NO. 01-24-00658-CR

IN THE FIRST COURT OF APPEALS
AT HOUSTON, TEXAS

SAUL RANCIER
Appellant,

v.

THE STATE OF TEXAS
Appellee.

Appealed from the 239th Judicial District Court of
Brazoria County, Texas
Cause No. 84493-CR
The Honorable Greg Hill, Presiding

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

This is an appeal from the judgment of conviction as to punishment and denial of a Motion for New Trial. Appellant was indicted by the Brazoria County Grand Jury for Aggravated Assault with a Deadly Weapon, Cause Number 84493-CR, in violation of §22.02 of the TEX. PENAL CODE. (4 RR 5).

Appellant entered "guilty" plea without an agreed recommendation on punishment. (1 CR 54, 55-56). The Trial Court accepted Appellant's plea, ordered a Presentence Investigation Report and set the matter for a sentencing hearing. (1 CR 94, 2 RR 8). After the hearing, The Trial Court assessed punishment at 20 years confinement. (1 CR 63-64). The Trial Court certified Appellant's right to appeal, and Appellant timely filed a notice of appeal. (1 CR 57, 67).

Appellant timely filed a Motion for New Trial. (1 CR 78-90). The Trial Court held an evidentiary hearing on Appellant's Motion for a New Trial and denied the Motion for a New Trial without making written findings of fact or conclusions of law. (1 CR 91).

ISSUE PRESENTED FOR REVIEW

Whether Appellant's Trial Counsel provided ineffective assistance of counsel specifically by failing to investigate mitigating evidence and failing to call mitigating witnesses at Appellant's sentencing hearing?

STATEMENT OF FACTS

Bar Scene and Shooting

On July 22, 2017, Appellant and some coworkers celebrated his promotion to a manager at Ferguson. (3 RR 86, 88; 4 RR 26, 32). The group first went to Hooters, and afterwards Appellant and three friends went to JP McNasty's, a bar in Rosharon. (3 RR 89-90). Appellant and his friends were at JP McNasty's for several hours, with no disputes or issues. (3 RR 91). Also at the bar was another group of people including, Bradley Brown and Jesus "JJ" Munoz. (3 RR 8-9, 50). A video surveillance camera recorded video from inside the bar. (3 RR 91).

Mr. Munoz testified that Appellant's group did not threaten or cause any disturbance while inside the bar that evening, and he was not aware of any "beef" between the groups. (3 RR 11, 39-40). Mr. Brown testified that there were no issues with he and Appellant inside the bar. (3 RR 67).

Appellant's group decided to leave and were followed out of the bar by a group of four people who had been sitting at the bar. (3 RR 27, 92). Appellant's group was confronted by the men, including Mr. Munoz, outside the bar. (3 RR 93-

94). The men returned to the bar, and Appellant saw his friends off and went to his car. (3 RR 94-96).

The second group of men, big guys, returned and closely surrounded Appellant at his car. (3 RR 28, 68, 80). Appellant retrieved a pistol from his car. (3 RR 100, 4 RR 26). A surveillance camera recorded a portion of the scene in the parking lot. (3 RR 14). During the encounter, the video showed Appellant putting his gun away into his pocket. (3 RR 32-33, 72).

Munoz, who had been at the bar all evening, approached the men surrounding Appellant and spoke with Appellant. (3 RR 29). Mr. Munoz testified he did not know the four or five people surrounding Appellant, and did not know if they were armed. (3 RR 29, 31-34). Mr. Brown did not know them either and believed they were random guys from the bar that evening, but they were not a part of Munoz' group. (3 RR 68-69).

Mr. Munoz spoke with Appellant, and after talking, the two men shook hands, surrounded by the other men. (3 RR 29, 35, 43, 67-68). Prior to the shooting Appellant did not threaten Mr. Munoz, Mr. Brown or anyone else with the pistol. (3 RR 37, 75). Mr. Munoz and Mr. Brown testified that up until the shots were fired, Appellant was not being threatening. (3 RR 43, 75).

After Mr. Munoz left the scene, the four men continue to surround Appellant. (3 RR 36, 100). Again, Appellant did not threaten any of the people

surrounding him. (3 RR 37, 100). Appellant did not kick, punch, or hit anyone before, during or after the shooting. (3 RR 26, 83).

Bradley Brown approached the group and confronted Appellant and began arguing with Appellant. (3 RR 76, 79). The argument was over another individual, Steven Pena, an acquaintance of Mr. Brown and Mr. Munoz, who was in the bar that evening and apparently talking about Appellant's group. (3 RR 10, 56-57, 78-79). Mr. Brown told Appellant that Pena had left the bar, but he did not know to where. (3 RR 77). After exchanging curse words with Appellant, Mr. Brown turned and began to walk away from Appellant and the group. (3 RR 57).

Mr. Brown admitted that when he approached Appellant, Brown was confrontational and agitated. (3 RR 82-83). Mr. Munoz also testified that when Mr. Brown approached Appellant, Brown looked upset and agitated. (3 RR 38-39). When Mr. Brown turned and left, Appellant heard Brown say something about a gun. (3 RR 101; 4 RR 26). Appellant believed Mr. Brown to be reaching for a weapon and panicked and began shooting at Brown, hitting him in the hip, buttock and legs. (3 RR 59, 61, 101-02).

Mr. Munoz returned to the scene and tackled Appellant and began hitting him in the face to disarm him. (3 RR 13, 23; 4 RR 24). Another bystander also jumped onto Appellant. (3 RR 24; 4 RR 25). Appellant was badly beaten up. (3 RR

13). Mr. Brown got into a vehicle, but was unable to drive, so another friend drove Brown to the hospital. (3 RR 59; 4 RR 23, 25).

Police arrived on scene and arrested Appellant. (4 RR 23). EMS also arrived and transported Appellant to the hospital for treatment of his injuries. (4 RR 19-22, 24-26). After release from the hospital, Appellant was transported to the Brazoria County Jail but began vomiting and was returned to the hospital for further treatment. (4 RR 26).

Appellant's Plea of Guilty

On June 21, 2018, almost eleven months after the shooting, Appellant was indicted for Aggravated Assault with a Deadly Weapon. (4 RR 5). Appellant remained on bond for almost seven years, with no issues or violations of bond conditions. (3 RR 104). In May 2024, after almost seven years and numerous requests, the Brazoria County District Attorney finally provided a copy of the surveillance video to Appellant and his Counsel, despite is existence since the start of the case. (3 CR 21; 1 Supp RR 7-8).

Appellant entered a plea of "guilty" on June 14, 2024 without an agreed recommendation from the State and the Court ordered a Presentence Investigation Report. (1 CR 54; 2 RR 6,8). During the pendency of the case, Appellant maintained full time employment, and there were no issues with Appellant's behavior and no reports of violations. (3 RR 104). Appellant had no prior felony

convictions, and two non-violent misdemeanor convictions in 2006 and 2007. (4 RR 23-28). Appellant has three children and was a caregiver for a blind disabled daughter and minor daughter. (3 RR 105; 4 RR 27). The Pre-Sentence Investigation Report indicated Appellant was a Low/Moderate risk for recidivism. (4 RR 29).

Sentencing Hearing

The State called two witnesses at the sentencing hearing, the victim, Bradly Brown, and Jesus "JJ" Munoz. (3 RR 3). Trial Counsel for Appellant did not call any witnesses to testify at the sentencing hearing besides Appellant. (3 RR 3; 3 RR 84). By agreement with the State, Appellant's daughter was allowed to read a letter to the Court, but did not answer questions. (3 RR 113-16). Witnesses supporting Appellant, including his ex-wife Neisy Cora, were present in the Court at sentencing and prepared to testify on behalf of Appellant. (3 RR 104, 117; 1 Supp RR 55). Trial Counsel attempted to identify the witnesses to the Court, but the State objected. (3 RR 104). The Court sustained the objection and informed Trial Counsel he could call them as witnesses. (3 RR 105). Trial Counsel did not call any witnesses present to testify. (3 RR 116-17).

Several witnesses, including Charles Finch, Jorge Roman and Monte Toussaint, provided Trial Counsel letters of support and indicated a willingness to testify on behalf of Appellant. (1 CR 87, 88).

At closing, the State of Texas asked for an 18-year sentence. (3 RR 128). Appellant's Counsel asked for deferred adjudication. (3 RR 118-24). Without any break after resting and closing arguments, the Trial Court sentenced Appellant to 20 years, the maximum sentence allowed by law. (3 RR 129-31).

Motion for New Trial

After the sentencing hearing, Appellant obtained new Counsel. (1 CR 65). New Counsel filed a notice of appeal and a Motion for a New Trial. (1 CR 67, 78-89). In support of the Motion for New Trial, Appellant included affidavits from Charles Finch and Monte Toussaint, who stated they were not contacted or interviewed by Trial Counsel and were available and willing to testify on behalf of Appellant. (1 CR 87, 88).

The Court held an evidentiary hearing on Appellant's Motion for New Trial, including testimony from Trial Counsel Brett Podolsky, and Monte Toussaint, Charles Finch, Jorge Roman, and Neisy Cora. (1 Supp RR 3). Mr. Podolsky testified regarding his actions and decisions. (1 Supp RR 6-36). Jorge Roman testified he was present at JP McNasty's but was never interviewed by Trial Counsel. (1 Supp RR 48-49). Witnesses testified about providing information and their willingness to testify for Appellant. (1 Supp. RR 36-57). The Trial Court denied the Motion for New Trial, without making written findings of fact or conclusions of law, and this appeal followed. (1 CR 91; 1 Supp RR 74).

POINT OF ERROR ONE

Trial Counsel provided ineffective assistance at Appellant's sentencing hearing specifically by failing to investigate mitigating evidence and call mitigating witnesses to testify, and the Trial Court abused its discretion by denying Ground 1 of Appellant's Motion for a New Trial.

SUMMARY OF THE ARGUMENT

Appellant Saul Rancier had a right to the effective assistance of counsel at his sentencing hearing; however, his Trial Counsel did not provide the required effective assistance. Trial Counsel called only one witness to testify at Appellant's sentencing hearing, Mr. Rancier himself. Witnesses with mitigating evidence, who were willing and able to come forward and testify for Appellant's but were not interviewed nor called to testify by Trial Counsel. At the Motion for New Trial evidentiary hearing, Trial Counsel acknowledge that his strategy at sentencing was "terrible," and the ultimate result was Appellant being sentenced to the maximum penalty of 20 years. Due to the ineffective assistance of Trial Counsel, the Trial Court abused its discretion in denying Ground 1 of Appellant's Motion for New Trial on the issue of mitigation and should be reversed. Appellant should receive a new sentencing hearing where he can receive the effective assistance of counsel.

ARGUMENT AND AUTHORITIES

Saul Rancier had a right to the effective assistance of counsel at his sentencing hearing. U.S. CONST. amends. VI and XIV; TEX. CONST. art. I, §10; *Powell v. Alabama*, 287 U.S. 45, 71 (1932); *Ex parte Gonzales*, 945 S.W.2d

830, 835 (Tex.Crim.App. 1997). Trial Counsel failed to perform a reasonable investigation into possible mitigation evidence and witnesses and failed to call mitigating witnesses to testify.

Appellant raised the issue of Trial Counsel's effectiveness in Ground 1 of a Motion for New Trial, which was denied by the Trial Court. (1 CR 78; 1 Supp RR 74). When a claim of ineffective assistance of counsel is asserted by a defendant in a motion for new trial, and that motion is denied after an evidentiary hearing, the denial of the motion is reviewed under an abuse-of-discretion standard. *Anderson v. State*, 193 S.W.3d 34, 39 (Tex.App.—Houston [1st Dist.] 2006, pet. ref'd); *Carter v. State*, 506 S.W. 3d 529, 533 (Tex.App.—Houston [1st Dist.] 2016) (citing *Charles v. State*, 146 S.W. 3d 204, 208 (Tex.Crim.App. 2004). When the motion alleges ineffective assistance of counsel the appellate court must determine whether the trial court's denial was "so clearly wrong as to lie outside the zone of reasonable disagreement." *Keller v. State*, 125 S.W.3d 600, 606-07 (Tex.App.—Houston [1st Dist.] 2003, pet. dism'd.)

The familiar *Strickland* standard applies to claims of ineffective assistance at sentencing. *Hernandez v. State*, 988 S.W.2d 770, 772 (Tex.Crim.App. 1999). *Strickland* requires a two-prong approach. A defendant first must show by a preponderance of the evidence that counsel's performance fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88

(1984). A defendant also must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id*. at 687-88, 694.

Prong One: Trial Counsel's representation fell below an objective standard of reasonableness

"We should have put on more. We should have done—whatever—we should have done the exact opposition of whatever I did." (1 Supp RR 34). That statement is how Trial Counsel reviewed the reasonableness of having several witnesses willing and able to testify and calling none to testify. (1 Supp RR 34).

The sentencing stage of any criminal case is a critical time in the defendant's life, and effective counsel is paramount. The sentencing stage of any case, regardless of the potential punishment, is the time for many defendants where the most important services of the entire proceeding can be performed. *Vela v. Estelle*, 708 F.2d 954, 964 (5th Cir. 1983).

Appellant's Motion for New Trial raised the issue regarding Trial Counsel's performance at the sentencing hearing, including his failure to call witnesses at the hearing, and his failure to properly investigate mitigating evidence. (1 CR 78-90).

Specific examples in the record of Trial Counsel's failure to investigate or admit mitigating evidence provided to the Trial Court include the following:

1. Jorge Roman was present with Appellant during the night of the altercation and provided information to the police. (1 Supp RR 48). Mr. Roman could provide first-hand knowledge of the atmosphere, facts, harassment, provocation and tension of the situation that night. (4 RR 14). Mr. Roman testified that he never spoke with Trial Counsel, was not asked about the facts or that evening, or to be present or testify at the sentencing hearing, despite providing contact information and a letter to Trial Counsel. (1 Supp RR 48; 4 RR 14). Mr. Roman stated he was willing to testify at trial on behalf of Appellant. (1 Supp RR 49). The prejudice of the loss of eyewitness evidence is explained by Mr. Roman who testified, "There was a lot of things that night that happened that from my perspective that I don't think were shared." (1 Supp RR 48.)

2. Neisy Cora is the ex-wife of Appellant and mother to his children. She has known Appellant since he was fourteen and was his partner for twenty-three years. (1 Supp RR 53). Ms. Cora testified she had conversations with Trial Counsel about testifying. (1 Supp RR 15). She was present at the sentencing hearing and was prepared to testify on behalf of Appellant. (1 Supp RR 54). The impact of an ex-spouse testifying on behalf of a defendant could be powerful. Ms. Cora, with years of experience, could testify as to the character of the Appellant and provide intimate details, such as his role in raising a blind and disabled daughter, along with other children, which could have had a powerful impact on the Court.

3. Charles Finch was a co-worker of Appellant at Ferguson. (1 CR 87). As with others, Mr. Finch was well acquainted with Appellant and his beneficial qualities, his impact on Mr. Finch, and his success on probation. (1 Supp RR 41, 44). Finch testified he was never contacted by Trial Counsel regarding his testimony. (1 Supp RR 43). Finch was willing to testify on behalf of Appellant. (1 Supp RR 43). Finch stated that his live testimony would have been better conveyed than a letter because, in addition to connecting with the audience, "I could have gave examples of situations that he was there for me, different situations." (1 Supp RR 44).

4. Monte Toussaint was also a co-worker of Appellant at Ferguson. (1 CR 88). Like Mr. Finch, despite writing a letter in support of Appellant, he was never contacted by Trial Counsel about his testimony. (1 Supp CR 38). Like the others, Toussaint was ready and willing to testify but was never contacted by Trial Counsel to appear at the sentencing hearing. (1 Supp RR 38). Mr. Toussaint was prepared and willing to testify to Appellant's character and likely success on probation. (1 Supp RR 39).

5. Derrick Justice was present at the sentencing hearing. (3 RR 117). He provided a letter in support of Appellant, that spoke of Appellants support and vague details of Appellant's interaction with his children. (4 RR 12). Mr. Justice was available to testify and provide further explanations and details to the Court, however he was not called to testify by Trial Counsel.

Trial Counsel testified at the hearing on the Motion for New Trial. (1 Supp RR 6-36). Trial Counsel took ownership of the defense strategy. "I made the determination of what I thought would be useful or not…who to call, what not to call, what letters to send…that was all my call." (1 Supp RR 14). An explanation provided by Trial Counsel for not calling Ms. Cora, or the other witnesses, was "I just thought we had enough in the file." (1 Supp RR 18).

Trial Counsel did not testify to, nor did any of the witnesses testify that his office provided any information as to what information should or should not be included in any letter submitted to the Trial Court. Additionally, Trial Counsel repeatedly stated that he had many conversations about the case but could not articulate any reason or concern for not calling a specific witness to testify, and at times had difficulty recalling facts. (1 Supp RR 13-16).

As noted earlier, witnesses, including Ms. Cora, were present in Court to testify at the sentencing. (1 Supp RR 21, 3 RR 104, 117). When questioned at the hearing about not offering any witnesses, Trial Counsel responded, "In hindsight, terrible—terrible defense strategy and tragedy, frankly." (1 Supp RR 22).

Appellate Courts have held that the decision to present witnesses is largely a matter of trial strategy. See *Shanklin v. State*, 190 S.W.3d 154, 164 (Tex.App.—Houston [1st Dist.] 2005, pet dism'd); *Lair v. State*, 265 S.W. 3d 580, 594 (Tex.App.—Houston [1st Dist.] 2008, pet. ref'd); *Lopez v. State*, 462 S.W.3d 180,

188 (Tex.App.—Houston [1st Dist.] 2015, no pet.). However, Appellate Courts also note that "counsel can only make a reasonable decision to forego presentation of mitigating evidence after evaluating available testimony and determining that it would not be helpful." *Milburn v. State*, 15 S.W.3d 267, 270 (Tex.App.-Houston [14th Dist.] 2000, pet. ref'd); *Shanklin*, 190 S.W.3d at 164 (decision not to call witnesses may be sound if attorney bases it on determination that testimony may be harmful rather than helpful); *Lair*, 265 S.W.3d at 594-95; *Richards v. Quarterman*, 566 F.3d 553 (5th Cir. 2009)(finding ineffective assistance based on failure to conduct adequate pre-trial investigation, and that the decision by counsel cannot be said to be reasonable or strategic absent a thorough investigation).

In this case, Trial Counsel failed to inquire and evaluate available testimony from key witnesses such as Jorge Roman; and did not articulate a reason as to why the testimony of witnesses at sentencing would not be helpful. *Milburn*, 15 S.W.3d at 269 (counsel ineffective when he did not investigate and interview potential punishment witnesses, despite the availability and willingness of several of appellant's relatives, friends, and co-workers to testify on his behalf) (citing *Milburn v. State*, 973 S.W. 2d 337 (Tex.App.—Houston [14th Dist.] 1998, vacated and remanded, *Milburn v. State*, 3 S.W.3d 918 (Tex.Crim.App.1999).

Jorge Roman, Charles Finch, and Monte Toussaint all unequivocally stated that Trial Counsel did not contact them regarding their testimony. This is

especially troubling, given that Mr. Roman was present on the night of the shooting. (1 Supp RR 48). Trial Counsel's performance was deficient for failing to investigate the witnesses and present them as witnesses. *Shanklin*, 190 S.W.3d at 164 (failure to investigate and call punishment witnesses amounts to deficient performance); See also *Wiggins v. Smith*, 539 U.S. 510, 522-23, (2003); *Goody v. State*, 433 S.W. 3d74, 80-81 (Tex.App.—Houston [1st Dist.] 2014, pet. ref'd). Additionally, the witnesses were available to testify and that their testimony would have benefited the defendant. *Butler v. State*, 716 S.W.2d 48, 55 (Tex.Crim.App. 1986).

Trial Counsel's testimony that his determination of what he thought would be useful does not automatically mean effective representation. Courts have noted that a decision that counsel defends as trial strategy might nonetheless be objectively unreasonable and the magic word "strategy" does not insulate a decision from judicial scrutiny. *Ex parte Saenz*, 491 S.W.3d 819, 829-30 (Tex.Crim.App. 2016)(citing *Ex parte Ellis*, 233 S.W.3d 324, 330 (Tex.Crim.App. 2007).

Trial Counsel's failure to investigate mitigating evidence from witnesses, including Jorge Roman, Charles Finch, and Monte Toussaint, and the failure to call mitigating witnesses at Appellant's sentencing hearing was objectively unreasonable under the first prong of *Strickland*.

Second Prong: There is a reasonable probability that, but for Trial Counsel's unprofessional errors, the result of the proceeding would have been different

The Trial Court sentenced Appellant to the maximum punishment allowed by law, even though the State was recommending 18 years. (3 RR 128,131).

To succeed under the second prong of *Strickland*, Appellant must show that there is a reasonable probability that the punishment would have been different or less severe. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Shanklin v. State*, 190 S.W.3d 154, 165 (Tex.App.—Houston [1st Dist.] 2005, pet dism'd); *Milburn v. State*, 15 S.W. 3d 267, 270 (Tex.App.—Houston [14th Dist.] 2000, pet. ref'd). Defendant need not show that he would have received a more favorable outcome, but rather, that he did not receive a fair trial which is understood to be a trial resulting in a verdict worthy of confidence. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Any amount of additional time in prison constitutes prejudice. *Glover v. United States*, 531 U.S. 198, 203 (2001).

At the sentencing hearing, the Trial Court heard powerful live testimony from the State's witnesses at the scene. (3 RR 3). To balance that testimony, Trial Counsel choose to only call Appellant to the stand. (3 RR 84). When sentencing Appellant to the maximum penalty, the Court referenced the State's witnesses, as well as Appellant's daughter. (3 RR 129-30). The Trial Court gave no reason for

exceeding the State's recommendation of 18 years. (3 RR 129-31). This is an indication that live testimony was a strong factor for the Trial Court.

As previously discussed, several witnesses were available and willing to present live testimony as to Appellant's character, family, suitability for probation, and contributions to society. (1 Supp RR 38-54). Trial Counsel offered no reasonable explanation or strategy, good or bad, for not presenting live testimony and testified that it was a "terrible strategy." (1 Supp RR 24). There is prejudice when trial counsel brings forward no witnesses where some exist or potentially exist, because the fact finder cannot consider mitigating evidence to offset the aggravating factors presented by the State. *Lopez v. State*, 462 S.W.3d 180, 188 (Tex.App.—Houston [1st Dist.] 2015, no pet.).

Courts have noted that to show prejudice, it is not required for Appellant to demonstrate that Appellant's witnesses would have changed the result of the sentencing. *Shanklin*, 190 S.W. 3d at 165 (citing *Milburn*, 15 S.W. 3d at 271) (Appellant demonstrated prejudice even though we cannot say for certain that Appellant's character witnesses would have favorably influenced the jury's assessment of punishment). It is the loss of the possibility of a different outcome that is the prejudice. *Shanklin*, 190 S.W. 3d at 166.

Trial Counsel introduced exhibits during the sentencing hearing, including letters of support, but it is unknown if the Court had the opportunity or time to

review the letters, and there was no break between the end testimony, closing arguments, and the Court pronouncing sentence. (3 RR 23, 117, 118, 126, 129).

Had Trial Counsel investigated the facts and called the available witnesses, they would have been able to counter the State's presentation to the Court and provide mitigating factors and additional details in addition to the letters for the Trial Court to weigh regarding Defendant's character, service, rehabilitation, and candidacy for probation. *Shanklin*, 190 S.W.3d at 165 (citing *Vela v. Estelle*, 708 F.2d 954, 966 (5th Cir. 1983)(sentencing process consists of weighing mitigating and aggravating factors and making adjustments). Perhaps more importantly, Appellant would have been guaranteed that the Trial Court heard and considered the live witness testimony in Court.

Appellant satisfies *Strickland*'s second prong because Trial Counsel's deficient representation eliminated the possibility that the missing mitigating evidence and testimony may have influenced the Trial Court to pronounce a lower sentence. *Milburn v. State*, 15 S.W.3d 267, 271 (Tex.App.-Houston [14th Dist.] 2000, pet. ref'd) (Court finds prejudice even though it is speculation that character witnesses in mitigation would have in favorably influenced punishment). Had the character witnesses testify as reflected in their affidavits and testimony at the Motion for New Trial, there is a reasonable probability that the Court would have considered assessing a lesser punishment. *Shanklin*, 190 S.W. 3d at 166.

CONCLUSION

The Trial Court abused its discretion in denying Ground 1 in Appellant's Motion for a New Trial on the issue of mitigation evidence. The record demonstrates, by a preponderance of evidence, that Appellant's Trial Counsel provided ineffective assistance of counsel at Appellant's sentencing hearing on the issue of mitigation evidence by failing to investigate mitigating evidence and witnesses and by failing to present mitigating evidence through witnesses who were available and willing to testify on behalf of Appellant, and whose testimony would have benefitted Appellant. The record also demonstrates, by a preponderance of the evidence, that Trial Counsel's deficiencies caused prejudice to Appellant by denying him the opportunity to present mitigating evidence and witnesses to the Trial Court, which may have reduced the sentence imposed by the Trial Court. Based on the evidence and testimony presented, Appellant was denied the effective assistance of counsel at his sentencing hearing and should receive a new sentencing hearing.

PRAYER

Saul Rancier's Trial Counsel provided ineffective assistance of counsel at the sentencing hearing. The law is clear that such an error requires reversal of the sentence imposed and a new sentencing hearing. Accordingly, Appellant, Saul Rancier, respectfully prays that this Court reverse the order denying Ground 1 of Appellant's Motion for New Trial and remand this matter to the 239th District Court for a new sentencing trial on the merits and grant any further relief to which Appellant, Saul Rancier, may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, pursuant to Rule 9.5 of the Texas Rules of Appellate Procedure, on this 20th day of February, 2025, a copy of Appellant's Brief was served by electronic service to all parties of record and upon the following counsel of record:

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Tex. R. App. P. 9.4(i)(2)(B) because it contains 4,313 words, excluding the parts of the brief exempted by Tex. R. App. P. 9.4(i)(1).

/s/ Russell A. Neumann
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