

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-15-00275-CR**

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**NANCY ANN LOPEZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 75th District Court**  
**Liberty County, Texas**  
**Trial Cause No. CR31285**

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**MEMORANDUM OPINION**

A jury convicted Nancy Ann Lopez of possession of a controlled substance and assessed a punishment of twenty-five years in prison. In a single appellate issue, Lopez contends that her trial counsel provided ineffective assistance. We affirm the trial court's judgment.

To establish ineffective assistance, Lopez must satisfy the following test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the

defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

*Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see Perez v. State*, 310 S.W.3d 890, 892-93 (Tex. Crim. App. 2010). Allegations of ineffectiveness must be "firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness." *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). "Appellate review of defense counsel's representation is highly deferential and presumes that counsel's actions fell within the wide range of reasonable and professional assistance." *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002). "Under normal circumstances, the record on direct appeal will not be sufficient to show that counsel's representation was so deficient and so lacking in tactical or strategic decisionmaking as to overcome the presumption that counsel's conduct was reasonable and professional." *Id.*

On appeal, Lopez contends that trial counsel rendered ineffective assistance in four ways. First, Lopez complains that trial counsel failed to object to the following comments made by the prosecutor during voir dire:

So, my new title is supreme prosecuting god of Liberty County and that's my title and that's what I use and it's tongue in cheek but it's what I do for a living.

I try cases. I went to law school to be a prosecutor. I was a defense attorney for six years, and I came back from the dark side to the light. This is what I do. This is what I'm going to retire doing which is not far away.

Second, Lopez complains that defense counsel failed to challenge a juror for cause when, during voir dire, the juror agreed that a defendant should testify at trial and failure to testify would be a factor for deliberations.<sup>1</sup> Third, Lopez contends that defense counsel conceded Lopez's guilt by arguing as follows:

This is a difficult case from the perspective of Ms. Lopez, but we are where we are. Y'all saw what you saw. You heard the video just like I did, and I have. It's out there.

She says [the methamphetamine] wasn't hers.

.....

I believe that you will hear from Ms. Lopez, and she will basically state again what has already been stated on the video. Thank you.

Finally, Lopez complains that defense counsel opened the door by eliciting Lopez's testimony that she has two felony convictions, after which the State elicited testimony that Lopez has more than two convictions.

The record does not indicate that Lopez filed a motion for new trial to allege ineffective assistance. The record is silent as to trial counsel's tactical and strategic decision making. *See Estrada v. State*, 313 S.W.3d 274, 311 (Tex. Crim. App. 2010). Additionally, our review of the record does not indicate that, but for the

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<sup>1</sup>Lopez testified at the guilt/innocence phase of trial.

complained of errors, the result of Lopez’s trial would have been different. *See Bone*, 77 S.W.3d at 833. The record does not demonstrate either that defense counsel’s performance was the product of an unreasoned or unreasonable trial strategy, or that counsel’s performance led to an unreliable verdict or punishment. *See id.* at 834. Because Lopez has not defeated the strong presumption that counsel’s decisions during trial fell within the wide range of reasonable professional assistance, we overrule her sole issue and affirm the trial court’s judgment. *See id.* at 833; *see also Thompson*, 9 S.W.3d at 813 (“Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”).

AFFIRMED.

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STEVE McKEITHEN  
Chief Justice

Submitted on February 29, 2016  
Opinion Delivered March 2, 2016  
Do Not Publish

Before McKeithen, C.J., Kreger and Johnson, JJ.