In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-15-00311-CR

LAWRENCE JARQOUIS DOYLE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 14-09-10043 CR

MEMORANDUM OPINION

Lawrence Jarqouis Doyle appeals his conviction for burglary of a habitation. Following the punishment phase of the trial, the jury assessed a fifty-year sentence, which was in the middle of the twenty-five to ninety-nine year enhanced sentencing range that was based on Doyle's criminal record. In a single appellate issue, Doyle contends that he received ineffective assistance of counsel because his attorney, (1) during jury selection, informed the venire that Doyle had been convicted of committing two previous felonies; (2) during trial, asked Doyle whether he had

previously been convicted on two felony counts for burglary when those convictions were for offenses that were more than ten-years old; and (3) during the trial, offered a judgment convicting Kavon LeRobert Henderson of theft, which recited that "[Kavon LeRobert Henderson,] along with, Lawrence Doyle, committed this offense [(burglarizing a habitation on September 7, 2014)]."

To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance fell below an objective standard of reasonableness, and that a reasonable probability exists to show that, but for counsel's error, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). In making an ineffective assistance of counsel claim, the appellant bears the burden of developing the facts required to show that the attorney who represented him rendered ineffective assistance based on the standards the United States Supreme Court identified in *Strickland*. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994) (citing *Strickland*, 466 U.S. at 689). To succeed on an ineffective assistance claim, the appellant must overcome the "strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance." *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999) (citing *Strickland*, 466 U.S. at 690).

In this case, Doyle did not file a motion for new trial, and the record that is before us does not indicate that the attorney who represented Doyle during the trial had an opportunity to explain why the matters Doyle complains about in his appeal were handled in the manner that the record shows they were handled. Ordinarily, in a direct appeal, the record developed in the trial court is not sufficiently developed to show that trial counsel's alleged errors amounted to ineffective assistance of counsel based on the standards the United States Supreme Court identified in *Strickland*. *Menefield v. State*, 363 S.W.3d 591, 592-93 (Tex. Crim. App. 2012). When the record before an appeals court contains no explanation about the strategy that trial counsel employed at trial, succeeding on a claim of ineffective assistance of counsel in a direct appeal from a judgment that is silent about trial counsel's trial strategy is difficult. *Id*. Generally, on a record that is silent regarding trial counsel's strategy, an appeals court presumes that the appellant's complaints concerned matters that related to trial counsel's trial strategy. *Garcia v. State*, 57 S.W.3d 436, 440 (Tex. Crim. App. 2001). Consequently, when the record is silent concerning trial counsel's trial strategy, an appeals court will not generally conclude that the conduct criticized on appeal is conduct that fell below the *Strickland* standards. *Id.*

First, we address Doyle's complaint that his attorney should not have mentioned that he had two prior felony convictions during jury selection. According

to Doyle, no reasonable trial strategy supports mentioning Doyle's prior convictions during jury selection. He contends that the information his attorney gave the potential jurors about his prior criminal record in jury selection cast him in a bad light and created a bias against him.

The record shows that during jury selection, Doyle's attorney explained that he wanted to determine what the potential jurors' attitudes were concerning a defendant's criminal record because Doyle had four prior convictions and he intended to testify during his trial. Nonetheless, Doyle's attorney obtained information from several of the potential jurors indicating that given Doyle's criminal history, they would not require the State to prove Doyle guilty beyond a reasonable doubt, which allowed Doyle's attorney to successfully challenge those jurors for cause. Therefore, it appears that Doyle's attorney related the information that Doyle had prior convictions to gain information useful to Doyle in selecting a jury. Revealing unfavorable information about a defendant in jury selection, in our opinion, can be a legitimate trial strategy designed to improve the defendant's chances at achieving a favorable result in a trial. *See Martin v. State*, 265 S.W.3d 435, 443 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Rodriguez v. State*, 129 S.W.3d 551, 558-59 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd).

Additionally, Doyle's attorney was not given the opportunity to address the approach he decided to use in conducting voir dire. Therefore, we must presume that the decisions that Doyle's trial attorney made in selecting the jury were appropriate. *See Scheanette v. State*, 144 S.W.3d 503, 509-10 (Tex. Crim. App. 2004). Based on the record that is currently before us, we hold that Doyle has failed to demonstrate that his attorney rendered ineffective assistance of counsel during voir dire. *See Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005); *Rylander v. State*, 101 S.W.3d 107, 111 (Tex. Crim. App. 2003).

Second, we address Doyle's complaint that his trial attorney was ineffective because he asked Doyle, during the guilt-innocence phase of the trial, whether Doyle had been convicted of committing several prior burglaries in 2003 and 2004. Four of the convictions for burglary that Doyle was asked to address when he testified were based on two judgments of conviction, which the State later offered into evidence during the punishment phase of Doyle's trial. The 2003 judgment indicates that Doyle was convicted on two counts of felony burglary and given two three-year sentences, which were to be served concurrently. The 2004 judgment shows that Doyle was convicted on two additional counts of felony burglary and given a five-year sentence, with the last two years to be completed while Doyle was serving probation. The records before the jury also showed in July 2008, the court that

convicted Doyle in 2004 revoked Doyle's probation. While the 2003 and 2004 judgments reflect that Doyle was convicted of the burglaries more than ten years before he was tried in the case now before us, Doyle also testified during the trial that he had not been out of prison before his trial for more than ten years.

The question we must decide is whether an attorney representing Doyle might have considered that evidence showing that Doyle had been convicted in 2003 and 2004 of burglaries could be admissible during the trial of Doyle's case, in which Doyle was charged with burglarizing a house in 2014. According to Doyle, the 2003 and 2004 convictions were too remote to be admissible, and his attorney opened the door to the admission of the convictions by questioning him about them in the guilt-innocence phase of his trial.

An attorney's decision to elicit testimony from the accused about his prior convictions is not necessarily ineffective, as it can constitute a sound trial strategy if the prior convictions would otherwise be admissible. *Martin*, 265 S.W.3d at 443; *Rodriguez*, 129 S.W.3d at 558-59. In our opinion, an attorney could have reasonably believed that the evidence showing that Doyle had been convicted of burglaries in 2003 and 2004 would be admissible to impeach Doyle because Doyle did not complete the sentences that he received in these judgments until 2006 and 2009. For the purpose of impeachment, remoteness with respect to a conviction for a prior

crime is measured from the date of the defendant's conviction or his release, "whichever is later." Tex. R. Evid. 609(b). Based on the information in the 2003 and 2004 judgments, together with Doyle's testimony showing that he had not been out of prison for more than ten years, it does not appear that Doyle had been released from the sentences reflected by the 2003 and 2004 judgments for a period of more than ten years before his 2014 burglary case went to trial. *See* Tex. R. Evid. 609(b). Because Doyle's attorney was never given an opportunity to explain why he decided to question Doyle regarding his prior convictions for burglary, and the record does not show that Doyle's prior burglary convictions were inadmissible, the present record does not establish that Doyle's attorney rendered ineffective assistance. *See Goodspeed*, 187 S.W.3d at 392; *Rylander*, 101 S.W.3d at 111.

Last, we address Doyle's complaint that his trial attorney asked the trial court to admit a judgment convicting Kavon LeRobert Henderson of theft.[1] The evidence developed in the trial showed that Kavon LeRobert Henderson, one of Doyle's associates, sold some of the property that had been stolen in a burglary of a home that occurred on September 7, 2014. According to one of the detectives who

[1] The judgment on Henderson's conviction for theft indicates that Henderson was charged with burglary, but that he pled guilty to committing theft, and that the trial court then elected to punish the theft as a misdemeanor under section 12.44(a) of the Penal Code. Tex. Penal Code Ann. § 12.44(a) (West 2011).

investigated the theft and who testified during Doyle's trial, Doyle and Henderson burglarized the house together. In cross-examining the detective, Doyle's attorney asked the trial court to admit the judgment convicting Henderson of theft. The judgment includes the statement that "[Kavon LeRobert Henderson,] along with, Lawrence Doyle, committed this offense [(burglarizing a habitation on September 7, 2014)]." Based on the detective's testimony and the indictment the grand jury returned in Doyle's case, which alleges that Doyle committed the burglary on or about September 7, 2014, the judgment convicting Henderson of theft appears to concern the same property that the State alleged Doyle took from the victim's home during the September 2014 burglary.

In the guilt-innocence phase of his trial, Doyle testified that he did not know various items of property traced to the home that had been burglarized that he sold or attempted to sell had been stolen, and he claimed that Henderson was attempting to frame him for the theft. In final argument, the prosecutor used the judgment convicting Henderson of theft to show that Henderson had accused Doyle of stealing the same property.

Doyle argues that his trial attorney's decision to offer the judgment as an exhibit during the trial of his case was an egregious mistake because no attorney would have considered the judgment to be helpful to Doyle's defense. According to

Doyle, his attorney failed to read the second page of the judgment, which contained Henderson's statement that the prosecutor used in final argument to argue that Doyle committed the burglary. However, Doyle's attorney was never given the opportunity to explain his strategy about why he decided to offer the judgment against Henderson into evidence in Doyle's trial, so the record does not affirmatively demonstrate that Doyle's attorney failed to read the second page of the two-page judgment. Additionally, the statement Henderson made in the judgment claiming that he and Doyle had committed the offense is not inconsistent with Doyle's apparent trial strategy that Henderson had attempted to frame Doyle for the offense.

Because Doyle's attorney was not given the opportunity to respond to the claims that Doyle levels against him in the appeal, the record is insufficient to affirmatively demonstrate that Doyle's claims for ineffective assistance have merit. *See Goodspeed*, 187 S.W.3d at 392; *Rylander*, 101 S.W.3d at 111. On the record that is before us, which is silent regarding the strategy decisions made by the attorney who represented Doyle in his trial, we must presume that the attorney's decisions related to the defendant's trial strategy. *See Scheanette*, 144 S.W.3d at 509-10. We overrule Doyle's sole issue, and we affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on June 28, 2016
Opinion Delivered April 26, 2017
Do Not Publish

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