COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-11-00355-CR

PAUL JOHNSON — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 432ND DISTRICT COURT OF TARRANT COUNTY

MEMORANDUM OPINION[1]

A jury found Appellant Paul Johnson guilty of theft of property under $1,500 with two prior theft convictions—one in 2005 and one in 2006—and assessed nine years' confinement after Macy's loss prevention officer LaTosha Hollins and her manager Justin Bennett stated that they saw Johnson go into a fitting room carrying three shirts and two pairs of pants and emerge holding only one shirt and one pair of pants. Johnson was caught with the extra pair of pants

[1]*See* Tex. R. App. P. 47.4.

underneath his pants and the two shirts wrapped around his waist; these items had a combined value of $183. *See* Tex. Penal Code Ann. § 31.03(a), (e)(4)(D) (West 2011 & Supp. 2012).

In three related issues, Johnson argues that his trial counsel provided ineffective assistance of counsel by exhibiting a consistent pattern of filing improper, poorly constructed, and untimely motions.

To establish ineffective assistance of counsel, an appellant must show by a preponderance of the evidence that his counsel's representation fell below the standard of prevailing professional norms and that there is a reasonable probability that, but for counsel's deficiency, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *Davis v. State*, 278 S.W.3d 346, 352 (Tex. Crim. App. 2009). The second prong of *Strickland* requires a showing that counsel's errors were so serious that they deprived the defendant of a fair trial, i.e., a trial with a reliable result. *Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064. In other words, appellant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694, 104 S. Ct. at 2068. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* The ultimate focus of our inquiry must be on the fundamental fairness of the proceeding in which the result is being challenged. *Id.* at 697, 104 S. Ct. at 2070.

Johnson complains about his difficulty in meeting *Strickland*'s second prong, and the tenor of his argument is that the burden required to meet it is too onerous. However, we are not at liberty to change *Strickland*'s requirements. *See Ex parte Dangelo*, 339 S.W.3d 143, 149 n.7 (Tex. App.—Fort Worth 2010, pet. granted) (op. on reh'g) ("Texas courts are bound by the United States Supreme Court's interpretation of the federal constitution."), *aff'd*, Nos. PD-0769-11, PD-0770-11, 2012 WL 2327813 (Tex. Crim. App. June 20, 2012). Therefore, we overrule Johnson's three issues, and having overruled these issues, we affirm the trial court's judgment.

BOB MCCOY
JUSTICE

PANEL: LIVINGSTON, C.J.; MCCOY and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: November 1, 2012