

No. 01-24-00288-CR

**IN THE FIRST COURT OF APPEALS
FOR THE STATE OF TEXAS**

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DEBORAH M. YOUNG
Clerk of The Court

Amel Garza,

Appellant,

vs.

The State of Texas,

Appellee.

BRIEF FOR APPELLANT

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Oral argument is not requested at this time.

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BRIEF FOR APPELLANT

**TO THE HONORABLE JUDGES OF THE FIRST COURT OF
APPEALS:**

Statement of the Case

On September 7, 2022, Appellant Amel Garza was charged by a grand jury for unlawfully carrying a weapon on August 20, 2022 (C.R. at 7). In addition to listing the felony which made him ineligible to carry a weapon, the indictment alleged that Garza had committed two additional felonies before August 20, 2022 (including a 2009 charge of failure to stop and render aid and a 2014 charge of aggravated assault

of a public servant). *Id.* The guilt phase of Garza’s trial began on April 8, 2024 (III R.R. at 19). The following day, Garza was found guilty as charged in the indictment (IV R.R. at 23, C.R. at 278). Later that same day, the jury sentenced Garza to thirty-five years in prison (V R.R. 112, C.R. at 286, 292).

Trial counsel filed Garza’s notice of appeal on April 9, 2024 (C.R. at 298). On April 12, the trial court appointed the undersigned to represent Garza on appeal (C.R. at 301). Undersigned Counsel filed Appellant’s Motion for New Trial on May 9, 2024 (C.R. at 310).¹ The trial court convened a hearing on the Motion on June 18 (VI R.R. at 4). On June 20, the trial court denied Appellant’s Motion for New Trial (VII R.R. at 9). Counsel now files Appellant’s Brief.

Statement Regarding Oral Argument

Oral argument is not requested at this time.

¹ The Motion for New Trial alleged that trial counsel provided Garza ineffective assistance during the pretrial, guilt/innocence, and punishment phases of trial (VIII R.R. at Def.’s Ex. 1; C.R. at 310-26). In light of the findings made by the trial court related to the pretrial period, Counsel has opted not to pursue that portion of the Motion for New Trial in this appeal and instead focus solely on the guilt/innocence and punishment phases of Garza’s trial (*see* VII R.R. at 6-8).

Issues Presented

- Did the trial court abuse its discretion in finding that Garza did not receive ineffective assistance from trial counsel during the guilt/innocence phase of trial when counsel failed to discover and present to the jury evidence that Garza is severely mentally ill, which might have led the jury to find he did not possess the required mental state on August 20, 2022 to be convicted of unlawfully carrying a weapon?
- Did the trial court abuse its discretion in finding there is not a reasonable probability that had trial counsel presented evidence of Garza's severe mental illness at trial there is not a reasonable probability the jury would have sentenced him to a term of less than thirty-five years in prison?

Statement of the Facts

Appellant Amel Garza was first diagnosed as having bipolar disorder when he was a child (VIII R.R. at Def.'s Ex. 1 at Ex. A). He was first treated for it in 2012 (VIII R.R. at Def.'s Ex. 4 at 512).² In the

² Defendant's Exhibit 4 consists of records from the Houston Behavioral Healthcare Hospital. Because the pages within the exhibit are not numbered consistently, Counsel refers to them herein by the pages of Volume 8 (which

summer of 2022, his mental health declined, and he was hospitalized because of his bipolar disorder on multiple occasions. *Id.*

Specifically, on June 28, 2022, Garza was admitted to the Emergency Center at Ben Taub Hospital because he was thinking about killing himself and had been exhibiting bizarre behavior (VIII R.R. at Def.'s Ex. 3 at 49, 58).³ Garza reported having visual hallucinations of people in his shower. *Id.* at 52, 56. According to the person who took him to Ben Taub, Garza had been released from jail only a week earlier, having been attacked while he was in jail, and that he had been acting bizarrely the entire time since his release. *Id.* at 56. While realizing the hallucinations could have been caused by his methamphetamine use, the initial assessment also suggested that Garza's visual hallucinations could be the result of a new or decompensated psychiatric disease, especially considering his prior reports of suicidal and homicidal ideation. *Id.* at 54.

contains 758 pages) in which they are found. For example, were Counsel to cite in this Brief the Business Record Affidavit which accompanied the records, the citation would appear herein as VIII R.R. Def.'s Ex. 4 at 507 because the BRA appears on page 507 of 758 in volume 8.

³ Defendant's Exhibit 3 consists of 340 pages of records from Harris Health. In this Brief, Counsel cites these records according to the number stamped on the bottom right corner of each page of records.

After the initial assessment, Dr. Abdulla Ben Ammer performed a psychiatric examination of Garza (VIII R.R. at Def.'s Ex. 3 at 119). Garza reported that he had not slept for five days and was hearing voices but did not want to talk about it. *Id.* at 120. He mentioned that after his release from jail, he felt unloved by his family and believed he could no longer trust them. *Id.* The psychiatrist diagnosed Garza as suffering from an unspecified psychotic disorder as well as from methamphetamine use disorder. *Id.* at 127.

The following day, records reflect that Garza was restless and agitated and yelling at and otherwise being verbally abusive and aggressive toward those around him. *Id.* at 61. The staff at the hospital were unable to redirect Garza and had to give him emergency medications (including Haldol and Ativan) to subdue him. *Id.* Garza was separated and moved to the other side of the pod. *Id.* at 130. However, several minutes later, he ran across the pod and tried to attack another patient (VIII R.R. Def.'s Ex. 3 at 130-31). Believing Garza posed an imminent risk of harm to both himself and others, hospital staff decided to place him in seclusion and apply to have him involuntarily committed. *Id.* at 129, 133.

That same day, Jenny Rodriguez, LMSW, filed an application for court-ordered temporary mental health services for Garza writing it was her belief he would benefit from inpatient hospitalization, which would hopefully prevent further deterioration of his mental health. *Id.* at 189. According to the certificate of preliminary physical examination conducted by Kathleen McDeavitt, MD, in support of the application, Garza suffered from an unspecified psychotic disorder. *Id.* at 197.

The following day—June 30—the probate court ordered that Garza be taken into protective custody and immediately transported to the Ben Taub General Hospital In-Patient Mental Health Facility, which was to detain him pending further notice from the court. *Id.* at 199. Shortly before he was transferred, Garza was involved in a second incident at Ben Taub when he entered another patient’s room to fight him. *Id.* at 62. Later that day, he was admitted to Houston Behavioral Healthcare Hospital pursuant to the court order. *Id.* at 66, 180, 199.

Garza remained at the Houston Behavioral Healthcare Hospital until July 5. There, he was diagnosed as suffering from bipolar disorder (VIII R.R. Def.’s Ex. 4 at 510). Garza continued to report having suicidal and homicidal ideation towards people whom he believed intended to

harm him. *Id.* at 512. While he reported that he was no longer having auditory hallucinations, he informed the staff that he continued to have visual hallucinations, including seeing shadows in the corners of his eyes. *Id.* The initial treatment plan for Garza at the hospital included that he was to receive 200 mg of Seroquel and 1000 mg of Depakote each evening. *Id.* at 515.

On July 18—less than two weeks after he was discharged and only a month before his arrest—Garza was once again admitted to the Emergency Center at Ben Taub Hospital, complaining about paranoia, insomnia, and visual and auditory hallucinations like “seeing demons” (VIII R.R. Def.’s Ex. 3 at 1, 5, 7). Garza left the hospital the same day.

On August 20, 2022, at 7:17 am, a 911 call was received at the Baytown Police Department, reporting gunshots coming from the intersection of Cypress Street and Eugenio Santana Drive in Baytown (VIII R.R. State’s Ex. 16). Officers were dispatched and arrived at the scene about ten minutes later (VIII R.R. State’s Ex. 16; III R.R. at 60-62).

Officer Bret Rasch was the first to arrive at the scene at 7:27 am. He noticed Garza, who matched the description of the alleged shooter,

walking from Eugenio Santana Drive to Airhart Drive while holding a handgun (III R.R. at 70-71, 76). When Garza saw Officer Rasch exiting the patrol vehicle, he dropped the handgun and then got on the ground following Officer Rasch's command (III R.R. at 71). At that point, more officers arrived, ordering Garza to crawl towards them (III R.R. at 71-72).

As the officers approached Garza and tried to place him in handcuffs while he was on the ground, he physically resisted, and a struggle began (III R.R. at 79). Garza spit at Officer Justin Turpin's face and bit Officer Ruoming Bi (III R.R. at 97). The officers tased Garza several times, handcuffed him, and took him into custody (III R.R. at 86-88).

After Garza was arrested, Officer Brandon Rauchfuss went to the "Shop N Go" convenience store at 3101 Wisconsin Street in Baytown, from where the first 911 call was made (III R.R. at 32). He checked the store's surveillance cameras and found footage showing Garza (III R.R. at 33-34). At 7:03 am, a surveillance camera had captured Garza brandishing a handgun, pointing it at a person sitting outside of the store, and striking the person on the head with his handgun (VIII R.R.

State's Exs. 6, 10, 11; III R.R. at 35). At 7:05 am, Garza was caught on a different surveillance camera, again brandishing his handgun and pointing it at the head of another person (VIII R.R. State's Exs. 7, 12-15; III R.R. at 36-37). Garza then left the scene and headed towards Cypress Street (III R.R. at 37-38).

Five days after Garza was arrested, on August 25, 2022, the trial court appointed Humberto Trejo to represent Garza (C.R. at 13). On that day, Garza was still being treated in the hospital for injuries he sustained during the arrest. *See id.*

On September 7, 2022, Garza was indicted for unlawfully, intentionally, and knowingly carrying a handgun when, at the time of the offense, he was prohibited from possessing a firearm because he was previously convicted of the felony offense of Aggravated Assault of a Family Member (C.R. at 13). (Ahead of trial, Garza stipulated that he was a felon and was prohibited from possessing a firearm (VIII R.R. State's Ex. 38).) The indictment further alleged that Garza had committed two additional felonies before August 20, 2022 (C.R. at 13).

During the following year and a half, trial counsel failed to learn about Garza's history of mental illness or how it might have affected

him on August 20, 2022. Trial counsel could have learned this information from Garza's mother, who had told one of the officers who came to her house on August 20 about Garza's history with bipolar disorder (VIII R.R. Def.'s Ex. 1 at Ex. A). During the motion for new trial proceeding, trial counsel claimed he had been nervous about speaking to Garza's mother because he feared he would be accused of tampering with a witness (because Garza's mother was the alleged victim of a subsequently dismissed charge) (VIII R.R. at Def.'s Ex. 2). Alternatively, trial counsel believed that because Garza had not given him written permission to update his mother about his case, he was not authorized to involve her in the investigation into his client that he should have conducted. *Id.* Notwithstanding his claimed belief that he was not allowed to speak with Garza's mother, trial counsel did speak to her on a few occasions. *Id.* During the motion for new trial proceeding, trial counsel faulted Garza's mother for not telling him about Garza's history of mental illness, even though he did not ask her questions that would lead to this. *See id.* Had he asked Garza's mother whether Garza suffered from any mental illnesses, she would have told trial counsel about his history of suffering from bipolar disorder and

would have shared relevant medical records with trial counsel (VIII R.R. Def.'s Ex. 1 at Ex. A). Finally, trial counsel believed that the trial court judges whom Garza appeared before would have been able to, based on their very limited interactions with Garza, diagnose any mental illnesses he might be suffering from (VIII R.R. Def.'s Ex. 3). The trial court, however, never informed trial counsel of any mental illnesses the court believed Garza might be suffering from. *Id.*

The guilt/innocence portion of Garza's began on April 8, 2024. Defense counsel presented no evidence of Garza's history of mental illness, which could have led the jury to believe Garza was not acting intentionally or knowingly on August 20, 2022. The following day, Garza was found guilty as charged in the indictment (IV R.R. at 23, C.R. at 278).

Later that same day (i.e., April 9), the jury heard testimony from witnesses presented by the State on punishment. Defense counsel, however, presented no witnesses, including none which could have testified about Garza's history of mental illness, which the jury likely would have found to be mitigating. Because the jury found that Garza had committed the two offenses used as enhancements, it could only

sentence Garza to between twenty-five and ninety-nine years in prison or it could sentence Garza to life in prison (C.R. at 280, 286). The jury subsequently sentenced Garza to thirty-five years in prison (V R.R. 112, C.R. at 286, 292).

Summary of the Argument

Trial counsel had a duty to investigate factors that might have been relevant in both the guilt and punishment phases of Garza's trial. If counsel conducted any pretrial investigation, it did not include any attempt whatsoever to discern whether Garza suffers from any mental illness. Had trial counsel made any attempt to discover such information, counsel would have learned that Garza suffered from bipolar disorder during the summer of August 2022 to such a degree that he was involuntarily committed for a five-day period only a month and a half before trial. Had trial counsel discovered and developed this information and presented it during the guilt/innocence phase of Garza's trial, there is a reasonable probability he would not have been convicted because the jury would likely have believed that Garza did not possess the required mental state to support a conviction. In the alternative, had trial counsel developed this evidence and presented it

during the punishment phase of Garza's trial, there is a reasonable probability the jury would have sentenced him to a term of incarceration less than thirty-five years. The trial court abused its discretion in denying Garza relief on his Motion for New Trial, which raised claims of ineffective assistance of trial counsel.

Argument

- I. Garza received ineffective assistance during the guilt/innocence phase of his trial because trial counsel failed to discover and present evidence about Garza's history of severe mental illness. Such evidence could have led the jury to find that Garza did not possess the specific intent required to be found guilty of unlawfully carrying a weapon.**

- A. The legal standard**

In determining whether trial counsel provided Garza ineffective assistance, this Court applies the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, the defendant must show that counsel's representation fell below an objective standard of reasonableness," which must be judged under "prevailing professional norms." *Strickland*, 466 U.S. at 688.

Second, the defendant must satisfy the prejudice requirement by demonstrating there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. The prejudice inquiry “finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution.” *Strickland*, 466 U.S. at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

This test is not outcome determinative. The *Strickland* Court itself expressly rejected an “outcome-determinative standard” requiring the defendant to show that counsel’s deficient conduct “more likely than not altered the outcome” of the case. *Id.* at 693-94. Instead, “[t]he result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.” *Id.* at 694. Thus, the “reasonable probability” standard—a probability sufficient to undermine confidence in the outcome—is a less onerous burden than even the preponderance of the evidence standard. The Supreme Court reiterated this point in *Williams v. Taylor*, 529 U.S. 362 (2000), expressly noting that a state court’s use of a preponderance of the evidence standard rather than the lesser reasonable probability

standard would result in a decision that was contrary to federal law as determined by that Court. *Williams*, 529 U.S. at 405-06 (“If a state court were to reject a prisoner’s claim of ineffective assistance of counsel on the grounds that the prisoner had not established by a preponderance of the evidence that the result of his criminal proceeding would have been different, that decision would be ‘diametrically different,’ ‘opposite in character or nature,’ and ‘mutually opposed’ to our clearly established precedent because we held in *Strickland* that the prisoner need only demonstrate a ‘reasonable probability that . . . the result of the proceeding would have been different.’”).

B. Prevailing professional norms required trial counsel to investigate whether Garza suffers from mental illness and, if so, to evaluate whether such evidence could have been useful during the guilt/innocence phase of Garza’s trial.

As part of his preparation for trial, trial counsel should have obtained information from the client and other sources about the client’s physical and mental health, including evidence of the client’s mental state at the time of the offense. State Bar of Texas, Performance Guidelines for Non-Capital Criminal Defense Representation (2011),

Guidelines 2.2(C)(4), 2.2(C)(5)(b), 2.2(D)(5).⁴ When representing a client with mental illness, counsel should inquire about the symptoms that may potentially impact the client’s culpability in the case. *Id.* Guideline 1.2(C). Because the “client’s mental impairment may make it difficult to obtain” this information, counsel may need to visit the client multiple times or seek to obtain this information from other sources. *Id.*

Guideline 2.2(C)(4). Counsel should seek all of the client’s available mental health records and request reports on the client’s mental health status (beginning at the time he was booked into the jail) and psychiatric treatment in jail, if any. *Id.* Guidelines 2.2.(B)(3), 3.3(D), 4.1(B)(10). While preparing for trial, counsel should consider defenses related to the client’s mental health. *Id.* Guideline 4.3. Evidence of the client’s history of mental illness may be presented at trial to negate the *mens rea* element. *Jackson v. State*, 160 S.W.3d 568, 574 (Tex. Crim. App. 2005); *see also Ruffin v. State*, 270 S.W.3d 586, 587-88 (Tex. Crim. App. 2008) (reaffirming *Jackson* and holding that “both lay and expert

⁴ Available at https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703#:~:text=Guideline%201.1%20Role%20of%20Defense%20Counsel&text=Counsel's%20role%20in%20the%20criminal,from%20repre%2D%20senting%20the%20client.

testimony of a mental disease or defect that particularly rebuts the particular *mens rea* necessary for the charged offense is relevant and admissible”).

Trial counsel’s failure to obtain and present evidence of the defendant’s mental illness as a defense deviates from prevailing professional norms and falls below the objective standard of reasonableness. *Ex parte Lahood*, 401 S.W.3d 45, 50-52 (Tex. Crim. App. 2013) (finding trial attorney was deficient for failing to investigate her client’s history of mental illness).

C. Trial counsel failed to present available evidence of Garza’s history of mental illness as evidence that he did not possess the requisite *mens rea* to be convicted.

Trial counsel could have and should have presented evidence of Garza’s severe mental illness, primarily the information he could have learned from Garza’s Harris Health Records (VIII R.R. Ex. DX-3) and Houston Behavioral Healthcare Hospital Records (VIII R.R. Ex. DX-4) dated from June to July 2022, to suggest to the jury that Garza might not have acted either intentionally, knowingly, or recklessly on August 20, 2022, when he was arrested.

As explained in greater detail above, all trial counsel had to do to become aware of evidence of Garza's history of severe mental illness was talk to Garza's mother. However, as his mother testified, trial counsel consistently refused to talk to her. He was thus unaware of Garza's mental health history and its impact on his behavior before his arrest.

D. Trial counsel compounded his error of not presenting evidence of Garza's mental illness by suggesting Garza was voluntarily intoxicated at the time he was arrested. This, in turn, led the trial court to include an instruction about voluntary intoxication, which had the effect of reducing the burden on the State to prove Garza acted intentionally, knowingly or recklessly.

The records admitted in the motion for new trial proceeding as Defendant's Exhibits 3 and 4 make clear there were at least two things affecting Garza's behavior on August 20, 2022: his severe mental illness and his having taken methamphetamine during the time prior to his arrest. The State presented evidence of neither of these at trial. The only suggestion that Garza was voluntarily intoxicated on August 20 came from his own attorney (*see* III R.R. at 84) (Q: "Was he acting crazy? Suspicious? Did you believe he was on drugs or anything like that?" . . . A: "I believed he was likely under the influence of drugs

based on his behavior.”). Because Garza’s attorney elicited this testimony at trial (and, moreover, did so intentionally over an objection from counsel for the State), the trial court correctly instructed the jurors that “[v]oluntary intoxication does not constitute a defense to the commission of a crime” (C.R. at 272). The inclusion of this instruction effectively reduced the burden on the State to prove that Garza acted intentionally, knowingly, or recklessly. *See Montana v. Egelhoff*, 518 U.S. 37, 55 (1996) (finding a Montana statute that made clear voluntary intoxication was not a defense did not run afoul of the Due Process Clause because reducing (as opposed to shifting) the State’s burden in this manner is permissible). In this scenario, where the jurors had been presented only one theory about why Garza acted so bizarrely on August 20, 2022, and had then been instructed that that theory (i.e., voluntary intoxication) was not a defense, it was all but inevitable he would be convicted.

E. If trial counsel had discovered, developed, and presented evidence of Garza’s mental illness during the guilt/innocence phase of Garza’s trial, it is reasonably probable Garza would not have been convicted of unlawfully carrying a weapon.

There is a reasonable probability that if the jury would have learned that Garza’s mental illness had been so severe in the weeks leading up to his August 20 arrest that he was involuntarily committed for a five-day period in July, the jury would not have believed Garza acted with the requisite intent to be convicted.

By denying Garza’s motion for new trial, the trial court found that Garza’s Sixth Amendment right to the effective assistance of counsel was not violated. Counsel respectfully requests this Court find that the trial court’s decision constituted an abuse of its discretion. *See Tollett v. State*, 799 S.W.2d 256, 259 (Tex. Crim. App. 1990) (explaining that an appellate court can only reverse the trial court’s ruling on a motion for new trial if the trial court abused its discretion).⁵

⁵ Counsel notes that in its findings related to the Motion for New Trial, the trial court did not make any findings relevant to this claim. The findings made by the trial court pertain to: 1) a part of the motion for new trial (which argued that trial counsel was ineffective during the pretrial period for not informing Garza of the strength of the State’s case and the range of punishment he would be facing if convicted) that Counsel has not pursued in this appeal, *see supra* note 1; and 2) Appellant’s second claim that trial counsel was ineffective for not introducing evidence of Garza’s mental illness during punishment (*see* VII R.R. at 6-9).

II. Garza received ineffective assistance during the punishment phase of his trial because trial counsel failed to discover and present evidence about Garza’s history of severe mental illness. Such evidence could have led the jury to find that Garza should be sentenced to a term of years less than thirty-five years.

A. The legal standard

In *Wiggins v. Smith*, 539 U.S. 510 (2003), the Supreme Court applied *Strickland*’s ineffective assistance of counsel framework (discussed in greater detail above) to the question of whether an attorney who failed to present mitigating evidence at trial during the sentencing phase provided ineffective assistance. In *Wiggins*, trial counsel failed to conduct any investigation related to punishment beyond basic presentence reports, despite available evidence of severe physical abuse, neglect, and mental health issues. *Wiggins*, 539 U.S. at 523-24. The Court made clear in *Wiggins* that when Counsel decides not to present mitigating evidence (as trial counsel decided to do at Garza’s trial) the relevant question is whether the investigation that led to the decision not to present mitigating evidence was reasonable. *Id.* at 523.

In this case, we know that the investigation supporting trial counsel’s decision to not present mitigating evidence at trial was not reasonable, because there was no investigation. Trial counsel’s affidavit

makes clear that he made no attempt to discern whether Garza suffered from mental illness. Trial counsel appears to believe it was the duty of Garza's mother (even though trial counsel never asked her about whether Garza had a history of mental illness and rarely spoke to Garza's mother) or Garza (whom trial counsel never asked whether he suffered from any mental illness) or the trial court (whose pretrial interactions with Garza were limited) to inform him about Garza's mental illness. Of course, the duty to discover this evidence belonged to trial counsel alone.

B. By failing to conduct a punishment phase investigation, trial counsel's actions fell woefully short of the prevailing professional norms.

Guidelines such as those promulgated by both the American Bar Association ("ABA") and the State Bar of Texas ("SBOT") are, at a minimum, instructive regarding the prevailing professional norms pertaining to criminal defense work. Pursuant to Guideline 4.10 of the SBOT's *Performance Guidelines for Non-Capital Criminal Defense Representation*, if an attorney is representing a client with mental illness or a developmental disability, trial counsel should obtain any available mental health records concerning his client. This duty is

arguably encompassed by Guideline 8.1(c), which establishes a duty to seek and present to the court (or jury) all reasonably available mitigating and favorable evidence that would likely cause the court (or jury) to find the client deserving of a punishment less than the maximum allowed by statute.

The ABA Criminal Justice Standards for the Defense Function similarly provide clear guidance on defense counsel's obligations, stating in Standard 4-8.3 (a) that "early in the representation of the case, defense counsel should consider potential issues that might affect sentencing."⁶ Moreover, Standard 7-1.4(c) of the ABA's guidelines expressly pertaining to mental health issues, addresses the precise responsibilities of attorneys representing defendants with mental disorders: "Attorneys who represent defendants with mental disorders should explore all mental state questions that might be raised, including . . . a claim in mitigation of sentence."⁷

⁶ *available at*
https://www.americanbar.org/groups/criminal_justice/resources/standards/defense-function/

⁷ *available at*
https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/mental_health_standards_2016.pdf.

Trial counsel's actions fell well short of these standards because trial counsel failed to conduct any investigation into Garza's mental health history, despite an extensive history of erratic behavior, especially in the time immediately before the events that precipitated the April 2024 trial. This Court should find trial counsel's failures in this case to constitute deficient performance.

The record reveals that Garza had an extensive behavioral health history including, but not limited to, erratic behavior in police officer confrontations, incoherent 911 calls, several hospitalizations, and an involuntary commitment two months before he was arrested. This Court held in *Lopez v. State*, 462 S.W.3d 180 (Tex. App.—Houston [1st Dist.] 2015 no pet.), that “failure to uncover and present mitigating evidence ‘cannot be justified as a tactical decision when defense counsel has not conducted a thorough investigation of the defendant's background.’” *Lopez*, 462 S.W.3d at 186 (Tex. App. 2015) (quoting *Shanklin v. State*, 190 S.W.3d 154, 164 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd). In this case, trial counsel conducted no investigation into Garza's background. Of course, trial counsel in this case has not claimed that his decision to forego presenting mitigating evidence was

based on a tactical decision. Indeed, because trial counsel conducted no mitigation investigation, trial counsel's decision to not present mitigating evidence cannot be viewed as a tactical decision.

Affidavits of Garza's mother and former girlfriend reveal that if trial counsel would have interviewed and consulted with family members, then he would have learned about Garza's mental health condition. Under ABA guideline 7-1.4 (d): "attorneys who represent defendants with mental disorders should seek relevant information from family members and other knowledgeable collateral sources." Trial counsel did not want to communicate with Garza's mother. As a result of his failure to interview members of Garza's family, trial counsel did not present any evidence during the sentencing phase.

C. Garza was prejudiced by trial counsel's failure to discover and present mitigating evidence during the punishment phase of his trial because there is a reasonable probability that he would have received a more lenient sentence had trial counsel performed as expected.

The second prong of the Strickland test requires the defendant demonstrate he was prejudiced by trial counsel's deficient performance. In the context of sentencing, prejudice is established if there is a reasonable probability that the assessment of punishment would have

been less severe had counsel presented the available mitigating evidence.

The jury's verdict on punishment makes clear it believed Garza committed both of the felonies used as enhancements in the jury's verdict. Given that, the jury could only sentence Garza to a number of years in prison that was between twenty-five years and ninety-nine years, or life. While thirty-five years seems an extreme sentence for a person convicted of the unlawful carrying of a weapon, it was close to the minimum that was available to the jury. The jury could have sentenced Garza to life in prison, but it believed thirty-five years was a more appropriate sentence, and it believed this after hearing no evidence from the defense on punishment. There is a reasonable probability the jury would have sentenced Garza to a sentence less than thirty-five years had it been presented the mitigating evidence presented in Garza's motion for new trial, which was available at trial, had trial counsel conducted even the most rudimentary of investigations.

D. The trial court abused its discretion in denying Garza relief on this claim during his motion for new trial proceeding.

In its brief findings announced from the bench for denying Garza relief on his Motion for New Trial, the trial court explained that it believed that had Garza introduced testimony about his mental health during punishment, the State likely would have presented evidence about Garza's previous felony convictions, including his conviction for the 2012 aggravated assault of a public servant (VII R.R. at 8-9).

Of course, that is precisely the type of evidence that the State *did* present in the punishment phase at trial. The entirety of testimony given the State's punishment phase witnesses was about Garza's previous charges. The first two of the witnesses testified about the January 29, 2012, aggravated assault of a public servant (V R.R. at 15-22, 28-34). The State's next punishment witness was a fingerprint analyst, who was able to link Garza to a few previous convictions through his thumbprint. (V R.R. at 43-51). The State's next witness was officer who testified that the victim of Garza's 2009 failure to stop and render aid charge died (V R.R. at 56-58). The next witness was the officer whom the State alleged Garza had bitten during the August 20,

2022, arrest (V R.R. at 60-63).⁸ The next witness testified that Garza spit in his face during the August 20 arrest (V R.R. at 72-73). The next witness testified about Garza's alleged 2021 assault of a family member (V R.R. at 78-86). The State's final witness testified about a threatening call to 911 Garza allegedly made (V R.R. at 92-94). The trial court denied Garza's motion for new trial wrongly believing that testimony like this had not been presented at trial (VII R.R. at 8-9). However, the jury sentenced Garza to something close to the minimum sentence available to it, notwithstanding having heard all of this testimony about Garza's previous conduct. Had the jury been presented any type of mitigating evidence, especially compelling testimony that Garza's mental illness was so severe that he was involuntarily committed in July 2022, then there is a reasonable probability the jury would have sentenced Garza to the minimum sentence available (given that the jury found the two enhancement paragraphs to be true), which was twenty-five years. The trial court abused its discretion for denying Garza relief on his Motion for New Trial.

⁸ Garza was indicted by the grand jury for this, but the charge was dismissed after Garza was sentenced to thirty-five years in the cause at issue in this Brief.

PRAYER

WHEREFORE, Appellant Amel Garza respectfully requests that this Court find his conviction and sentence should be vacated.

Respectfully Submitted,

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