

Affirm and Opinion Filed August 21, 2020



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

No. 05-19-00945-CR

**DESHAUN LANELL CLARK, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1953238-Q**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichel
Opinion by Justice Partida-Kipness

Deshaun Lanell Clark appeals his conviction for assault by impeding breath or circulation of a family member or household member. Clark entered a guilty plea. The trial court accepted his plea, found him guilty, and sentenced him to five years' imprisonment. In one issue, Clark contends he received ineffective assistance of counsel because his attorney did not address the State's argument that he did not want substance abuse treatment. We affirm the trial court's judgment.

BACKGROUND

The State indicted Clark on a charge of assault family violence based on a complaint that he assaulted a woman he was dating. Clark pleaded guilty to the State's charge.

At the hearing on Clark's plea, Clark claimed he was drunk and had consumed drugs the night of the offense. Clark pleaded guilty in the hope that he would receive probation and placement in a substance abuse program. On cross-examination, however, the following exchange occurred.

Q. Okay. And you told probation that you didn't think you necessarily needed treatment that you could just stop; is that correct?

A. Yes, ma'am.

Q. Okay. So do you need drug treatment, Mr. Clark?

A. Yes, ma'am.

Q. So who did you lie to? Did you lie to probation, or you're lying now?

A. I don't think I'm lying.

The State reiterated Clark's exchange with the probation department in later questioning.

Q. Okay. And you want drug treatment, but you've only used the drugs one time?

A. Yes, ma'am.

Q. And you told probation that you don't really need the help that you could probably stop on your own?

A. Yes, ma'am.

Q. But you wanna go to drug treatment so you don't have to go to prison?

A. No, ma'am.

On redirect, Clark’s counsel questioned Clark on his desire for substance abuse treatment. Clark testified that he needed treatment for multiple controlled substances and alcohol.

After receiving Clark’s testimony and other evidence, the trial court sentenced Clark to five years in prison. This appeal followed.

ANALYSIS

In one issue, Clark contends he received ineffective assistance of counsel because his trial attorney failed to mitigate the State’s “false impression” that Clark did not want substance abuse treatment.

We review ineffective assistance of counsel claims under the standard outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). To prove ineffective assistance of counsel, an appellant must demonstrate by a preponderance of evidence that (1) counsel’s performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel’s deficient performance, the result of the proceeding would have been different. *Id.* at 687–88, 694; *Thompson v. State*, 9 S.W.3d 808, 812–13 (Tex. Crim. App. 1999). We consider the totality of the representation, not focusing on strategic decisions. *See Rubio v. State* 596 S.W.3d 410, 426 (Tex. App.—Dallas 2020, no pet.). As such, counsel is not ineffective merely because another attorney would have used a different strategy. *Id.* (citing *Ex Parte Jimenez*, 364 S.W.3d 866, 883 (Tex. Crim. App. 2012)).

To evaluate the effectiveness of counsel, we review the record for affirmative manifestations of ineffectiveness. *Id.* If the record is silent on the issue, the appellate court will not speculate on the reasons underlying the trial counsel's actions. *Robinson v. State*, 16 S.W.3d 808, 813 n. 7 (Tex. Crim. App. 2000).

Clark contends the sole purpose for his guilty plea was to receive substance abuse treatment. Clark testified on cross-examination, however, that he told a probation officer that he did not need treatment. Counsel did not object. Clark contends that counsel provided ineffective assistance by allowing "the false impression that [Clark] did not want drug treatment to stand without objection." According to Clark, counsel allowed the "false statement to remain unchallenged," and counsel could have mitigated the effects of Clark's testimony by addressing a pre-sentence report that contradicted the false impression that Clark did not want treatment. It is not clear from the record, however, whether counsel had access to this report or whether this report was before the trial court at the hearing on Clark's plea. Regardless, the record is silent as to the reason counsel did contest the "false impression."

Because we have nothing before us from which to determine why counsel failed to mitigate Clark's cross-examination testimony, as Clark contends, his allegations of ineffectiveness are not firmly founded in the record, and the record does not affirmatively demonstrate the alleged ineffectiveness. *See Thompson*, 9 S.W.3d at 813. Accordingly, we conclude that Clark has not met his burden of

proving his ineffective assistance claim by a preponderance of the evidence, and we overrule Clark's sole issue.

CONCLUSION

Clark has failed to prove his ineffective assistance claim by a preponderance of the evidence. Accordingly, we affirm the trial court's judgment.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
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

DESHAUN LANELL CLARK,
Appellant

No. 05-19-00945-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F-1953238-Q.
Opinion delivered by Justice Partida-
Kipness. Justices Myers and Reichek
participating.

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

Judgment entered this 21st day of August, 2020.