TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00738-CR

Sylvester Bean, III, Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF BELL COUNTY, 264TH JUDICIAL DISTRICT
NO. 75276, HONORABLE MARTHA J. TRUDO, JUDGE PRESIDING

MEMORANDUM OPINION

Sylvester Bean appeals his judgment of conviction by a jury for possession of a controlled substance, over one gram but less than four. *See* Tex. Health & Safety Code § 481.115. After the jury found "true" the State's allegation that Bean had previously been convicted of two sequential felonies, the district court assessed punishment at sixty years' imprisonment. *See* Tex. Penal Code § 12.42(d). The trial court certified Bean's right of appeal.

Bean's court-appointed attorney has filed a motion to withdraw supported by a brief addressing this appeal and concluding that this appeal is frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 744 (1967), by presenting a professional evaluation of the record in this cause demonstrating why there are no arguable appellate grounds to be advanced. *See id.*; *see also Penson v. Ohio*, 488 U.S. 75, 80 (1988); *High v. State*, 573 S.W.2d 807, 811-13 (Tex. Crim. App. 1978); *Currie v. State*, 516 S.W.2d 684, 684 (Tex. Crim.

App. 1974); *Jackson v. State*, 485 S.W.2d 553, 553 (Tex. Crim. App. 1972); *Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969). Counsel sent a copy of the brief to Bean, advised him of his right to examine the appellate record in this cause and to file a pro se brief, and supplied Bean with a form motion for pro se access to the appellate record. *See Anders*, 386 U.S. at 744; *Kelly v. State*, 436 S.W.3d 313, 319-20 (Tex. Crim. App. 2014). After requesting and receiving an extension of time, Bean filed a pro se brief raising two issues, challenging the sufficiency of the evidence to support his conviction and the effectiveness of his appointed counsel at trial.

In his first issue, Bean contends that the evidence at trial was not sufficient to support his conviction for possession of a controlled substance. The Texas Court of Criminal Appeals has held that the legal sufficiency standard set out in *Jackson v. Virginia*, 443 U.S. 307, 320 (1979), is the only standard that a reviewing court should apply when determining the sufficiency of the evidence. *Brooks v. State*, 323 S.W.3d 893, 896 (Tex. Crim. App. 2010). Under that standard, we view the evidence in the light most favorable to the verdict and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319; *Brooks* 323 S.W.3d at 899. We may not substitute our judgment for that of the jury by reevaluating the weight or credibility of the evidence, but must defer to the jury's resolution of conflicts in the evidence, weighing of the testimony, and drawing of reasonable inferences from basic facts to ultimate facts. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). We apply the same standard to direct and circumstantial evidence. *Id*. Circumstantial evidence is as probative as direct evidence in establishing the guilt of a defendant, and circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Each fact

need not point directly and independently to appellant's guilt, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Id*.

At trial, the State was required to prove beyond a reasonable doubt that Bean intentionally or knowingly possessed a controlled substance, namely cocaine, in an amount of more than one gram but less than four grams. *See* Tex. Health & Safety Code § 481.115(c). Two officers with the Temple Police Department testified that on the day of Bean's arrest, they were investigating the suspected distribution of crack cocaine from Bean's residence and were executing a search warrant. One of the officers testified that he seized crack cocaine from the backyard of Bean's home and that Bean led him to it, after asking if Bean's girlfriend could "take the case." The officer recalled telling Bean that his girlfriend could only be charged if she were responsible, and the officer agreed to ask Bean's girlfriend if the narcotics were hers. The officer testified that he told Bean's girlfriend what they found, and she denied any knowledge of it.

An evidence technician with the Temple Police Department testified that she was responsible for intake of the evidence seized in this case, packaging it, and delivering it to and from the lab. A forensic scientist with the Texas Department of Public Safety testified that the five rocks submitted to him for testing consisted of crack cocaine in an amount of 1.66 grams. Based on this evidence, viewed in the light most favorable to the verdict, a rational trier of fact could have found, beyond a reasonable doubt, the essential elements of the offense of possession of a controlled substance, over one gram but less than four. *See Jackson*, 443 U.S. at 320; *Brooks*, 323 S.W.3d at 896. Bean's first issue lacks merit.

In his second issue, Bean contends that his counsel provided ineffective assistance by not conducting a proper investigation as to the location where the cocaine was found. Bean contends that "the drugs were found on a fence that was not part of the property line" where he lived. However, to prevail on an ineffective-assistance claim, a defendant must show that his counsel's representation was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Claims of ineffective assistance of counsel must be supported by the record, and where the record is silent regarding counsel's strategy or tactics, we will not speculate as to the basis for counsel's decision. *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). Here, we conclude that Bean's claim of ineffective assistance of counsel lacks merit because the record is silent as to his counsel's strategy or tactics and thus, Bean has not met his burden of showing deficient performance and prejudice. *See Strickland*, 466 U.S. at 687.

We have reviewed the record in this cause and find no reversible error. *See Garner v. State*, 300 S.W.3d 763, 766 (Tex. Crim. App. 2009); *Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005). We agree with counsel that this appeal is frivolous. Counsel's motion to withdraw is granted. The judgment of conviction is affirmed.

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Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

Filed: August 17, 2017

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