Affirmed and Memorandum Opinion filed March 4, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01048-CR

DANA GERARD ADAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 1104754

M E M O R A N D U M O P I N I O N

Appellant, Dana Gerard Adams, was charged with third-degree felony assault of a family member. Appellant pleaded no contest pursuant to a plea agreement. The trial court deferred its finding of guilt and placed appellant on community supervision. Thereafter, the State moved to revoke appellant's community supervision based on alleged probation violations. After an adjudication hearing, the trial court found that appellant had committed most of the violations asserted in the State's motion, revoked appellant's community supervision, and sentenced him to ten years in prison. On appeal, appellant contends that he was denied effective assistance of counsel and due process of law during the adjudication process. We affirm.

I. BACKGROUND

In February 2007, appellant was charged with third-degree felony assault of a family member. Pursuant to a plea agreement, he pleaded no contest. The trial court deferred its finding of guilt and placed appellant on community supervision for four years. Months later, the State moved to adjudicate appellant's guilt, claiming that appellant had violated a number of his community supervision conditions, including: (1) cocaine use while on probation; (2) failure to report to a community supervision officer; (3) leaving Harris County without the trial court's permission; (4) failure to participate in community service, an approved drug and alcohol treatment program, an educational skills evaluation, and a domestic violence treatment program; and (5) failure to pay mandatory fees and court costs. The State also alleged in its motion that appellant had committed two criminal offenses: criminal trespass and burglary. The criminal allegations arose from appellant's estranged wife, who told police that appellant had become violent with her at her home, refused to leave, and then stole her vehicle.

The trial court conducted a hearing on the State's motion to adjudicate. As the hearing started, defense counsel relayed to the trial court the State's offer of six years in prison and appellant's rejection of that offer. Appellant then pleaded true to multiple probation violations: cocaine use, failure to report, leaving Harris County without proper permission, failure to pay mandatory fees and court costs, and failure to participate in community service, drug and alcohol treatment, domestic violence treatment, and an educational skills evaluation.

Despite having pleaded guilty to these violations, appellant pleaded not true to the allegations that he had committed the criminal offenses of criminal trespass and burglary. The trial court ultimately found that appellant did not commit the burglary offense but that he had committed the remaining violations asserted in the State's motion. Accordingly, the trial court revoked appellant's probation, found him guilty, and sentenced him to ten years in prison. In two appellate issues, appellant contends that he

was denied effective assistance of counsel and due process of law during the adjudication process.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

In appellant's first issue, he contends that he received ineffective assistance of counsel during the adjudication process because trial counsel's representation was subject to a conflict of interest. The Sixth Amendment to the United States Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense. U.S. Const. amend. VI. The Sixth Amendment guarantees not just the right to counsel, but the right to the reasonably effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Monreal v. State*, 947 S.W.2d 559, 564 (Tex. Crim. App. 1997). The Sixth Amendment's right to reasonably effective assistance of counsel includes the right to "conflict-free" representation. *See Strickland*, 466 U.S. at 692; *see also Cuyler v. Sullivan*, 466 U.S. 335, 348–50 (1980). In the context of "conflict-free" representation, a defendant may prove ineffective assistance of counsel if he can show (1) that his counsel was burdened by an actual conflict of interest and (2) that the conflict actually colored counsel's actions during the adjudication hearing. *See Acosta v. State*, 233 S.W.3d 349, 356 (Tex. Crim. App. 2007) (citing *Cuyler*, 446 U.S. at 349–50); *see also Monreal*, 947 S.W.2d at 564.

Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance. *Cuyler*, 446 U.S. at 350. An actual conflict of interest exists if counsel is required to make a choice between advancing his client's interest in a fair trial or advancing other interests—including counsel's—to the detriment of his client's interest. *Acosta*, 233 S.W.3d at 355 (quoting *Monreal*, 947 S.W.2d at 564). Furthermore, a defendant who shows that a conflict of interest actually affected the adequacy of counsel's representation need not demonstrate prejudice to obtain relief. *Cuyler*, 446 U.S. at 349–50.

Here, appellant contends that defense counsel's statements to the trial court on the record—that the State had offered appellant six years and appellant had rejected the offer—constitutes ineffective assistance of counsel. Specifically, appellant contends the statement shows that defense counsel's self interest in protecting himself against any future claim of ineffective assistance was in conflict with appellant's interest to secure a fair trial. In *Monreal v. State*, the Court of Criminal Appeals addressed the same conflict-of-interest issue. 947 S.W.2d at 564.

In *Monreal*, the defendant was charged with two felony offenses. The defendant pleaded not guilty, and his case was tried to the trial court. *Id.* at 560. After the State rested its case, defense counsel put the defendant on the witness stand for the sole purpose of entering into the record that she, defense counsel, had advised the defendant before trial of a plea offer from the State, and that appellant had rejected the offer. *Id.* at 560–61. It was undisputed that defense counsel's sole purpose in doing so was to protect herself against a future claim of ineffective assistance of counsel. *See id.* The trial court ultimately found the defendant guilty and sentenced him to 99 years in prison. *Id.* at 561. On appeal, the defendant contended that trial counsel labored under an actual conflict of interest—she represented her self-interest of protecting herself from future claims of ineffective assistance. *Id.* at 564. The Court of Criminal Appeals rejected the defendant's conflict-of-interest argument, concluding that "trial counsel was not required to make a choice between advancing her client's interests in a fair trial or advancing her own interest in avoiding a future claim of ineffective assistance." *Id.* at 565. Accordingly, trial counsel's interest, if any, did not actually conflict with the defendant's interest.

Similar to *Monreal*, trial counsel's statements in this case regarding the State's plea offer do not rise to the level of an actual conflict of interest because trial counsel was not required to make a choice between advancing his own interest in avoiding a future claim of ineffective assistance and advancing appellant's interest in a fair trial. *See id.*

Following the Court of Criminal Appeals decision in *Monreal*, we find that no actual conflict existed between counsel and appellant. *Id.* at 564; *see also Acosta*, 233 S.W.3d at 356 (citing *Cuyler*, 446 U.S. at 349–50). Accordingly, trial counsel did not render ineffective assistance of counsel. We overrule appellant's first issue.

III. DUE PROCESS OF LAW

In appellant's second issue, he contends that trial counsel's statements regarding the State's plea offer denied him due process of law because such statements affected the trial court's partiality and affected the court's punishment decision. Due process requires that a neutral and detached judge preside over probation revocation proceedings. *Wright v. State*, 640 S.W.2d 265, 269 (Tex. Crim. App. 1982); *Lyons v. State*, 222 S.W.3d 658, 660 (Tex. App.—Houston [14th Dist.] 2007, no pet). In the absence of a clear showing to the contrary, we presume that the trial court was a neutral and detached officer. *Sosa v. State*, 230 S.W.3d 192, 194–95 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd).

In this case, there is nothing in the record before us reflecting that the trial court was not a neutral detached officer. There is no evidence that the trial court participated in the actual plea negotiations. There is no evidence that appellant was coerced one way or another regarding the plea offer or that the trial court improperly exerted any influence in the plea process. There is no evidence that the trial court was influenced by appellant's plea rejection. Moreover, the sentence imposed by the trial court was within the sentence range for the offense. *See* Tex. Penal Code § 12.34. Because the record is devoid with any evidence that the trial court's knowledge of the rejected plea offer influenced its sentencing decision, appellant has not made a showing that the trial court was anything other than a detached and neutral arbiter. Accordingly, we overrule appellant's second issue.

Having overruled both of appellant's issues, we affirm the trial court's judgment.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges, Justice Anderson, and Senior Justice Mirabal.*

Do Not Publish — TEX. R. APP. P. 47.2(b).

*Senior Justice Margaret Garner Mirabal sitting by assignment.