

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

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**NO. 09-09-00539-CV**

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**IN RE COMMITMENT OF JOE EDWIN WILLIAMS**

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**On Appeal from the 435th District Court  
Montgomery County, Texas  
Trial Cause No. 09-03-02413 CV**

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**MEMORANDUM OPINION**

A jury determined that Joe Edwin Williams is a sexually violent predator under Texas law. *See* Tex. Health & Safety Code Ann. §§ 841.001-.150 (West 2010) (SVP statute). The jury found that Williams suffers from a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. Williams presents two issues in his appeal from the trial court's judgment and order of civil commitment. We find no error and affirm the judgment.

In his first issue, Williams argues that the trial court denied him his constitutional and statutory right to effective assistance of counsel on appeal by refusing to allow the State Council for Offenders (SCFO) to withdraw from serving as the organization obligated to provide him with counsel. Alleging a conflict of interest, SCFO's attorney

filed a post-judgment motion to withdraw, asking that he be allowed to withdraw from serving as Williams's appellate counsel. SCFO's motion is based on section 841.005(b) of the Texas Health and Safety Code. *See* Tex. Health & Safety Code Ann. § 841.005(b) (stating that the court shall appoint other counsel if for any reason the Office of the SCFO is unable to represent an indigent person at a civil commitment proceeding). After a hearing, the trial court denied SCFO's motion to withdraw.

In a previous proceeding, SCFO and Williams filed a petition for mandamus asking this Court to compel the trial court to permit SCFO's withdrawal. We denied the petition for mandamus. *See In re Williams*, No. 09-10-00012-CV, 2010 WL 684865 (Tex. App.—Beaumont Feb. 25, 2010, orig. proceeding).

In evaluating issue one, we first note that the legislature requires SCFO to represent indigent persons subject to civil commitment proceedings that involve sexually violent predators. *See* Tex. Health & Safety Code Ann. § 841.005(a). Section 841.005(b) of the Texas Health and Safety Code provides the trial court with the discretion to relieve SCFO of its statutorily imposed obligation to represent a sexually violent predator in an appeal. *See id.* § 841.005(b); *In re Fields*, 256 S.W.3d 859 (Tex. App.—Beaumont 2008, orig. proceeding) (holding that trial court did not abuse its discretion in denying counsel's motion to withdraw based on conflict of interest). Therefore, we review a trial court's decision to deny motions that are filed by SCFO attorneys to withdraw as counsel for abuse of discretion.

SCFO alleged that its attorney was unable to represent Williams on appeal due to a conflict of interest. SCFO asserts a conflict arose because Williams wanted its attorney to argue that SCFO's trial attorney rendered ineffective assistance during trial because SCFO's attorney did not call any witnesses to testify on Williams's behalf.

Although the Texas Supreme Court has extended a right to effective assistance to civil cases involving the termination of parental rights, it has not addressed whether a sexually violent predator may obtain a remedy for ineffective assistance in a direct appeal. *See In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003). The policy considerations relevant to extending a remedy for ineffective counsel to cases involving civil commitments of sexually violent predators differ in several ways from parental termination cases. For example, a final judgment in a parental termination case generally divests the parent of all legal rights concerning the child, with the exception of the right to inherit; in contrast, a final judgment in a sexually violent predator case remains subject to the sexually violent predator's right to have a biennial review of the order. *Compare* Tex. Fam. Code Ann. § 161.206 (West 2008) (concerning effect of order terminating parental rights) *with* Tex. Health & Safety Code Ann. § 841.102 (West 2010) (providing for biennial reviews). Additionally, the sexually violent predator statute contains procedures allowing sexually violent predators to file post-judgment petitions seeking their release from the terms of the civil commitment. *See* Tex. Health & Safety Code Ann. §§ 841.121-.124. Thus, sexually violent predator judgments do not carry the same degree of finality as cases that involve terminating parental rights.

In this case, we need not reach the question of whether a new trial for a claim alleging ineffective assistance is available in a direct appeal. Williams fails to identify the identities of witnesses that he claims would have provided him with favorable testimony. Claims of ineffective assistance must “be firmly founded in the record” for the appellate court to evaluate the claim. *Bone v. State*, 77 S.W.3d 828, 835 (Tex. Crim. App. 2002) (quoting *Thompson v. State*, 9 S.W.3d 808, 814 (Tex. Crim. App. 1999)). We are unable to review whether to extend a remedy based on a claim asserting ineffective assistance of counsel without a record that shows what facts, if any, might have been placed in issue by the witnesses who were not called to testify in a trial. In summary, there is nothing in the record to reflect either the identities of the witnesses who Williams now claims he desired to have called during his trial or to demonstrate on appeal the facts that these witnesses would have established had they testified. We conclude that Williams’s claim of ineffective assistance is not firmly founded in the record.

If the remedy for ineffective assistance of counsel extends to cases involving civil commitments of sexually violent predators, a matter we need not decide, the trial court did not abuse its discretion when it denied SCFO’s motion to withdraw, which was not supported by the record. Without such a record, SCFO had nothing to support its claim that Williams received ineffective assistance of counsel during his trial, the argument that Williams contends he now wishes to advance in his appeal.

In summary, trial courts are not required to replace appellate counsel to advance the claims of a client that are not supported by the record. *See King v. State*, 29 S.W.3d

556, 566 (Tex. Crim. App. 2000); *Garner v. State*, 864 S.W.2d 92, 98-99 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd). Williams's first issue is overruled.

### Legal Sufficiency

In issue two, Williams challenges the legal sufficiency of the evidence supporting the jury's verdict. The SVP statute requires the State to prove beyond a reasonable doubt that a person is a sexually violent predator. *See* Tex. Health & Safety Code Ann. § 841.062(a). Because the State has the burden of proving its case beyond a reasonable doubt, we apply the same appellate standard of review that we apply in criminal cases for legal sufficiency of the evidence. *In re Commitment of Barbee*, 192 S.W.3d 835, 839 (Tex. App.—Beaumont 2006, no pet.). In determining whether the evidence is legally sufficient to support an affirmative jury finding, we review all of the evidence in a light most favorable to the verdict. *Id.* Therefore, we review the evidence introduced to the jury during Williams's trial to decide if a rational jury could have found, beyond a reasonable doubt, that Williams suffers from a behavioral abnormality predisposing him to engage in a predatory act of sexual violence. *See id.*

In his legal sufficiency challenge, Williams asserts that the testimony of the State's expert witnesses was unreliable and not probative on the face of the record because the experts failed to sufficiently tie their evaluations to the facts of his case. Williams argues that Dr. Tim Proctor lacked sufficient expertise and training to determine whether Williams suffers from a behavioral abnormality, and he contends Dr.

Michael Arambula's opinion that Williams suffered from a behavioral abnormality is conclusory and constitutes no evidence.

Dr. Proctor, who is board certified in forensic psychology and a licensed sex offender treatment provider, testified regarding his qualifications. *See* Tex. Occ. Code Ann. § 110.001(7) (West Supp. 2010) (defining "sex offender treatment provider"); 22 Tex. Admin. Code § 810.3(a) (2010) (requiring sex offender treatment providers to be licensed by the Council on Sex Offender Treatment). Dr. Proctor testified that he holds a bachelor's degree in psychology and a doctorate in clinical psychology. Dr. Proctor did a one year internship conducting forensic evaluations on inmates at a federal prison, completed a two year post-doctoral psychopharmacology program, and has been teaching for approximately ten years. According to Dr. Proctor, the primary focus of his practice is doing assessments, and he had previously assessed approximately twenty-five persons in cases involving behavioral abnormalities.

Dr. Proctor further testified regarding the methodology he used in formulating his opinions. Dr. Proctor explained that he examined historical records pertaining to Williams, interviewed Williams, and administered risk assessment instruments and actuarial tests. Specifically, Dr. Proctor administered the "Static 99," which is used to measure the risk of sexual recidivism; the "Minnesota Sex Offender Screening Test-Revised" (MnSOST-R), which predicts the risk of future sexual offenses; and the "Psychopathy Checklist-Revised" (PCL-R), which is also used to measure psychopathy and the risk of reoffending. Williams's score on the Static 99 was a "5," which Dr.

Proctor explained gives Williams a “moderate high range” of reoffending. On the MnSOST-R, Williams’s score of “14” places Williams in the “highest risk level” for recidivism, according to Dr. Proctor. Dr. Proctor believes he scored Williams with a “25” on the PCL-R, giving Williams “many of the traits that you see in a psychopath although not at the level of psychopathy.”

Dr. Proctor diagnosed Williams as having “paraphilia not otherwise specified[,]” “antisocial personality disorder[,]” and also indicated that Williams has a history of “polysubstance abuse[.]” Dr. Proctor explained that he was aware of the circumstances that related to Williams’s sexual offenses resulting in Williams having served time in prison. Dr. Proctor also considered Williams’s disciplinary infractions while in prison, which included sexual misconduct. Dr. Proctor identified several factors that he felt enhanced the probability that Williams would reoffend, including (1) a pattern of sexual deviancy, which includes multiple sex offenses; (2) his lack of stable romantic relationships; (3) a failure to comply with rules while on probation and parole; (4) a selection of victims who were strangers that varied in age; (5) the use of force during the offenses; (6) a pattern of offenses that included multiple sex acts performed on the same victim; (7) his history of antisocial behaviors in adolescence; (8) an instability in his work history; (9) his lack of remorse and failure to take responsibility for his behavior; (10) a history of substance abuse; and (11) a failure to complete a treatment program. Dr. Proctor concluded that Williams has a behavioral abnormality that affects his emotional

and behavioral capacity and that predisposes him to engage in predatory acts of sexual violence.

The State's other expert, Dr. Arambula, is board certified in general and forensic psychiatry. Dr. Arambula testified regarding the methodology he used in formulating his opinions. Dr. Arambula explained that he had examined historical records pertaining to Williams and interviewed Williams. In his evaluation, Dr. Arambula considered Williams's two prior convictions, an alleged sexual offense resulting in Williams's arrest, and Williams's failure to comply with various rules while on parole, while under mandatory supervision, and when Williams was in the Marines. Dr. Arambula diagnosed Williams with "paraphilia not otherwise specified with a suggestion of sadism, and also related to the paraphilia, sexual abuse of a minor[,] "alcohol abuse in remission[,] and "a personality disorder not otherwise specified with features of antisocial personality." Dr. Arambula identified several factors that he felt enhanced the probability Williams would reoffend. These included (1) a pattern of repeated serial acts against his victims; (2) his lack of good relationships with women; (3) a pattern of escalating physical force, violence, and humiliation; (4) his problems with authority; (5) the lack of adequate treatment for sexual offenses; (6) his failure to successfully reform as evidenced by his violations of parole and community supervision; and (7) the lack of treatment for substance abuse problems in remission. Dr. Arambula testified that Williams's diagnosis of paraphilia, alcohol abuse, and personality disorder are acquired conditions that form



the basis for his past offenses. According to Dr. Arambula, Williams has a behavioral abnormality that predisposes him to commit predatory acts of sexual violence.

Having reviewed the record, we conclude that it contains legally sufficient evidence to support the jury's verdict. Here, the State's experts testified that Williams has a behavioral abnormality predisposing him to commit a future predatory act of sexual violence, and each of the State's experts explained the supporting basis for his opinion, identified the records he relied upon, and explained that the records he used in forming his opinion were the same types of records typically relied upon by experts in his field. We conclude that Dr. Arambula's and Dr. Proctor's testimony is not conclusory. Issue two is overruled.

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

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on August 26, 2010  
Opinion Delivered October 28, 2010  
Before Gaultney, Kreger, and Horton, JJ.