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Juvenile Law Case Summaries

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Not ineffective assistance for defense counsel to prevent diagnostic examination in certification proceedings [Montgomery v. State] (03-1-09).

On December 12, 2002, the Amarillo Court of Appeals held that it was not ineffective assistance of counsel for the juvenile's lawyer to prevent his client from being subjected to a psychological and pyschiatric examination as part of the certification process.

03-1-09. Montgomery v. State, UNPUBLISHED, No. 07-00-0574-CR, 2002 WL 31778661, 2002 Tex. App.Lexis _____ (Tex.App.-Amarillo 12/12/02) Texas Juvenile Law (5th Ed. 2000).

Facts: Appellant Michael Lee Montgomery was convicted of capital murder and sentenced to life imprisonment. In four points, he contends 1) he was denied effective assistance of counsel at trial, 2) the trial court abused its discretion in denying his motion for continuance, 3) he was denied effective assistance of counsel when his juvenile counsel failed to obtain a psychiatric and psychological examination of him, and 4) the evidence is legally and factually insufficient to sustain his conviction.

On the night of December 27, 1999, appellant, who was 14 years old, and his friends Juan Perez, Miguel Juarez, Miguel's brother Felipe Juarez, and Felipe's wife Marissa Juarez gathered at the home of Miguel and Felipe. Around 9:00 p.m., they left the residence to go cruising in two cars with Juan, Miguel, and appellant in the first car and Felipe and Marissa in the second car. Miguel carried a gun but gave it to appellant sometime during the drive. The occupants of the first car spotted another car they wished to car jack and told the driver Juan to follow it. The car was driven by Rosa Martinez. They followed Rosa into the parking lot of her apartment, and Miguel and appellant went to the driver's side of her car. Miguel tried to take the keys from her, and they struggled as she sat in the driver's seat. Appellant then shot Rosa, and the bullet entered through her shoulder and went into her chest. She was later pronounced dead at the hospital. Rosa was nine months pregnant at the time of her death.

Held: Affirmed.

Opinion Text: Issue Three Failure to Obtain a Psychiatric Exam

In his third issue, appellant complains of having received inadequate representation by his counsel during the juvenile proceeding as a result of the failure of his counsel to obtain a complete psychiatric and psychological examination to which he was entitled under the Family Code.

The record shows that the State filed a motion seeking to have psychiatric and psychological examinations performed on appellant including an examination for "competency and fitness to proceed." The court had ordered a diagnostic study, social evaluation, and full investigation of appellant, his circumstances and the circumstances of the alleged offense to be performed which is required prior to a waiver of original jurisdiction by the juvenile court. See Tex. Fam.Code Ann. § 54.02 (Vernon 2002). That report indicates that psychiatric and psychological examinations were not performed at the request of appellant's counsel. A letter from appellant's counsel requesting that no such testing be conducted was also attached to the report. Thus, it appears that counsel considered the situation and made an affirmative decision to forego testing. He may well have had a legitimate reason for deciding as he did. Indeed, the decision could have been made to prevent appellant from having an opportunity to make incriminating statements or to add fodder to the State's argument that appellant had the mental faculty of an adult. Yet, we are left to simply guess about those reasons. And, most importantly, counsel was not afforded an opportunity to explain them. So, the record does not show on its face that the decision of counsel was something other than reasonable trial strategy.

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