Opinion filed April 13, 2017

In The

Eleventh Court of Appeals

No. 11-15-00072-CR

LENORA LAURENCE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 350th District Court

Taylor County, Texas

Trial Court Cause No. 10106-D

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

This is an appeal from the adjudication of Lenora Laurence's guilt and consequent revocation of her deferred adjudication community supervision. We affirm.

The grand jury indicted Appellant for fraudulent use of identifying information. *See* TEXAS PENAL CODE ANN. § 32.51 (West 2016). Appellant pleaded

guilty to the offense, but the trial court deferred an adjudication of her guilt, assessed a fine of $250, ordered restitution of $235.90, and placed Appellant on community supervision for a term of three years. Subsequently, the State filed a motion to adjudicate Appellant's guilt and alleged that Appellant violated multiple terms of her community supervision. After a hearing, the trial court found the State's allegations to be "true." The trial court revoked Appellant's community supervision, adjudicated her guilt, and assessed her punishment at confinement in a state jail facility for fourteen months and a fine of $197.

Appellant argues on appeal that the trial court erred when it failed to hold a hearing on her motion for new trial. The argument presupposes that the trial court actually failed to hold the hearing. To the contrary, the record shows that, when Appellant requested a hearing, the trial judge told postconviction counsel that the judge was only there for the day and that counsel would "need to talk to the court coordinator about that." Appellant has presented nothing to this court to show that counsel ever made such a request of the court coordinator. That the trial court instructed counsel to talk to the court coordinator regarding a date for hearing Appellant's motion for new trial seems to us to be incongruous with a claim that the trial court failed to set a hearing on the motion. We hold that the trial court did not refuse or otherwise fail to set a hearing on Appellant's motion for new trial. Rather, this record does not show that Appellant's postconviction counsel ever contacted the court coordinator to request a hearing date as instructed by the trial court. Because the trial court did not refuse or fail to set a hearing on Appellant's motion for new trial, Appellant's argument regarding abuse of discretion is inapposite.

Even if we were to hold otherwise, the result would be no different. We review a trial court's denial of a hearing on a motion for new trial under an abuse of discretion standard. *Wallace v. State*, 106 S.W.3d 103, 108 (Tex. Crim. App. 2003); *Martinez v. State*, 74 S.W.3d 19, 22 (Tex. Crim. App. 2002). As a

prerequisite to obtaining a hearing on a motion for new trial, a defendant must support her motion with an affidavit showing the truth of the grounds for attack. *Martinez*, 74 S.W.3d at 21. A defendant is entitled to a hearing if her motion and accompanying affidavit raise matters that are not determinable from the record and could entitle the defendant to relief. *Wallace*, 106 S.W.3d at 108; *Martinez*, 74 S.W.3d at 21; *King v. State*, 29 S.W.3d 556, 569 (Tex. Crim. App. 2000); *Jordan v. State*, 883 S.W.2d 664, 665 (Tex. Crim. App. 1994); *Reyes v. State*, 849 S.W.2d 812, 816 (Tex. Crim. App. 1993). To be sufficient to entitle the defendant to a hearing, the motion for new trial and supporting affidavit need not establish a prima facie case for a new trial; however, the motion and affidavit must reflect that reasonable grounds exist for holding that such relief could be granted. *Wallace*, 106 S.W.3d at 108; *Martinez*, 74 S.W.3d at 21–22; *Jordan*, 883 S.W.2d at 665; *Reyes*, 849 S.W.2d at 816. Affidavits that are conclusory in nature and unsupported by facts are insufficient to put the trial court on notice that reasonable grounds for relief exist. *Jordan*, 883 S.W.2d at 665. The purpose of the hearing is to give the defendant an opportunity to fully develop the matters raised in her motion. *Wallace*, 106 S.W.3d at 108; *Martinez*, 74 S.W.3d at 21.

In her motion for new trial, Appellant asserted that she received ineffective assistance of counsel. In her supporting affidavit, Appellant stated that the only time she saw her attorney was at court and that, whenever she did see him, he would "brush off" any questions she asked him. Appellant explained that trial counsel's answer was always, "[A]s long as I did what I had to do and report like I was suppose[d] to everything would be fine." Appellant said that, after she was questioned by the FBI and U.S. Marshall, trial counsel said, "[S]ince I told the FBI what I knew, even though it wasn't much, that my cooperation would basically trump my MTR, and make it go away, as long as I stayed out of trouble."

Appellant stated that she voiced her concerns to her "P.O.," but she provided no evidence to support that claim. Appellant further asserted in her affidavit that she was notified of court dates by "Public Access Taylor County.Org," Officer Brett Rose, and "TNT Bailbond" and that her attorney failed to explain to her the process of the hearing. Appellant said, "[T]hat's why I froze up and was unprepared when I took the stand, because I had no idea what to expect." Appellant further claimed that her attorney "was doing things [she] had no idea about, such as the chemist testimony being waived and her being allowed to testify by phone." Appellant asserted that, at the conclusion of the hearing on the motion to revoke, her attorney simply said, "[H]ave a nice day," and walked off. Appellant said that she found out about her right to appeal from a "female sheriff officer." Appellant's supporting affidavit consisted only of conclusory statements and, therefore, failed to contain reasonable allegations upon which relief could be granted. *See Jordan*, 883 S.W.2d at 665. Additionally, Appellant failed to explain in her affidavit how the result would have been different but for trial counsel's actions. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Hernandez v. State*, 988 S.W.2d 770, 772 (Tex. Crim. App. 1999); *Hernandez v. State*, 726 S.W.2d 53, 55–57 (Tex. Crim. App. 1986). Also attached to the motion for new trial was an affidavit signed by Appellant's appellate counsel, but in it, counsel merely asserted that Appellant alleged that her trial counsel had rendered ineffective assistance of counsel during the motion to revoke hearings. No other evidence was attached to the motion for new trial. As such, the documentation was deficient. *See Jordan*, 883 S.W.2d at 665. Even if the trial court refused to set a hearing, which it did not, the motion and affidavits were insufficient to put the trial court on notice that reasonable grounds for relief existed, and the trial court would not have abused its discretion in failing to hold a hearing on Appellant's motion for new trial.

For each of the foregoing reasons, we overrule Appellant's sole issue on appeal.

We affirm the judgment of the trial court.

JIM R. WRIGHT
CHIEF JUSTICE

April 13, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.