Affirmed and Opinion filed June 15, 2000.

In The

Fourteenth Court of Appeals

———————————

NO. 14-98-00684-CR

———————————

THOMAS LEANDRE LANDRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 673,048

O P I N I O N

Thomas Leandre Landry was sentenced to six years' probation, with the trial court deferring adjudication. The State subsequently filed a motion to adjudicate; after a hearing the trial court granted the motion and sentenced him to six years' imprisonment. In three points of error appellant contends this court has jurisdiction to consider his appeal[1], that the trial

---

[1] As the State points out, where the original plea was without the benefit of an agreed recommendation of punishment, it is not necessary to specify the basis of the appeal in the notice of appeal. We therefore agree with appellant that his general notice of appeal was sufficient to confer jurisdiction on this court.

court erred in not conducting a separate punishment hearing, and that his counsel rendered ineffective assistance by not objecting to the failure to hold a punishment hearing.

When a trial court finds that an accused has committed a violation as alleged by the State and adjudicates a previously deferred finding of guilt, the accused is entitled to a punishment hearing. *Issa v. State*, 826 S.W.2d 159, 161 (Tex. Crim. App. 1992). The State, however, argues this error was waived when trial counsel failed to object to the trial court's action, and did not point out this error in a motion for new trial.

We believe disposition of this case is governed by *Faerman v. State*, 966 S.W.2d 843 (Tex. App.–Houston [14th Dist.] 1998, no pet.). In *Faerman*, as here, both sides presented evidence at the motion to adjudicate hearing. In *Faerman*, as here, no objection was offered as the trial court proceeded immediately to sentencing. In *Faerman*, as here, no motion for new trial was offered which cited this error. The *Faerman* court held that the error was not preserved. We so hold here.

The appellant in *Faerman* also argued his trial counsel rendered ineffective assistance by failing to object to the immediate adjudication. The standard of review used in reviewing all ineffective assistance of counsel claims is stated in *Strickland v. Washington*, 466 U.S. 668 (1984). *Hernandez v. State*, 988 S.W.2d 770, 772-773 (Tex. Crim. App. 1999). This two-pronged test requires a showing, first, that the performance of appellant's trial counsel fell below an objective standard of reasonableness when assessed in light of prevailing professional norms, and second, that appellant's defense was prejudiced by this ineffectiveness. *See McFarland v. State*, 845 S.W.2d 824, 842 (Tex. Crim. App. 1992).

Appellant assigns both his counsel's failure to object to the immediate adjudication and his counsel's failure to preserve this error for our review as ineffective assistance. He fails to show harm, however. Unless appellant contends on appeal that other witnesses were available who, if called, would have presented other evidence in mitigation of his sentence, appellant cannot satisfy the prejudice prong of the *Strickland* test. *See Ross v. State*, 802

S.W.2d 308, 313 (Tex. App.–Dallas 1990, no pet.). We overrule this point of error and affirm the judgment of the trial court.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed June 15 2000.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears. Bill Cannon and D. Camille Hutson-Dunn sitting by assignment.