IN THE
TENTH COURT OF APPEALS

No. 10-19-00435-CR

RANDAL WILLIAMS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 21st District Court
Burleson County, Texas
Trial Court No. 15,637

MEMORANDUM OPINION

In two issues, appellant, Randal Ray Williams, challenges his guilty plea to the charged offense of unlawful possession of a controlled substance—marihuana—in an amount less than fifty pounds, but greater than five pounds, in a drug-free zone. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.121(a), (b)(3), 481.134(c) (West 2017). We affirm.

I. ANALYSIS

In his first issue, Williams contends that his guilty plea was involuntary because trial counsel provided ineffective assistance of counsel by failing to inform him of the consequences of his plea—namely, that there were possible Fourth Amendment issues in this case and that, by entering his guilty plea, he waived his right to a suppression hearing. In his second issue, Williams argues that the trial court erred by denying his motion to withdraw his guilty plea based on his misunderstanding of the consequences of his plea. Because these issues are related, we will consider them together.

A. Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees the right to reasonably effective assistance of counsel in criminal prosecutions. *See* U.S. CONST. amend. VI. Generally, to show ineffective assistance of counsel, a defendant must establish that: (1) his counsel's performance 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. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064, 2068, 80 L. Ed. 2d 674 (1984); *see Andrews v. State*, 159 S.W.3d 98, 101-02 (Tex. Crim. App. 2005). Failure to make the required showing of either deficient performance or sufficient prejudice defeats an ineffectiveness claim. *See Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009); *see also Andrews*, 159 S.W.3d at 101.

"When a defendant challenges the voluntariness of a plea entered upon the advice of counsel, contending that his counsel was ineffective, 'the voluntariness of the plea depends on (1) whether counsel's advice was within the range of competence demanded of attorneys in criminal cases and if not, (2) whether there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" *Ex parte Moody*, 991 S.W.2d 856, 857-58 (Tex. Crim. App. 1999) (quoting *Ex parte Morrow*, 952 S.W.2d 530, 536 (Tex. Crim. App. 1997)).

Under either test, the defendant has the burden of proving the elements by a preponderance of the evidence. *See id.* at 858 (holding that the defendant's burden is the same as other types of ineffective-assistance-of-counsel claims); *see also Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999) (holding that the defendant bears the burden of proving by a preponderance of the evidence that counsel was ineffective). Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Thompson*, 9 S.W.3d at 813. "We determine the reasonableness of counsel's challenged conduct in context, and view it as of the time of counsel's conduct." *Andrews*, 159 S.W.3d at 101. Furthermore, we presume that counsel's conduct falls within the wide range of reasonable, professional assistance, and we will find a counsel's performance deficient only if the conduct is so outrageous that no competent attorney would have engaged in it. *Andrews*, 159 S.W.3d at 101.

B. Withdrawal of a Guilty Plea

A guilty plea must be entered into voluntarily and freely. *See Houston v. State*, 201 S.W.3d 212, 217 (Tex. App.—Houston [14th Dist.] 2006, no pet.); *see also* TEX. CODE CRIM. PROC. ANN. art. 26.13(b) (West Supp. 2019). We must examine the entire record when considering the voluntariness of a guilty plea. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998) (per curiam). If the trial court properly admonished the defendant before a guilty plea was entered, there is a prima-facie showing the plea was both knowing and voluntary. *Id.*

The burden then shifts to the defendant to show that he pled guilty without understanding the consequences of his plea and, as a result, suffered harm. *Pena v. State*, 132 S.W.3d 663, 666 (Tex. App.—Corpus Christi 2004, no pet.). "An accused who attests that he enters his plea of guilty that he understands the nature of his plea and that it is voluntary has a heavy burden on appeal to show that his plea was involuntary." *Labib v. State*, 239 S.W.3d 322, 332 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *see Coronado v. State*, 25 S.W.3d 806, 809 (Tex. App.—Waco 2000, pet. ref'd). A guilty plea is not voluntary if made as a result of ineffective assistance of counsel, because it does not represent an informed choice. *Ex parte Burns*, 601 S.W.2d 370, 372 (Tex. Crim. App. 1980).

A defendant may withdraw his plea as a matter of right, without assigning a reason, until judgment is pronounced or the case is taken under advisement by the trial court. *See Murray v. State*, 302 S.W.3d 874, 883 (Tex. Crim. App. 2009); *see also Jackson v.*

State, 590 S.W.2d 514, 515 (Tex. Crim. App. 1979). Once a trial court has admonished a defendant, received his plea and the evidence, and passed the case for a pre-sentence investigation, the case has been taken under advisement. *Houston*, 201 S.W.3d at 218 (citing *Jagaroo v. State*, 180 S.W.3d 793, 802 (Tex. App.—Houston [14th Dist.,] 2005, pet. ref'd)). If a defendant seeks to withdraw his guilty plea after the trial court has taken the case under advisement, withdrawal of the plea is within the sound discretion of the trial court. *Jagaroo*, 180 S.W.3d at 802. An abuse of discretion is shown only when the trial court's ruling lies outside the "zone of reasonable disagreement." *Houston*, 201 S.W.3d at 218 (citing *Montgomery v. State*, 810 S.W.2d 372, 390 (Tex. Crim. App. 1990) (op. on reh'g)).

C. Discussion

Prior to entering his guilty plea, Williams completed paperwork that provided numerous admonishments and accurately informed him of the various rights he was waiving, as well as the sentencing range he faced. Thereafter, the trial court conducted a hearing, whereby Williams was further admonished by the trial court. Williams acknowledged that his guilty plea was voluntary. Further, among the admonishments given by the trial court was that Williams was giving up his right to a jury trial—a fact that Williams verbally affirmed. Additionally, Williams affirmed that his trial counsel answered all questions he might have had regarding his plea. Following the trial court's

admonishments of Williams, the trial court "accepted" Williams's plea and passed the case for a pre-sentence investigation.[1]

After the plea hearing, but before being sentenced, Williams, now represented by new counsel, filed a written motion to withdraw his guilty plea. The record reflects that, prior to the time Williams had filed his written motion to withdraw his guilty plea, Williams had entered his guilty plea; the trial court had admonished Williams; the trial court received and "accepted" Williams's plea and evidence; and the trial court passed the case for a pre-sentence investigation. Under the governing case law, at the point that Williams filed his written motion to withdraw his guilty plea, this case had been taken under advisement.[2] *See Houston*, 201 S.W.3d at 218; *see also Jagaroo*, 180 S.W.3d at 802. This is important because, as discussed above, once the case is taken under advisement,

[1] Although the trial court "accepted" Williams's guilty plea, there was no finding of guilt until the punishment hearing on November 18, 2019, presumably because deferred adjudication was a consideration by the trial court.

[2] At the September 23, 2019 hearing on Williams's motion to withdraw his guilty plea, the trial court stated on the record that she had not taken the case under advisement. However, at this point, the trial judge refused to let Williams withdraw his guilty plea. If it was true that the case had not been taken under advisement by the trial court at this juncture, then Williams would have been able to withdraw his guilty plea as a matter of right without assigning a reason. *See Murray v. State*, 302 S.W.3d 874, 883 (Tex. Crim. App. 2009); *see also Jackson v. State*, 590 S.W.2d 514, 515 (Tex. Crim. App. 1979). In other words, the trial court would have had no choice but to allow Williams withdraw his guilty plea. *See Murray*, 302 S.W.3d at 883; *see also Jackson*, 590 S.W.2d at 515.

However, under *Jagaroo* and *Houston*, because the trial judge had "accepted" the plea and passed the case for a pre-sentence investigation, the trial judge had indeed taken the case under advisement. *See Houston v. State*, 201 S.W.3d 212, 218 (Tex. App.—Houston [14th Dist.] 2006, no pet.); *see also Jagaroo v. State*, 180 S.W.3d 793, 802 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). Therefore, at this point, the withdrawal of the plea was within the trial judge's sound discretion. *See Jagaroo*, 180 S.W.3d at 802.

Williams could not, as a matter of right, withdraw his guilty plea without assigning a reason. *See Murray*, 302 S.W.3d at 883; *see also Jackson*, 590 S.W.2d at 515. Instead, withdrawal of the guilty plea was within the sound discretion of the trial court. *See Jagaroo*, 180 S.W.3d at 802.

In any event, at the October 11, 2019 hearing on Williams's motion to withdraw his guilty plea, Williams proffered the testimony of his original trial counsel, Prince J. Myles, who testified that he discussed pursuing a motion to suppress with Williams because of possible Fourth Amendment issues. Myles characterized this conversation as discussing "what his options were . . . ." Myles admitted that it is plausible for someone to think they could have a suppression hearing and, if that does not work, still have the option to plead to the court. However, on cross-examination, Myles denied telling Williams that he could pursue a motion to suppress after entering his guilty plea. Myles also stated that he never had the impression that Williams entered his guilty plea involuntarily.

At the conclusion of Myles's testimony, the trial judge stated the following, in pertinent part:

> We came in the morning of trial and the first time the Court had ever been made aware that there was a motion to suppress is, he filed it the morning of trial. I was never asked to hear it that day. We were here for the trial, and what we were going to do is get the jury and then hear the motion, because he had just filed it. Then the Court was informed that [a] plea agreement had been reached, and I took the plea. This young man never said one thing about a motion to suppress any further. His attorney did not urge it any further that day. I ordered the PSI.

. . .

> But right now it was the Court's belief that day that [Williams] freely, voluntarily, and intelligently entered the plea, and I have no evidence, other than his word, as to what you are telling me.
>
> Mr. Myles did not make any representations, nor do I feel that he had any inaccuracies in his representation of this gentleman.

Nothing in this record supports a finding that Myles incorrectly advised Williams of the consequences of his guilty plea.[3] Furthermore, there is nothing in the record demonstrating that Williams was unaware of the consequences of his plea or that he was coerced into entering the plea.

Therefore, based on the foregoing, we cannot say that Williams carried his burden of overcoming the presumption created by proper admonishment. *See Martinez*, 981 S.W.2d at 197; *see also Labib*, 239 S.W.3d at 332; *Pena*, 132 S.W.3d at 666; *Coronado*, 25

---

[3] Williams did not testify at the October 11, 2019 hearing on his motion to withdraw his guilty plea. Rather, on October 29, 2019, Williams filed with the District Clerk his "Sworn Affidavit," wherein he stated that he told Myles,

> that I wanted to have a suppression hearing. He told me that there were possible 4th amendment issues and that a suppression hearing would be done before my plea. I never intended to or consented to waiving my right to have a suppression hearing on the 4th Amendment issues my lawyer informed me about. I would still like to go forward with my suppression hearing before sentencing. This is my first adult case and I never believed I had waived my right to have the suppression hearing. I would not have pled if I was informed that I was waiving my right.

This document was never offered or admitted into evidence at the hearings on Williams's motion to withdraw his guilty plea. Moreover, as observed by the trial judge, at the time Williams entered his guilty plea, neither Williams nor his counsel urged a motion to suppress. The record shows that Williams expressed his desire to file a motion to suppress in this case only after he voluntarily, knowingly, and intelligently entered his guilty plea and after the trial court took the matter under advisement.

S.W.3d at 809. We therefore conclude that the trial court did not abuse its discretion by denying Williams's motion to withdraw his guilty plea. *See Montgomery*, 810 S.W.2d at 390; *see also Houston*, 201 S.W.3d at 218.

Additionally, based on the record before us, we cannot say that Williams has overcome the presumption of sound trial strategy. *See Strickland*, 466 U.S. at 687-88, 694, 104 S. Ct. at 2064, 2068; *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011) (noting that we review the totality of counsel's representation and the circumstances of the case without the benefit of hindsight); *Andrews*, 159 S.W.3d at 101-02; *Ex parte Moody*, 991 S.W.2d at 857-58; *Ex parte Burns*, 601 S.W.2d at 372. Thus, we overrule both of Williams's issues on appeal.

II. CONCLUSION

We affirm the judgment of the trial court.

JOHN E. NEILL
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
Affirmed
Opinion delivered and filed July 29, 2020
Do not publish
[CR25]