

**AFFIRMED; Opinion Filed March 30, 2016.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-15-00757-CR**

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**JOSHUA DAVID CANALES, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the 194th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. F-1424957-M**

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**MEMORANDUM OPINION**

Before Justices Fillmore, Stoddart, and Schenck  
Opinion by Justice Stoddart

Joshua David Canales pleaded guilty to the first-degree felony offense of fraudulent use or possession of identifying information. The trial court sentenced him to 20 years' confinement. In a single issue, Canales argues he suffered ineffective assistance of counsel. We affirm the trial court's judgment.

Canales waived his right to a jury and entered an open plea to fraudulent use or possession of fifty items or more of identifying information. He also pleaded true to an enhancement paragraph contained in the indictment. The trial court accepted the pleas, found Canales guilty, found the enhancement paragraph to be true, and sentenced Canales.

The State presented testimony from Winnie Wysinger, one of Canales's victims, during the punishment phase of the proceedings. Wysinger testified someone attempted to open a credit card in her name by using her identifying information, including social security number, date of

birth, and driver's license number. Her husband's and son's information also was stolen. She thought the person obtained their information when the family's mail was stolen several months before. When the State asked what sentence Wysinger would request the judge assess, Wysinger replied "[a]t least 25 years." Canales's lawyer did not object to Wysinger's testimony. On appeal, Canales complains that counsel's failure to object rendered his counsel ineffective.

To successfully assert an ineffective assistance of counsel challenge on direct appeal, an appellant must show that (1) counsel's representation fell below an objective standard of reasonableness and (2) the deficient performance prejudiced him; that is, but for the deficiency, there is a reasonable probability that the result of the proceeding would have been different. *Rylander v. State*, 101 S.W.3d 107, 110 (Tex. Crim. App. 2003). An ineffective assistance of counsel claim must be "firmly founded in the record," and the record must "affirmatively demonstrate" the claim has merit. *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005). We commonly assume a strategic motive if any can be imagined and find counsel's performance deficient only if the conduct was so outrageous that no competent attorney would have engaged in it. *Andrews v. State*, 159 S.W.3d 98, 101 (Tex. Crim. App. 2005).

The court of criminal appeals has made clear that, in most cases, a silent record which provides no explanation for counsel's actions will not overcome the strong presumption of reasonable assistance. *Rylander*, 101 S.W.3d at 110. Further, counsel should ordinarily be accorded the opportunity to explain his actions before being denounced as ineffective. *Menefield v. State*, 363 S.W.3d 591, 593 (Tex. Crim. App. 2012). Because the reasonableness of trial counsel's choices often involve facts that do not appear in the appellate record, an application for writ of habeas corpus is the more appropriate vehicle to raise ineffective assistance of counsel claims. *See Mitchell v. State*, 68 S.W.3d 640, 642 (Tex. Crim. App. 2002).

Canales did not raise his claim of ineffective assistance of counsel in the trial court or otherwise develop a record showing why his lawyer did not object to the testimony. The record includes no evidence to overcome the presumption that Canales’s counsel provided reasonable assistance. *See Rylander*, 101 S.W.3d 110–11. The decision by Canales’s lawyer not to object was not “so outrageous that no competent attorney would have engaged in” that action. *See Garcia v. State*, 57 S.W.3d 436, 440 (Tex. Crim. App. 2001). Further, Canales has not shown a reasonable probability that the result of the proceeding would have been different if his counsel had objected to Wysinger’s testimony. The trial court’s articulated reasons for the twenty-year sentence included “the magnitude of the offense, the number of individuals involved, [Canales’s] criminal history, everything combine [sic].” The trial court’s explanation of its sentencing decision contravenes Canales’s assertion the proceedings would have been different had his counsel objected.

In light of this record, we conclude Canales has not demonstrated that his trial counsel’s performance was deficient or that the trial court’s assessment of punishment would have been different but for his counsel’s actions. We overrule Canales’s sole issue.

We affirm the trial court’s judgment.

/Craig Stoddart/

CRAIG STODDART  
JUSTICE

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TEX. R. APP. P. 47.2(b)  
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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

JOSHUA DAVID CANALES, Appellant

No. 05-15-00757-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the 194th Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. F-1424957-M.

Opinion delivered by Justice Stoddart.

Justices Fillmore and Schenck participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 30th day of March, 2016.