

IN THE COURT OF APPEALS

FIRST JUDICIAL DISTRICT

HOUSTON, TEXAS

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DEBORAH M. YOUNG
Clerk of The Court

NO. 01-24-00617-CR

TERRELL WALLS

V.

THE STATE OF TEXAS

On Appeal from the 248th District Court
Harris County, Texas, Cause No. 1635968
Honorable Hilary Unger, Judge Presiding

BRIEF FOR APPELLANT, TERRELL WALLS

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Oral Argument Not Requested

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Tex. R. App. P. 38.1(a), the following are parties or counsel to the judgment appealed from:

Presiding Judge: The Honorable Hilary Unger
Judge, 248th District Court
1201 Franklin Street
Houston, Texas 77002

Appellant: Terrell Walls

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STATEMENT REGARDING REFERENCES TO THE RECORD

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The reporter's record will be cited as "RR page number." For example:

RR 15.

STATEMENT OF THE CASE

On July 15, 2019, Appellant was indicted for the offense of aggravated robbery, enhanced with two prior felony convictions. CR 9. Appellant pled to a Presentence Investigation Report on Feb. 20, 2020. CR 38. The Trial Court sentenced Appellant to 8 years deferred adjudication community supervision. CR 63. The State filed a motion to adjudicate guilt on April 11, 2022 and an amended motion to adjudicate guilt was filed on June 14, 2024. CR 74, 87. The Trial Court sentenced Appellant to 25 years in prison after a hearing on the motion to adjudicate. CR 94. Appellant timely filed notice of appeal on August 12, 2024. CR 101.

ISSUES PRESENTED

ISSUE ONE: Appellant was denied effective assistance of counsel because his trial counsel did not investigate and present evidence of Appellant's mental health history at the adjudication hearing. U.S. Const. amends. VI, XIV.

ISSUE TWO: Appellant was denied effective assistance of counsel because his trial counsel did not investigate a possible insanity defense to the motion to adjudicate. U.S. Const. amends. VI, XIV.

STATEMENT OF THE FACTS

Introductory Summary

Appellant was placed on eight years deferred adjudication community supervision for aggravated robbery on October 20, 2020. CR 63. He reported as instructed up until March 2022. RR 18. The State proceeded on failure to report allegations in a motion to adjudicate guilt hearing. RR 14-17. On the day of the hearing, the Trial Court spoke with Appellant on the record about concerns Appellant was having with his court-appointed attorney. RR 5-6; CR 8. Appellant expressed concern that he provided information to his attorney about his mental health and the attorney refused to present the evidence at his hearing. RR 6-7. The Trial Court left his attorney on the case and ordered the hearing to begin. RR 8-9. Appellant's attorney did not present any evidence of his mental health history; instead, she argued that he failed to report because he was scared of getting arrested on a new law violation. RR 25-26. The Trial Court adjudicated Appellant's guilt and, having previously found the two prior felony convictions to be true, sentenced him to the minimum term of 25 years in prison. RR 28-29.

The Motion to Adjudicate Hearing

Before the testimony in the hearing began, the Trial Court had an extended conversation with Appellant in open court about issues he was having with his attorney. RR 5-9. Relevant portions of this exchange are as follows:

Trial Court: “So my question is: What is your issue with your attorney?”

Appellant: “My – I feel – I feel that I haven’t been able to set a defense.

I’ve asked her several times – I’ve given her information that she says she wasn’t going to share with the DA because it’s incriminating. So she’s – and she’s telling me the Judge is not going to give you a bond. The Judge – the Judge is not going to –”

Trial Court: “Well, you do have a bond.”

Appellant: “I mean, she’s not – the judge is not going to lower your bond. She won’t lower your bond.”

Trial Court: “I am not lowering your bond.”

Appellant: “Okay.”

Trial Court: “That’s absolutely correct.”

Appellant: “Okay. Well, my thing is this, I – she haven’t [sic] came to sit down with me to have a defense – to set up a defense of nothing with me. I’ve given her stuff to talk about that will help me in my defense. First off my mental health. She told me – she said it’s not important. She said it’s not important. I told her today that I left Houston, Texas, and I went straight to a

mental health institute and I stayed there for weeks. I said since I was – since she had – she won't believe – believe that I went to California.”

RR 5-6.

Trial Court: “Now, if you have an explanation as to why you left the State of Texas and you're asking me to consider that, that's something different.”

Appellant: “Yes, Ma'am.”

Trial Court: “But that is not a defense. And you just admitted that you violated the terms of your community supervision.”

Appellant: “Yes, Ma'am.”

Trial Court: “So I understand why she advised you not to get up there and say anything. So is there anything else that you wish to –”

Appellant: “I'd like to –”

Trial Court: “—state regarding – because I am going to deny your request for another lawyer at this time. I believe that everything that I've heard, she is more than competent. And I also know her – I've seen her representing multiple other people throughout the years and she is more than competent and you're lucky to have her as a lawyer.”

Appellant: “Okay.”

Trial Court: “So is there anything else that you wish to state or we're going to proceed with the hearing.”

Appellant: “I’d like to, yes, ma’am. Well, I was mainly going to – I’m killing myself. I don’t know, but I’m trying to fight for my life.”

Trial Court: “I understand that, sir.”

Appellant: “I did not –”

Trial Court: “Sir, okay. Here’s the situation that we are at, you have asked to have a new lawyer. I have stated, no. We are now at the start of the hearing. We are now about to start your motion to adjudicate hearing. State?”

RR 7-9.

The State called only one witness, the court liaison community supervision officer for the 248th District Court; she testified that Appellant failed to report. RR 14-17. Appellant’s Trial Counsel did not present any evidence or witnesses, and she did not present any evidence about Appellant’s mental health history; instead, she argued that he failed to report because he was afraid of being arrested for a new law violation. RR 25-26. The only other evidence in the record of Appellant suffering from mental illness is that he was sentenced to the Dual Diagnosis Residential Program as a condition of his deferred adjudication community supervision. CR 67. The Trial Court found the failure to report allegation to be true and sentenced Appellant to 25 years in prison. RR 28-29.

SUMMARY OF THE ARGUMENT

ISSUE ONE: Trial Counsel was aware that Appellant left Houston and went straight to a “mental health institute” for weeks during the time he failed to report. Trial Counsel told Appellant that the evidence is not important, that it is incriminating, and would not be shared with the State. The evidence at the hearing was very clear that Appellant failed to report to his officer. Even so, Trial Counsel argued nothing more than Appellant failed to report because he was afraid of being arrested on a new law violation. Arguing this, without also showing that Appellant was in a mental health hospital, is not sound trial strategy. It is mitigating, and possibly exculpatory, to show that Appellant was in a mental hospital when he failed to report. Such evidence could likely show Appellant was suffering a mental health episode, possibly psychotic in nature, which could be a defense to failure to report. Trial Counsel failed to investigate Appellant’s mental health and did not present any evidence at the hearing, including evidence of his mental health during the time he was failing to report. The Trial Court did sentence Appellant to the minimum term of 25 years in prison, however, this particular mitigating evidence is also very material to the decision to adjudicate. This is error by Trial Counsel that amounts to ineffective assistance of counsel.

ISSUE TWO: Trial Counsel was aware that Appellant was in a mental health institute for weeks at the time of the allegations of failure to report, and she did not investigate the issue of his sanity. This is the only possible defense reflected in the record, and the evidence was very clear that Appellant failed to report. Trial Counsel told Appellant she would not share this evidence with the State, that the evidence was not important, and it was incriminating. Trial Counsel's failure to investigate Appellant's sanity at the time of the failure to report allegations is unreasonable and amounts to ineffective assistance of counsel.

ARGUMENT AND AUTHORITY

ISSUE ONE: Appellant was denied effective assistance of counsel because his trial counsel did not investigate and present evidence of Appellant's mental health history at the motion to adjudicate hearing. U.S. Const. amends. VI, XIV.

A. Standard of Review

To establish a claim of ineffective assistance of counsel, Appellant must show that (1) counsel's performance was deficient because it fell below an objective standard; and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U. S. 668, 689 (1984); *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011). Appellant must first prove by a preponderance of the evidence that counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms. *Lopez*, 343 S.W.3d at 142. "When assessing the reasonableness of an attorney's investigation, a reviewing court must consider the quantum of evidence already known to counsel and whether the known evidence would lead a reasonable attorney to investigate further." *Ex parte Martinez*, 195 S.W.3d 713, 721 (Tex. Crim. App. 2006) (citing *Wiggins v. Smith*, 539 U.S. 510, 527 (2003)). Once counsel's performance is shown to be deficient, Appellant then must show that there is a reasonable probability, or a probability sufficient to undermine confidence in the outcome,

that the result of the proceeding would have been different but for counsel's errors. *Lopez*, 343 S.W.3d at 142.

The record on direct appeal is “in almost all cases inadequate to show that counsel's conduct fell below an objectively reasonable standard of performance and that the better course is to pursue the claim in habeas proceedings. But, when no reasonable trial strategy could justify the trial counsel's conduct, counsel's performance falls below an objective standard of reasonableness as a matter of law, regardless of whether the record adequately reflects the trial counsel's subjective reasons for acting as she did.” *Andrews v. State*, 159 S.W.3d 98, 102 (Tex. Crim. App. 2005). Finally, the court must consider the totality of the representation in deciding if counsel was ineffective. *Ex parte Felton*, 815 S.W.2d 733, 735 (Tex. Crim. App. 1991).

B. Argument

In *Lampkin*, the appellate court held that trial counsel was ineffective for failing to investigate and present mitigating evidence of the defendant's extensive mental health history. *Lampkin v. State*, 470 S.W.3d 876 (Tex. App. – Texarkana 2015). Trial counsel in *Lampkin* had concerns about the defendant's mental health because he had him examined for competency; however, once competency was established, counsel did not investigate the defendant's mental health history and

failed to use such evidence for mitigation of punishment. The court of appeals found this to be ineffective assistance of counsel. *Lampkin* at 925-926.

In the present case, Trial Counsel was aware of Appellant's mental health issues and failed to investigate and present such evidence at the motion to adjudicate hearing. While it is true that Appellant received the minimum sentence, thus does not have the exact same claim as the defendant in *Lampkin*, Appellant's mental health evidence was material to the trial court's decision to adjudicate his guilt. The decision to adjudicate guilt is reviewable in the same manner as a decision to revoke probation. Tex. Code Crim. Proc. Article 42A.108(b). Appellate review of an order revoking probation is limited to abuse of the trial court's discretion. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). Therefore, any evidence that may persuade a judge to, in his discretion, not proceed to adjudication of guilt is crucial for trial counsel to investigate and present to the court. Motions to adjudicate guilt are not just about punishment, they are primarily about whether to proceed with an adjudication of guilt on the original charge. Tex. Code Crim. Proc. Article 42A.108(b).

Relevant facts in the present case, which combine to equal ineffective assistance of counsel, are as follows: (1) the trial court had wide discretion in making the decision whether to adjudicate Appellant guilty of the original offense;

(2) all of the hearing evidence showed the failure to report violations to be true; (3) Trial Counsel argued only that Appellant failed to report because he was afraid of being arrested on a new law violation; and (4) Trial Counsel did not investigate or present any evidence of Appellant's mental health history. Under these circumstances, Trial Counsel's failure to investigate and present evidence of Appellant's mental health history at the motion to adjudicate guilt hearing is conduct that falls below an objective standard of reasonableness under the prevailing professional norms. See e.g., *Freeman v. State*, 167 S.W.3d 114, 119-120 (Tex. App. – Waco 2005). In fact, no reasonable trial strategy can justify Trial Counsel's conduct. It is unreasonable to argue that Appellant was afraid to report to his officer because he may get arrested on a new law violation, when instead it can be argued that Appellant failed to report because he was in a mental health hospital. Basically, Trial Counsel argued that Appellant failed to report because he may be guilty of a new law violation. No reasonable attorney would decide to argue that when he can instead argue that his client failed to report because he was in a mental health hospital.

This failure to investigate and present evidence of Appellant's mental health history did prejudice Appellant in that the trial court decided, in its discretion, to find him guilty of the aggravated robbery. The only evidence the trial court heard was that Appellant failed to report because he didn't want to get arrested on a new

law violation. It is reasonable to believe that if the trial court heard evidence that Appellant was in a mental health hospital when he failed to report, the court may not have decided to adjudicate Appellant and instead may have decided to continue his community supervision. Confidence in the outcome is undermined in this case.

In summary, Trial Counsel rendered ineffective assistance of counsel by failing to investigate and present evidence of Appellant's mental health history in his motion to adjudicate guilt hearing. His conviction should be reversed and the cause remanded to the trial court for a new adjudication hearing.

ISSUE TWO: Appellant was denied effective assistance of counsel because his trial counsel did not investigate a possible insanity defense to the motion to adjudicate. U.S. Const. amends. VI, XIV.

A. Standard of Review

The standard of review is the same as in Issue One above.

B. Argument

The Supreme Court stated in *Ake v. Oklahoma* that “when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense.” *Ake v. Oklahoma*, 470 U.S. 68 (1985). One such step is the State must provide funds to the defendant for psychiatric experts when the defendant shows

that sanity at the time of the offense is likely to be a significant factor at his trial. *Ake* at 74. In the present case, Trial Counsel was aware that Appellant was in a mental institute for weeks at the time of the failure to report allegations, however she did not file a motion requesting funds for a psychiatric expert to examine Appellant for sanity at the time of the failure to report allegations.

Counsel has a duty to make reasonable investigations and to make reasonable decisions that certain investigations are not necessary. *Strickland*, 466 U.S. at 691. Trial Counsel in the present case failed to perform either of these duties in that she failed to investigate Appellant's sanity at the time of the failure to report allegations, and her decision to not investigate Appellant's sanity was unreasonable because it was Appellant's only possible defense.

Trial Counsel's failure to have Appellant examined for sanity prejudiced Appellant in that he did not have his only possible defense investigated. This is the very minimum duty a defense attorney has; it's even in the name of the attorney's title: "defense" attorney. The failure to investigate Appellant's only possible defense undermines the entire fundamental fairness of the proceedings against him, and that failure, in and of itself, is severely prejudicial to a criminal defendant. US Const. amends. V and XIV.

In summary, Trial Counsel rendered ineffective assistance of counsel by failing to investigate an insanity defense. His conviction should be reversed and the cause remanded for a new adjudication hearing.

CONCLUSION AND PRAYER

THEREFORE, Appellant respectfully prays that his Court sustain Appellant's points of error advanced herein, reverse Appellant's conviction, reverse judgment of the Trial Court below and remand the case for a new motion to adjudicate hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on April 30, 2025, a true and correct copy of the above and foregoing document was served on the State of Texas by serving the District Attorney's Office, Harris County, 1201 Franklin Street, Suite 600, Houston, Texas 77002 through the electronic filing manager.

/s/Cynthia Rayfield-Aguilar
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CERTIFICATE OF COMPLIANCE

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