

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-09-00092-CR**

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**KENNETH EDWARD COMEAUX, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 163rd District Court  
Orange County, Texas  
Trial Cause No. B-080,458-R**

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**MEMORANDUM OPINION**

Appellant, Kenneth Edward Comeaux, appeals the jury's verdict convicting him on two counts of aggravated assault on a public servant and sentencing him to life in prison. Comeaux contends on appeal that he was denied the right to effective assistance of counsel as provided for in the Sixth Amendment to the United States Constitution. *See* U.S. CONST. amend. VI. Because we find the record is insufficient to establish ineffective assistance of counsel, we affirm the judgment of the trial court.

To prevail on a claim for ineffective assistance of counsel, appellant must show that (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *Andrews v. State*, 159 S.W.3d 98, 101-02 (Tex. Crim. App. 2005) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). "Appellate review of defense counsel's representation is highly deferential and presumes that counsel's actions fell within the wide range of reasonable and professional assistance." *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002). "Under *Strickland*, the defendant must prove, by a preponderance of the evidence, that there is, in fact, no plausible professional reason for [counsel's] specific act or omission." *Id.* at 836. "Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness." *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). The Court in *Bone* explained,

Under normal circumstances, the record on direct appeal will not be sufficient to show that counsel's representation was so deficient and so lacking in tactical or strategic decisionmaking as to overcome the presumption that counsel's conduct was reasonable and professional. As this Court recently explained, rarely will the trial record contain sufficient information to permit a reviewing court to fairly evaluate the merits of such a serious allegation: "in the majority of cases, the record on direct appeal is simply undeveloped and cannot adequately reflect the failings of trial counsel."

*Bone*, 77 S.W.3d at 833 (footnotes omitted).

Comeaux argues on appeal that he received ineffective assistance because “there were absolutely no witnesses put on the stand in the defense of [Comeaux] besides [Comeaux]” and because defense counsel “allowed hearsay evidence from [Comeaux’s] wife to be introduced through her stepmother without forcing [Comeaux’s] wife to take the stand and be [subject] to cross-examination.” Though Comeaux filed a motion for new trial, he did not assert ineffective assistance of counsel in the motion, nor is the motion supported by affidavit. Further, no hearing was requested or had on the motion, which was overruled as a matter of law.

Comeaux did not develop a record in the trial court explaining trial counsel’s conduct in not presenting Comeaux’s wife as a witness or in not presenting any additional defense witnesses. *See Bone*, 77 S.W.3d at 834; *Wilkerson v. State*, 726 S.W.2d 542, 551 (Tex. Crim. App. 1986) (“Absent a showing that potential defense witnesses were available, and that their testimony would benefit the defense, counsel’s failure to call witnesses is of no moment.”) In the absence of a record that affirmatively demonstrates trial counsel’s alleged ineffectiveness, we cannot find trial counsel provided ineffective assistance. *See Thompson*, 9 S.W.3d at 813. Therefore, Comeaux failed to meet the first prong of the *Strickland* test. We overrule Comeaux’s sole issue on appeal and affirm the judgment.

AFFIRMED.

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CHARLES KREGER  
Justice

Submitted on April 16, 2010  
Opinion Delivered April 28, 2010  
Do not publish

Before McKeithen, C.J., Kreger and Horton, JJ.