NUMBERS 13-14-00441-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

RENE FRANCISCO AGUILERA, Appellant,

v.

THE STATE OF TEXAS, Appellee.

On appeal from the 206th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Justices Benavides, Perkes, and Longoria
Memorandum Opinion by Justice Perkes

Appellant Rene Francisco Aguilera appeals the trial court's denial of his application for writ of habeas corpus seeking to set aside a judgment of conviction ordering community supervision.[1] *See* TEX. CODE CRIM. PROC. ANN. art. 11.072 (West, Westlaw

[1] Habeas applications in felony or misdemeanor cases seeking relief from judgments ordering community supervision "must be filed with the clerk of the court in which community supervision was imposed," and the denial of such applications may be appealed to the court of appeals "under Article 44.02

through 2015 R.S.). By seven issues, appellant argues the trial court erred by: (1) finding that his recantation testimony was not credible; (2) finding that his wife's recantation testimony was not credible; (3) failing to consider whether the circumstantial evidence was sufficient to support a conviction of possession of marijuana; (4) concluding that appellant's new evidence of actual innocence did not meet a clear and convincing standard; (5) finding that appellant's representation at trial was sufficient; (6) finding that appellant was not prejudiced by the deficient representation at trial; and (7) concluding that appellant's new evidence of actual innocence did not meet a more likely than not standard in accordance with *Schlup v. Delo*.[2] We affirm.

I. BACKGROUND

Appellant pleaded guilty to possession of marijuana in the amount of fifty pounds or less but more than five pounds, a third-degree felony. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.121 (West, Westlaw through 2015 R.S.). The trial court assessed punishment at ten years' imprisonment, but suspended the sentence and placed appellant on community supervision for a period of ten years. Appellant later filed an application for writ of habeas corpus seeking to set aside his guilty plea on the following grounds: (1) "actual innocence based upon newly discovered evidence;" (2) constitutional error that probably resulted in the conviction of one who was actually innocent; and (3) ineffective assistance of counsel. Despite the fact appellant was discharged from community supervision, he alleged in his application that the collateral

and Rule 31, Texas Rules of Appellate Procedure." TEX. CODE CRIM. PROC. ANN. art. 11.072, §§ 1, 2(a), 8 (West, Westlaw through 2015 R.S.).

[2] *See Schlup v. Delo*, 513 U.S. 298, 314 (1995).

consequences of his guilty plea continue to affect him because he was ordered removed from the country as a result of his plea.[3] In support of his application, appellant attached affidavits and the record of the plea proceedings.

With respect to his actual innocence claim, appellant cites the affidavit of his wife, Lorena Martinez, by which she testifies that the marijuana found at her home on the date appellant was arrested was hers, recanting her earlier statement to law enforcement that it was appellant's marijuana. Regarding his second and third grounds, appellant argues that the ineffective assistance of his attorney rendered his guilty plea involuntary. In support, appellant maintains that his counsel failed to inform him of the consequences of his guilty plea. Appellant cites evidence that the attorney appearing on his behalf at the plea hearing was standing in for his attorneys, and that she could not communicate with appellant because she did not speak Spanish.

During the hearing, the trial court considered appellant's affidavits and heard appellant's and Martinez's testimony. The trial court subsequently entered findings of fact and conclusions of law, which read in pertinent part as follows:

FINDINGS OF FACT

. . . .

2. On June 16, 2001, [appellant] entered a plea of guilty to the charge of Possession of Marijuana, in an amount 50 or less but more than five pounds. [Appellant] was admonished in writing that if he was not a U.S. citizen, a plea of guilty or nolo contendere may result in

[3] An individual is confined or under restraint, as necessary to seek habeas relief, if the individual faces collateral consequences resulting from the conviction in question. *See Le v. State*, 300 S.W.3d 324, 326–27 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (citing *Ex parte Schmidt*, 109 S.W.3d 480, 482–83 (Tex. Crim. App. 2003)); *Ex parte Wolf*, 296 S.W.3d 160, 166–67 (Tex. App.—Houston [14th Dist.] 2009, pet. ref d).

deportation, exclusion from admission to the country, or denial of naturalization under federal law.

. . . .

6. On August 2, 2013, [appellant] filed an application for a writ of habeas corpus under article 11.072 of the Texas Code of Criminal Procedure alleging: (1) that he is actually innocent; and (2) that his plea was entered involuntarily because his trial attorney failed to advise him of the consequences of his plea.

7. On August 12, 2013, [appellant] filed an amended application for a writ of habeas corpus under article 11.072 of the Texas Code of Criminal Procedure alleging the same grounds.

. . . .

9. On October 14, 2013, [attorney Susan] Miller submitted an affidavit responding to [appellant's] allegations, and this Court's order. [Appellant's] counsel at the plea hearing, Ms. Miller, provided credible affidavit testimony that she was standing in for [attorney Bobby] Flores and [Luis] Singleterry as a favor and that she inquired into whether [appellant] was properly admonished. Ms. Miller avers that Mr. Singleterry assured her that he had explained all the Plea paperwork to [appellant] in Spanish.

10. On October 31, 2013, Judge Flores submitted an affidavit responding to [appellant's] allegations, and this Court's order. [Appellant's] retained counsel, Judge Flores, provided credible affidavit testimony that it was his practice to advise his clients of the immigration consequences on all criminal matters, and that it was also Mr. Singleterry's practice.

11. On July 14, 2014, an evidentiary hearing was held at which the [appellant] testified that he was actually innocent of the crime for which he was charged and convicted, in that he was not in possession of the marijuana. [Appellant] further testified that he was not admonished of the consequences of his plea by Ms. Miller and that further he did not discuss his case in any way with Ms. Miller as he only speaks Spanish and she only speaks English. [Appellant] also testifies that the signature on the plea admonishment paper work is his but that Mr. Singleterry did not discuss all the consequences with him. This Court finds that [appellant's] testimony that he is actually innocent is not credible in the face of the

offense report submitted into evidence in the underlying case and submitted again as an exhibit in his writ application. The Court also finds [appellant's] testimony that Mr. Singleterry did not explain the plea paper work is not credible. Said testimony is not credible in light of the testimony adduced at the plea hearing, which directly contradicts this claim.

12. Ms. Lorena Loida Martinez, the wife of [appellant], also testified at the July 14, 2014 evidentiary hearing. Ms. Martinez testified that she was in sole possession of the marijuana and that [appellant] was not aware of the marijuana. Ms. Martinez further testified that she sent him to purchase packing material; but [appellant] was not aware that said packing material would be used to ship marijuana. This Court finds that Ms. Martinez's testimony is not credible. *See Drew v. State*, 743 S.W.2d 207, 228, (Tex. Crim. App 1987).

CONCLUSIONS OF LAW

. . . .

2. [Appellant] contends that the trial court failed to admonish him of the consequences of his plea. Article 26.13 of the Texas Code of Criminal Procedure provides, in relevant part, that prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of the consequences of the plea. TEX. CODE CRIM. PROC. art. 26.13 (2014). Article 26.13 of the Code of Criminal Procedure further provides that the trial court can make the required admonitions orally or in writing. TEX. CODE CRIM. PROC. art. 26.13(d) (2012). The oral admonishments contained within the reporter's record provide clear evidence that Article 26.13 was followed.

3. [Appellant] alleges that he was denied his Sixth Amendment right to effective assistance of counsel because his trial attorney failed to advise him of the consequences of his plea. . . .

4. [Appellant] has the burden to prove a claim of ineffective assistance of counsel by a preponderance of the evidence. *Moore v. State*, 694 S.W.2d 528, 531 (Tex. Crim. App. 1985).

5. An applicant's failure to show either deficient representation or prejudice will defeat a claim of ineffective assistance of counsel. *Perez v. State*. 310 S.W.3d 890, 893 (Tex. Crim. App. 2010).

a. [Appellant] was advised as to the consequences of his plea by Mr. Singleterry. Said admonishment's [sic] served as [appellant's] admonishments by counsel. Ms. Miller's duty was to ensure that [appellant] was made aware of the consequences. This duty was fulfilled when she asked Mr. Singleterry if he had admonished [appellant] and Mr. Singleterry informed her that he had.

b. [Appellant] has failed to establish prejudice; [appellant] cannot show that he was unaware of the consequences of his plea. [Appellant] was made aware of the consequences through the admonishments of Mr. Singleterry, as well as the admonishments of this Court.

6. There are two types of actual innocence claims which can be raised on collateral attack: (1) a bare innocence claim, or a *Herrera* claim, in which the applicant is asserting his innocence based solely upon newly discovered evidence; or (2) a *Schlup* claim in which the applicant is raising a procedural claim of innocence that is tied to a showing of constitutional error at trial. *Ex parte Tuley*, 109 S.W.3d 388, 390 (Tex. Crim. App. 2002).

7. On a bare claim of actual innocence, [appellant] is required to show that newly discovered evidence not available at the time of trial unquestionably establishes that he is not guilty of the offense or offenses. *Ex parte Elizondo*, 947 S.W.2d 202. 209 (Tex. Crim. App. 1996). [Appellant] has failed to show that he is actually innocent by clear and convincing evidence in light of this Court's finding that [appellant] and Ms. Martinez did not provide credible testimony of his innocence.

8. A *Schlup* claim does not by itself provide an avenue for relief, rather it allows on otherwise procedurally barred claim to be raised. *Id*. at 208. As this is [appellant's] first writ, he does not have any otherwise procedurally barred claims.

The trial court denied appellant's application for writ of habeas corpus. This appeal followed.

II. STANDARD OF REVIEW

In an article 11.072 habeas proceeding, we view the facts in the light most favorable to the habeas court's ruling and uphold the ruling absent an abuse of discretion. *Ex parte Peterson*, 117 S.W.3d 804, 819 (Tex. Crim. App. 2003) (per curiam), *overruled in part on other grounds by Ex parte Lewis*, 219 S.W.3d 335 (Tex. Crim. App. 2007). The trial court is the sole finder of fact in a habeas proceeding. *Id.* "We afford almost total deference to a trial court's factual findings when supported by the record, especially when those findings are based upon credibility and demeanor." *Id.* "Furthermore, reviewing courts will defer to a trial judge's factual findings that are supported by the record even when no witnesses testify and all of the evidence is submitted through affidavits, depositions, or interrogatories." *Id.* However, "in all habeas cases, sworn pleadings are an inadequate basis upon which to grant relief, and matters alleged in the application that are not admitted by the State are considered denied." *Id*. "If the resolution of the ultimate question turns on an application of legal standards, we review the determination de novo." *Ex parte Mello*, 355 S.W.3d 827, 832 (Tex. App.—Fort Worth 2011, pet. ref'd).

III. ACTUAL INNOCENCE

By his first four issues and his seventh issue, appellant argues the trial court abused its discretion in denying habeas relief due to newly discovered evidence showing appellant's actual innocence.

A. Pertinent Facts

The record of the plea proceedings included a police report detailing the investigation and arrest. The report was also made a part of the habeas record. In the report, the investigating officer stated that an officer observed appellant parking at a

private mail and shipping facility. The officer observed that appellant "parked away" from the facility, which the officer knew to be a technique used by drug smugglers to avoid detection. Appellant exited the facility a short while later carrying two bags of Styrofoam packing peanuts and an unassembled box. As appellant walked back to his vehicle he constantly looked around, which the officer viewed as suspicious behavior. Officers followed appellant back to a residence and made contact with Martinez who claimed to be the owner of the home. Martinez said her boyfriend, later identified as appellant, was driving the vehicle in question, and she was not sure whether he was packaging any items for delivery. Officers then explained that "drug smugglers sometimes use local mail drop locations to deliver drugs using boxes and styrofoam peanuts." Martinez then became nervous and stated that it was appellant "who had drugs, not her." Martinez consented to the search of her home. Officers found appellant inside the home and asked him to wait outside during the search. Officers discovered a cardboard box containing marijuana in the middle of the bedroom which appellant and Martinez shared. Officers also found marijuana in the closet of the bedroom. Appellant told officers that Martinez "had nothing to do with the marijuana," and he "took full responsibility for the marijuana." Officers discovered numerous packing items and $2,180 in cash.

In his affidavit, appellant recanted his guilty plea and confession and claimed the marijuana belonged to Martinez. Appellant stated that he pleaded guilty just to "get the case over." Appellant maintained that he never received money for selling any drugs. In her affidavit, Martinez stated that the marijuana found at her residence belonged to her.

Appellant testified at the habeas hearing and stated he was innocent. Appellant stated that the house belonged to Martinez, and that he was only visiting. When asked about the purchase of packing material, appellant stated he "had nothing to do with that."

Martinez also testified at the habeas hearing. She stated that the marijuana "was from some friends of mine." She denied that appellant had any knowledge that the marijuana was in her house. Martinez admitted that she asked appellant to buy her some packing material as a favor, but he did not have anything to do with the marijuana that was later discovered in the packing box and the closet. The trial court admitted an order barring prosecution of Martinez for possession of marijuana.

B. Applicable Law

A defendant who pleaded guilty to an offense may assert, as an applicant for habeas corpus relief, an actual-innocence claim based on newly discovered evidence. *Ex parte Mello*, 355 S. W.3d at 830–31 (citing *Ex parte Brown*, 205 S.W.3d 538, 544 (Tex. Crim. App. 2006)). Evidence is considered "newly discovered" if it was not known to the applicant at the time of the trial, plea, or post-trial motions and could not have been known to him even with the exercise of due diligence. *Ex parte Brown*, 205 S.W.3d at 545. To establish a claim of actual innocence, "an applicant must show 'by clear and convincing evidence, that despite the evidence of guilt that supports the conviction, no reasonable juror could have found the applicant guilty in light of the new evidence.'" *Id*. (quoting *Ex parte Tuley*, 109 S.W.3d 388, 392 (Tex. Crim. App. 2002)). "This showing must overcome the presumption that the conviction is valid and it must unquestionably establish applicant's innocence." *Id*. In deciding this issue, the trial court examines the

"newly discovered evidence" and determines whether the "new" evidence, when balanced against the "old" inculpatory evidence, unquestionably establishes the applicant's innocence. *Ex parte Thompson*, 153 S.W.3d 416, 426 (Tex. Crim. App. 2005). The court of criminal appeals has noted that, "[e]stablishing a bare claim of actual innocence is a Herculean task." *Ex parte Brown*, 205 S.W.3d at 545.

If the applicant entered a guilty plea, the guilty plea—along with any evidence entered, or stipulation to the evidence, supporting the plea—must be considered in weighing the old evidence against the new evidence. *Ex parte Tuley,* 109 S.W.3d at 392 ("A convicting court is not free to ignore a guilty plea when reviewing a collateral attack."). Courts should "give great respect to knowing, voluntary, and intelligent pleas of guilty." *Id.* at 391.

C. Analysis

1. Credibility Findings

By his first two issues, appellant argues the trial court erred by finding that appellant's and Martinez's testimony was not credible. Specifically, appellant maintains the trial court's findings on credibility were not supported by the evidence. Appellant argues that "[b]y failing to consider the extraneous evidence of guilt in the record, the [t]rial [c]ourt acted without reference to any guiding rules or principles." We disagree.

Appellant's argument confuses the distinction between article 11.07 and article 11.072 habeas proceedings. In article 11.07 habeas cases, the Court of Criminal Appeals is the ultimate finder of fact, and the trial court's findings are not automatically binding. *Ex parte Garcia*, 353 S.W.3d 785, 787 (Tex. Crim. App. 2011). However, in

an article 11.072 habeas proceeding, such as this one, the trial judge is the sole finder of fact. *Id.* at 788. Accordingly, "[w]e afford almost total deference to a trial court's factual findings when supported by the record, especially when those findings are based upon credibility and demeanor." *Ex parte Peterson*, 117 S.W.3d at 819. Ultimately, the trial court must balance the newly discovered evidence against the inculpatory evidence in determining whether appellant has unquestionably established his innocence. *Ex parte Thompson*, 153 S.W.3d at 426. The matter of a recanting witness's credibility, while not dispositive, is highly relevant to determining whether an applicant has met his burden of proof. *Ex Parte Navarijo*, 433 S.W.3d 558, 571 (Tex. Crim. App. 2014). We conclude that the trial court did not abuse its discretion in exercising its role as fact-finder and assessing the credibility of the recantation testimony. We overrule appellant's first and second issues.

2. Clear and Convincing Evidence

By his third and fourth issues, appellant argues the trial court erred by concluding that appellant did not meet his burden of establishing his innocence by clear and convincing evidence. Appellant further argues that the trial court "failed to consider the impact of the new recantations on the evidence," and by "failing to consider whether the circumstantial evidence was sufficient to support a conviction of possession of marijuana."

Assuming arguendo that the recantation evidence constitutes newly discovered evidence, we conclude it does not constitute clear and convincing evidence that unquestionably establishes appellant's innocence.

Although Martinez, in her affidavit and at trial, testified that the marijuana did not belong to appellant, her recantation lacked any detail regarding the circumstances surrounding the offense. *See Ex Parte Navarijo*, 433 S.W.3d at 568 (concluding applicant failed to meet clear and convincing standard, in part, because of the lack of detail in recantation testimony). On the other hand, the police report for the offense provides extensive detail connecting appellant to the marijuana. Officers observed appellant buying packing material at a private mail establishment and exhibiting suspicious behavior by parking away from the facility while nervously looking around. The report further indicates that appellant returned to the residence in question with the packaging material. After obtaining consent to search the home, officers discovered marijuana located in a packing box in a bedroom shared by appellant and Martinez. Appellant admitted to officers that the marijuana was his and stated that Martinez was not involved. Martinez also told law enforcement that appellant was responsible for the marijuana. Appellant testified that he had nothing to do with picking up packaging materials, while Martinez testified that she asked appellant to purchase the materials "as a favor." Appellant's evidence fails to contradict or explain the observations of law enforcement connecting appellant to the marijuana in the home.

Considering the evidence in the light most favorable to the trial court's ruling and deferring to the trial court's findings of fact and conclusions of law supported by the record, we hold that the evidence supports the trial court's conclusion that appellant failed to prove by clear and convincing evidence his claim of actual innocence. *See Ex parte Brown*, 205 S.W.3d at 545. We overrule appellant's third and fourth issues.

3. *Schlup* Claim

By his seventh issue, appellant argues "the trial court erred by concluding that appellant's new evidence of actual innocence did not meet a more likely than not standard in accordance with *Schlup v. Delo.*"

A *Schlup* claim is a procedural claim in which applicant's claim of innocence does not provide a basis for relief, but is tied to a showing of constitutional error at trial. *Ex parte Tuley*, 109 S.W.3d at 390 (citing *Schlup v. Delo*, 513 U.S. 298, 314 (1995)). "In a *Schlup* actual-innocence claim, evidence demonstrating innocence is a prerequisite the applicant must satisfy to have an otherwise barred constitutional claim considered on the merits." *Ex parte Villegas*, 415 S.W.3d 885, 886 (Tex. Crim. App. 2013) (citing *Schlup*, 513 U.S. at 314–15).

Appellant argues that his "*Schlup* claim is based on his assertion of ineffective assistance of counsel[.]" However, appellant's ineffective-assistance-of-counsel claim is not procedurally barred as it was asserted in appellant's application for habeas relief and considered by the trial court. Therefore, a *Schlup* innocence claim is improper. *See Ex Parte Villegas*, 415 S.W.3d at 886-87; *see also Ex parte Fournier*, 473 S.W.3d 789, 794 (Tex. Crim. App. 2015) (concluding *Schlup* no longer provides basis for review in Texas following enactment of Texas's abuse-of-the writ statutes and further noting "[b]ecause Applicant's claims are made in initial applications, we are not faced with procedurally barred claims").

D. Summary

We conclude that the trial court's denial of habeas relief on the grounds of actual innocence was not an abuse of discretion. We overrule appellant's first through fourth and seventh issues.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

By his fifth and sixth issues, appellant argues the trial court erred by denying habeas relief on appellant's ineffective-assistance-of-counsel claim. Specifically, appellant maintains his counsel's ineffectiveness rendered his guilty plea involuntary.

A. Applicable Law

To be valid, a plea must be entered voluntarily, knowingly, and intelligently. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(b) (West, Westlaw through 2015 R.S.); *Fuller v. State*, 253 S.W.3d 220, 229 (Tex. Crim. App. 2008); *Ex parte Karlson*, 282 S.W.3d 118, 128–29 (Tex. App.—Fort Worth 2009, pet. ref'd). The Sixth Amendment to the United States Constitution guarantees a defendant effective assistance of counsel in a plea hearing. *McMann v. Richardson*, 397 U.S. 759, 771 & n. 14 (1970). If counsel is ineffective at the plea hearing, a defendant may be prevented from entering a knowing and voluntary plea. *See Hill v. Lockhart*, 474 U.S. 52, 56–60 (1985).

We apply the two-pronged test of *Strickland v. Washington* to challenges to pleas premised on ineffective assistance of counsel. *Ex parte Harrington*, 310 S.W.3d 452, 458 (Tex. Crim. App. 2010) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). Specifically, when a person challenges the validity of a plea entered upon the advice of counsel, contending that his counsel was ineffective, the voluntariness of the plea depends on (1) whether counsel's advice was within the range of competence demanded

of attorneys in criminal cases and if not, (2) whether there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty to the charged offense and would have insisted on going to trial. *Id.* Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). In reviewing counsel's performance, we look to the totality of the representation to determine the effectiveness of counsel, indulging a strong presumption that counsel's performance falls within the wide range of reasonable professional assistance or trial strategy. *See Robertson v. State*, 187 S.W.3d 475, 482–83 (Tex. Crim. App. 2006).

B. Pertinent Facts

The record from the plea proceedings reflect that appellant was represented by Bobby Flores and his associate Luis Singleterry, who handled the negotiation of the plea agreement he presented to appellant. The plea agreement and plea admonishments each bear Singleterry's and appellant's signature.

Attorney Susan Miller appeared for appellant at the plea hearing. Miller informed the trial court that she was standing in for Singleterry who was appearing in another court. Miller informed the trial court that a plea agreement had been reached, but that she had not communicated directly with appellant because she does not speak Spanish. Appellant confirmed to the trial court that Miller was standing in for Flores and Singleterry with his permission. The trial court asked appellant if he had discussed the case with his attorneys, and he responded "yes." Appellant also stated that he was satisfied with his attorneys' services and their advice. Appellant confirmed that he signed a jury waiver

document and understood the document, and that his attorney explained the document to him. The trial court admonished appellant that his guilty plea may have negative immigration consequences, and appellant stated that he understood. The trial court also asked appellant if he understood his right to confront witnesses and that he was waiving that right, and appellant responded, "yes." Appellant confirmed that he signed and understood the State's stipulation of evidence and the waiver of his right to confront witnesses. Appellant entered a plea of guilty and stated that he was doing so freely and voluntarily.

C. Analysis

The trial court was presented with evidence that Singleterry, appellant's primary attorney, fully discussed the consequences of a guilty plea with appellant. The record from the plea proceedings further reflects that appellant discussed the plea agreement with Singleterry. As the fact finder, the trial court was entitled to believe this evidence and disbelieve appellant's testimony to the contrary. *See Ex parte Peterson*, 117 S.W.3d at 819. Appellant affirmed to the trial court that his plea was made "freely and voluntarily." Such statements comprise a formidable barrier to a subsequent challenge regarding the voluntariness of the pleas. *See Labib v. State*, 239 S.W.3d 322, 332 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (explaining an "accused who attests when he enters his plea . . . that he understands the nature of his plea and that it is voluntary has a heavy burden . . . to show that his plea was involuntary"). We also note that appellant was properly admonished in accordance with article 26.13 of the Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(a) (West, Westlaw through 2015

R.S.). This creates a prima facie that appellant's plea was entered voluntarily. *Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998); *Jackson v. State*, 139 S.W.3d 7, 14 (Tex. App.—Fort Worth 2004, pet. ref'd). Appellant affirmed that he was satisfied with his attorneys' representation and that Miller was "standing in" for purposes of the plea hearing with his consent. Finally, we note that appellant presented no evidence regarding what specifically his trial counsel failed to explain or why any such failure would cause him to not plead guilty and instead seek a trial on the merits. To the extent appellant complains in his application for habeas relief that he was not advised of the immigration consequences of a guilty plea, we note that he was admonished by the trial court at his plea hearing that his "plea may result in deportation, [] exclusion from the United States, or [denial of] naturalization under federal law."[4]

For the foregoing reasons, and viewing the evidence in the light most favorable to the trial court's ruling and according the trial court great deference, we hold that the trial court did not abuse its discretion by concluding that appellant's representation was not legally deficient. *See Ex parte Peterson*, 117 S.W.3d at 819.

We overrule appellant's fifth and sixth issues.

[4] We also observe the requirement that counsel inform a defendant of the immigration consequences of a plea announced in *Padilla v. Kentucky*, 559 U.S. 356, 367 (2010), does not have retroactive application, and would therefore not apply to appellant whose plea was entered in 2001. *See Ex parte De Los Reyes*, 392 S.W.3d 675, 679 (Tex. Crim. App. 2013).

V. CONCLUSION

We affirm the judgment of the trial court.

GREGORY T. PERKES
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
30th day of June, 2016.