Opinion issued May 26, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00667-CR

EX PARTE JEANETTE ROCHELLE WILLIAMS, APPELLANT

On Appeal from the County Criminal Court at Law No. 9
Harris County, Texas
Trial Court Case No. 2019350

MEMORANDUM OPINION

Jeanette Rochelle Williams appeals from the trial court's denial of her application for writ of habeas corpus.[1] In her application for writ of habeas corpus,

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[1] A county court may issue a writ of habeas corpus "in any case in which the constitution has not conferred the power on the district courts." TEX. GOV'T CODE ANN. § 26.047(a) (West 2004); *see also Ex parte Schmidt*, 109 S.W.3d 480, 483 (Tex. Crim. App. 2003). Article V, section 16 of the Texas Constitution, Section 25.0003(a) of the Government Code, and Article 11.05 of the Code of Criminal Procedure give the statutory county court at law the power to issue a writ of habeas

Williams argues that she was illegally restrained by virtue of the collateral consequences of an involuntary plea.

We affirm.

Background

Williams was charged with assault of a family member[2] and with interference with an emergency telephone call[3] arising out of the same incident. For both charges, appointed counsel, Jeffrey Downing, represented Williams. On December 6, 2010, the trial court sentenced Williams to six days in jail after she pled guilty to assault of a family member with three days credit for time served. The judgment reflects that the trial court properly admonished Williams and that Williams made her "plea freely and voluntarily, and was aware of the consequences of this plea." On her signed plea of guilty, Williams acknowledged that she was "satisfied that the

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corpus "when a person is restrained by an accusation or conviction of misdemeanor." *Schmidt*, 109 S.W.3d at 483; *see also Ex parte Ali*, 368 S.W.3d 827, 831 (Tex. App.—Austin 2012, pet. ref'd). Habeas corpus relief may be sought by defendants who are subject to collateral legal consequences resulting from a conviction. *See, e.g.*, *Tatum v. State*, 846 S.W.2d 324, 327 (Tex. Crim. App. 1993) ("If a misdemeanor judgment is void, and its existence may have detrimental collateral consequences in some future proceeding, it may be collaterally attacked, whether or not a term of probation was successfully served out."); *Ali*, 368 S.W.3d at 831; *State v. Collazo*, 264 S.W.3d 121, 125–26 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd).

2 *See* TEX. PENAL CODE ANN. § 22.01(a) (West 2014).

3 *See* TEX. PENAL CODE ANN. § 42.062(a) (West Supp. 2014). The State dismissed this charge on December 6, 2010.

attorney representing me today in court has properly represented me and I have fully discussed the case with my attorney."

Williams filed an application for writ of habeas corpus on April 8, 2015, challenging the voluntariness of her guilty plea based on allegedly ineffective assistance of counsel. The trial court denied her application on June 29, 2015. Williams timely filed a notice of appeal on July 21, 2015.

Williams argues that "[w]hen she pled guilty in this case, she did not understand the consequences of her plea because they were not fully explained to her by her attorney." Specifically, she states that she was not told that by pleading guilty she was receiving a criminal conviction that can never be expunged and if the conviction remains on her record, "she will continue to be subject to the imposition of those collateral legal consequences that a conviction entails."

Standard of Review

An applicant for a writ of habeas corpus bears the burden of proving her allegations by a preponderance of the evidence. *Ex parte Richardson*, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002). We view the evidence in the light most favorable to the trial court's ruling, and we afford almost total deference to the court's determination of historical facts that are supported by the record, especially when the fact findings are based on an evaluation of credibility and demeanor. *Ex parte Amezquita*, 223 S.W.3d 363, 367 (Tex. Crim. App. 2006); *Ex parte Peterson*, 117

S.W.3d 804, 819 (Tex. Crim. App. 2003), *overruled in part on other grounds by Ex parte Lewis*, 219 S.W.3d 335 (Tex. Crim. App. 2007). We afford the same amount of deference to the trial court's rulings on "application of law to fact questions" that involve an evaluation of credibility and demeanor. *Peterson*, 117 S.W.3d at 819. In such instances, we apply an abuse of discretion standard. *See Ex parte Garcia*, 353 S.W.3d 785, 787 (Tex. Crim. App. 2011). However, if resolution of those ultimate questions turns on an application of legal standards, we review those determinations de novo. *Peterson*, 117 S.W.3d at 819. We will affirm the trial court's decision if it is correct on any theory of law applicable to the case. *Ex parte Primrose*, 950 S.W.2d 775, 778 (Tex. App.—Fort Worth 1997, pet. ref'd).

Ineffective Assistance of Counsel

In her application for writ of habeas corpus, Williams argues that she involuntarily entered her plea of guilty for assault of a family member because her counsel rendered ineffective assistance by not explaining the consequences of her plea.

To be valid, a plea must be entered voluntarily, knowingly, and intelligently. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(b) (West Supp. 2014); *Fuller v. State*, 253 S.W.3d 220, 229 (Tex. Crim. App. 2008); *Ex parte Karlson*, 282 S.W.3d 118, 128–29 (Tex. App.—Fort Worth 2009, pet. ref'd). A plea is not voluntarily and

knowingly entered if it is made as a result of ineffective assistance of counsel. *Ulloa v. State*, 370 S.W.3d 766, 771 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd).

We apply the two-pronged test of *Strickland v. Washington* to challenges to pleas premised on ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S. Ct. 366, 370 (1985) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)). Under *Strickland*, in order to establish ineffective assistance of counsel, a defendant must show (1) trial counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for trial counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687–88, 694, 104 S. Ct. at 2064, 2068; *see also Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999). 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. In reviewing counsel's performance, we look to the totality of the representation to determine the effectiveness of counsel, indulging a strong presumption that counsel's performance falls within the wide range of reasonable professional assistance or trial strategy. *See Robertson v. State*, 187 S.W.3d 475, 482–83 (Tex. Crim. App. 2006). The "failure to satisfy one prong of the Strickland test negates a court's need to consider the other prong." *Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009).

In the context of pleas, the focus of the prejudice inquiry is "on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Hill*, 474 U.S. at 59, 106 S. Ct. at 370. Therefore, in order to satisfy Strickland's prejudice prong, when a defendant has pleaded guilty or nolo contendere, he "must show that 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." *Hill*, 474 U.S. at 59, 106 S. Ct. at 370 (emphasis added); *Ex parte Moody*, 991 S.W.2d 856, 858 (Tex. Crim. App. 1999).

Williams's affidavit states that her appointed counsel (1) "did not go over the facts of the case or asked me what happened"; (2) "did not investigate my case before he advised me to plead guilty"; and (3) "never informed me about the option of applying for pretrial diversion." She further averred,

> Mr. Downing never explained to me that by taking a time served I would have a conviction for assaulting a family member on my record that can never be sealed or expunged. I would not have pled guilty if I had known that this would be on my record for the rest of my life.
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> At no time was I advised of the implications or consequences of my plea. I would not have taken the plea if I had known the consequences it would have on my professional life or that my mother was telling the truth to the Assistant District Attorney—I never assaulted her.

Her attorney, Downing, averred in his affidavit,

> I do not have any memories of the case. I have reviewed the charge[s] and the booking photo of the defendant, yet I cannot recall any of the particulars of the case.
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> Many of the cases to which I was appointed had victims. I would not plead the case if a victim had not been contacted or if the victim could never be found. If there was a RIP call in the file, I would review the statements of the victim and compare them to the offense report. I would relay these facts to the defendant I was appointed to represent. If there was conflict in the RIP call, the offense report and/or the defendant's telling of the facts, I would reset the case for further investigation.
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> My practice when it comes to plea offers is to convey the offer(s) to the defendant. I feel I am obligated to inform my client of what the State has offered, because, ultimately, the choice to plea or reject the offer and take the case to trial is the client's. I inform the client of these offers and let them decide if they want to plea to the case or reset it the matter. . . . If a client wants to accept a plea, I make certain they know all of the options before them. I have not and will not ever force a client into a plea. On the day in question, I was appointed multiple cases. I pled some and reset some. Some of the cases that were reset had victims.
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> I do not decide to take a case to trial. I do not have the right to a trial, the defendant does. Therefore it is my client that decides to take a case to trial. My job is to review the case, including the offense report, the RIP call, the defendant's story and any other evidence available to me. I will form an opinion on the strength of the case, whether it is strong for the defense or for the State. I will inform my client of this and then allow them to make the decision to take the case to trial or not.

Patrice Rochelle Williams, the complaining witness and Williams's mother, also submitted an affidavit in which she averred that, "Jeffrey Downing never contacted me. I never heard from [Williams's] attorney. If he had contacted me I

would have told him that [Williams] did not assault me or try to stop me from calling the police."

The trial court took judicial notice of its file and noted that Mr. Downing had six cases that morning and that most of them were reset. The trial court further stated that he found it "incredulous that somebody would tell the DA that they want to dismiss the charge and they wouldn't pass that on to the defense attorney." The trial court continued,

> Looks to me that she just wanted to get out of jail, and she's having buyer's remorse. She testified that she pled to a different Judge. I looked at the judgment and I signed the judgment. So she doesn't remember who the Judge is. I don't think she remembers much of anything, and she's just trying to answer the questions the way you think it's best to grant the writ. So at this time it's denied.

Based on Williams's affidavit and her testimony during the habeas hearing, the trial court heard evidence that Williams was not advised of the consequences of her plea and that her mother had no communications with appointed counsel. At the same time, the trial court also had her appointed counsel's affidavit which despite not recalling anything specific about the case, stated that it was his practice to review the case and the evidence, form an opinion on the strength of the case, and inform his client, who then makes the decision on whether to take the case to trial or not. The Court of Criminal Appeals has "repeatedly recognized that the fact finder is the exclusive judge of the credibility of the witnesses." *Amezquita*, 223 S.W.3d at 367

(quoting *Ex parte Mowbray*, 943 S.W.2d 461, 465 (Tex. Crim. App. 1996)). The record shows that the trial court disbelieved Williams's affidavit and testimony and believed that trial counsel followed his customary practice of informing his client of the consequences of their plea. Accordingly, Williams has not demonstrated deficient performance as required in the first prong of Strickland.

Because Williams has not met the first prong of *Strickland*, it is not necessary for this Court to address the second prong. *See Rylander v. State*, 101 S.W.3d 107, 110 (Tex. Crim. App. 2003).

Conclusion

We affirm the trial court's order that denied Williams's habeas corpus relief.

Harvey Brown
Justice

Panel consists of Chief Justice Radack and Justices Massengale and Brown.

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