

Affirmed and Memorandum Opinion filed June 1, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00410-CR

JUAN PLATAS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 1466393**

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

Appellant Juan Platas pleaded “guilty” to manslaughter, a second-degree felony. *See* Tex. Penal Code § 19.04 (West 2015). Appellant also pleaded “true” to the allegation that he used a deadly weapon during the commission of the offense. *See* Tex. Code Crim. Proc. Ann. art. 42.12 § 3(g) (West 2015). In two similar issues, appellant contends that his guilty plea was involuntary as a result of ineffective assistance of counsel, and that the trial court abused its discretion in

denying his motion for new trial. Because appellant has failed to prove he was prejudiced by counsel's deficient performance, if any, we affirm.

I. BACKGROUND

Appellant was indicted for manslaughter. The indictment alleged that appellant unlawfully and recklessly killed Holly Vega with a deadly weapon, namely a motor vehicle, by failing to control speed, failing to maintain a proper lookout, and disregarding a traffic control device. Appellant pleaded "guilty" to manslaughter and "true" to the deadly weapon allegation. Appellant waived the right to have a court reporter record his plea and signed a written waiver of his right to a jury trial. The trial court accepted appellant's plea with a finding that he used a deadly weapon, and sentenced him to six years in the Texas Department of Criminal Justice—Institutional Division.

With new counsel, appellant filed a motion for new trial alleging that his plea was involuntary as a result of ineffective assistance of counsel. The trial court held a hearing. Neither appellant nor his trial counsel testified at the hearing. The trial court denied appellant's motion for new trial. Appellant timely appealed.

II. STANDARD OF REVIEW AND APPLICABLE LAW

We review a trial court's ruling on a motion for new trial for an abuse of discretion, "reversing only if the judge's opinion was clearly erroneous and arbitrary." *Riley v. State*, 378 S.W.3d 453, 457 (Tex. Crim. App. 2012). We view the evidence in the light most favorable to the trial court's ruling, must not substitute our judgment for that of the trial court, and must uphold the ruling if it was within the zone of reasonable disagreement. *Id.*; *Wead v. State*, 129 S.W.3d 126, 129 (Tex. Crim. App. 2004). If there are two permissible views of the evidence, then the factfinder's choice between them cannot be clearly erroneous.

Riley, 378 S.W.3d at 457. Therefore, a trial court abuses its discretion in denying a motion for new trial only when no reasonable view of the record could support its ruling. *Id.*; *Webb v. State*, 232 S.W.3d 109, 112 (Tex. Crim. App. 2007).

Claims of ineffective assistance of counsel are governed by the two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *See Hernandez v. State*, 726 S.W.2d 53, 56–57 (Tex. Crim. App. 1986) (adopting the *Strickland* test for ineffective assistance of counsel claims under the Texas Constitution). Under *Strickland*, the defendant must prove by a preponderance of the evidence that: (1) his counsel’s performance was deficient and (2) the deficient performance resulted in prejudice. *See Strickland*, 466 U.S. at 687. To demonstrate deficient performance, the defendant must establish that counsel’s representation fell below an objective standard of reasonableness. *Id.* at 688. To demonstrate prejudice, the defendant must show a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Id.* at 694. When the claim of ineffectiveness is predicated on an involuntary plea of guilty, prejudice is shown if the defendant establishes that, but for his counsel’s erroneous advice, he would have pleaded not guilty and insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *see Miller v. State*, ___S.W.3d___, No. PD-0891-15, 2017 WL 1534213, at *4 (Tex. Crim. App. Apr. 26, 2017) (comparing and contrasting the prejudice prongs in *Strickland* and *Hill*).

III. ANALYSIS

Because appellant’s two issues complain of matters arising from his motion for new trial, we consider them together. Appellant contends that the trial court abused its discretion in denying his motion for new trial because his guilty plea was involuntary as a result of ineffective assistance of counsel. Appellant contends that his trial counsel was ineffective by: (1) failing to fully explain to appellant the

consequences of his plea; (2) failing to conduct an independent investigation of the facts and circumstances of the case; and (3) misinforming him that he would receive probation or, at most, two years in prison if he pleaded guilty. We assume without deciding that trial counsel's performance was deficient under the first *Strickland* prong.

Appellant has failed to show he was prejudiced by trial counsel's deficient performance under the second *Strickland* prong. Appellant did not testify at the motion-for-new-trial hearing that he would not have pleaded guilty but for trial counsel's deficient performance (nor has appellant alleged same in his brief). *See Hill*, 474 U.S. at 59 (“[D]efendant 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.”). Therefore, the trial court did not abuse its discretion in implicitly finding that appellant's guilty plea was voluntary and denying his motion for new trial. We overrule appellant's two issues.

IV. CONCLUSION

The trial court's judgment is affirmed.

/s/ Marc W. Brown
Justice

Panel consists of Justices Boyce, Jamison, and Brown.
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