvenile would not have entered the plea and would have insisted on going to trial. This record does not contain any information that would shed light on that matter. [FN2] In the absence of any evidence in the record to show that T.D.S. would have chosen to go to trial but for this particular failure by counsel, the requirements of Strickland have not been met. The contention of error is overruled.

FN2. When direct appeal does not provide an adequate record to evaluate a claim which might be substantiated through additional evidence gathered in a habeas corpus proceeding, a claim of ineffective assistance of counsel will properly be raised through habeas corpus, even if previously rejected on direct appeal. Oldham v. State, 977 S.W.2d 354, 363 (Tex.Crim.App. 1998); see also Jackson v. State, 973 S.W.2d 954, 957 (Tex.Crim.App.1998); Ex parte Torres, 943 S.W.2d 469, 475 (Tex.Crim.App.1997).

The judgment is affirmed.

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