

NO. 07-05-0052-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
DECEMBER 30, 2005

CHRISTOPHER HILLIARD,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 331ST DISTRICT COURT OF TRAVIS COUNTY;
NO. 2,040,196; HON. FRED MOORE, PRESIDING

Memorandum Opinion

Before QUINN, C.J., and REAVIS and CAMPBELL, JJ.

Christopher Hilliard (appellant) appeals his conviction for possessing a controlled substance, namely cocaine. His two issues concern 1) the trial court's refusal to grant his motion to continue and 2) the effectiveness of counsel. We affirm the judgment.

First Issue – Continuance

Appellant argues that the trial court erred in refusing to grant his motion to continue the trial. We overrule the issue.

The motion was made on the day of trial, though the trial had been set some two months earlier. Furthermore, appellant contends on appeal that the continuance was needed so a defense expert could ascertain whether the several rocks of cocaine found on his person were actually cocaine.¹ Appellant did and does not suggest that they were something else. Nor does he cite us to either argument or evidence of record indicating that they were anything other than cocaine. Indeed, at the hearing, appellant represented to the trial court that laboratory reports obtained from the State revealed the substance to be approximately 1.1 grams of crack cocaine. So too did appellant eventually admit, when pleading guilty, that the substance was more than one but less than four grams of cocaine. Given this, we conclude that the trial court did not abuse its discretion in refusing to grant a continuance on the day of trial. See *Wright v. State*, 28 S.W.3d 526, 532-33 (Tex. Crim. App. 2000) (holding that the trial court did not abuse its discretion when it denied the defendant's motion to continue made on the day of trial and after knowing for some time the issues upon which an expert would be needed).

Issue Two – Effective Assistance

Next, appellant contends that his counsel was ineffective because he did not ask for the aforementioned expert earlier. We overrule the issue.

One claiming ineffective assistance of counsel must establish not only that his counsel was deficient but also that the deficiency was prejudicial. *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002). And, to be prejudicial, the record must show that there exists a reasonable probability that, but for counsel's errors, the result of the proceeding

¹This argument was not asserted below.

would have been different. *Id.* This occurs when the circumstances undermine our confidence in the outcome of the proceeding. *Id.* Moreover, if either or both prongs of the test go unsatisfied, then the claim must be rejected.

As previously stated, appellant cites us to nothing of record suggesting that the substance was anything but cocaine. Moreover, he admitted that it was. And, given his five prior convictions for possessing drugs, the evidence of his dependence upon and, thus, familiarity with, cocaine, and his admission that he and his friends were smoking crack cocaine prior to being arrested, we find nothing undermining our confidence in the outcome of the proceeding. In short, appellant did not establish that there existed a reasonable probability that had an expert been appointed to determine whether the substance was cocaine, the result of the proceeding would have differed.

The judgment is affirmed.

Brian Quinn
Chief Justice

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