

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-02-00481-CR

Jimme Gene Jolly, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF MCCULLOCH COUNTY, 198TH JUDICIAL DISTRICT
NO. 4685, HONORABLE EMIL KARL PROHL, JUDGE PRESIDING**

MEMORANDUM OPINION

A jury found appellant Jimme Gene Jolly guilty of delivering more than one-fourth ounce of marihuana. Tex. Health & Safety Code Ann. ' 481.120(a), (b)(3) (West Supp. 2003). The jury assessed punishment at incarceration in state jail for two years and a \$1000 fine. In his only point of error, appellant contends his trial counsel rendered ineffective assistance. The State agrees, confessing error. We will reverse the conviction and remand for further proceedings.

Appellant raised the ineffective assistance issue in a motion for new trial filed after he obtained new counsel. Appellant, his trial counsel, and the prosecuting attorney testified at the hearing on the motion. Their testimony shows: (1) appellant wanted to request probation should he be convicted, (2) counsel failed to inform appellant of a plea-bargain offer by the prosecutor for a probated sentence, and (3)

counsel recommended going to the jury for punishment, not knowing that it could not recommend probation in this case. *See* Tex. Code Crim. Proc. Ann. art. 42.12, ' 4(d)(2) (West Supp. 2003).

The failure of defense counsel to inform appellant of the plea-bargain offer was an omission that falls below an objective standard of professional reasonableness. *Ex parte Lemke*, 13 S.W.3d 791, 795 (Tex. Crim. App. 2000). The proper remedy is to reinstate the plea offer and allow the defendant to replead. *Id.* at 798.

The judgment of conviction is reversed, and the cause is remanded to the district court with instructions to withdraw appellant's guilty plea, reinstate the plea-bargain offer, and allow appellant to enter a new plea to the indictment.

Mack Kidd, Justice

Before Justices Kidd, Yeakel and Patterson

Reversed and Remanded

Filed: April 17, 2003

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