

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00467-CR

JOSEPH JIMMIE DESORMEAUX, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 08-04459**

MEMORANDUM OPINION

A jury convicted Joseph Jimmie Desormeaux of murder, sentenced him to life in prison, and assessed a \$10,000 fine. In one issue on appeal, Desormeaux contends that he received ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments of the United States Constitution. We affirm the trial court's judgment.

To establish ineffective assistance, Desormeaux must satisfy the following test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's

errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); see *Perez v. State*, 310 S.W.3d 890, 892-93 (Tex. Crim. App. 2010). “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). “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 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.” *Id.*

On appeal, Desormeaux contends that trial counsel rendered ineffective assistance by allegedly abandoning Desormeaux’s defense during the punishment phase of trial. Desormeaux complains that, during the punishment phase, trial counsel failed to conduct a reasonable investigation, cross-examine the State’s sole punishment witness, call witnesses, present mitigating evidence, object to the jury charge, request jury instructions, and make closing argument.

The record does not indicate that Desormeaux filed a motion for new trial to allege ineffective assistance. The record is silent as to trial counsel’s “tactical and strategic

decisionmaking.” *Estrada v. State*, 313 S.W.3d 274, 311 (Tex. Crim. App. 2010), *cert. denied*, *Estrada v. Tex.*, ___ U.S. ___, 131 U.S. 905, 178 L.Ed.2d (2011). Moreover, Desormeaux cannot demonstrate that, but for counsel’s alleged errors, the outcome of his trial would have been different. *Graves v. State*, 310 S.W.3d 924, 929 (Tex. App.—Beaumont 2010, pet. ref’d). Under these circumstances, Desormeaux cannot “defeat[] the strong presumption that the decisions of counsel during trial fell within the wide range of reasonable professional assistance.” *Thompson*, 9 S.W.3d at 814. We overrule Desormeaux’s sole issue and affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on August 25, 2011
Opinion Delivered August 31, 2011
Do Not Publish

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