Affirmed and Memorandum Opinion filed July 14, 2020.

In The

Fourteenth Court of Appeals

NO. 14-18-01081-CR

WILLIE ROBERT SCOTT, Appellant

V.

STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 1509581

M E M O R A N D U M O P I N I O N

Appellant Willie Robert Scott pleaded guilty to aggravated sexual assault of an adult. He did so without an agreed recommendation on sentencing. After a pre-sentence investigation hearing, the trial court signed a judgment finding appellant guilty and sentencing him to 60 years' confinement in the Texas Department of Criminal Justice, Institutional Division. On appeal, he seeks a new trial on the grounds that: (1) the trial court abused its discretion by denying his motion to withdraw his guilty plea; and (2) his trial counsel was ineffective by failing to advise

him of the consequences of pleading guilty. Because the record does not support appellant's contentions, we overrule his issues and affirm the judgment.

Background

Appellant pleaded guilty to aggravated sexual assault without an agreed recommendation in the 209th District Court of Harris County. By signing a written plea statement and initialing several assertions included therein, appellant indicated his agreement with certain relevant facts, including the following:

> I am mentally competent and I understand the nature of the charge against me[.] I fully understand the consequences of my plea herein, and after having fully consulted with my attorney, request that the trial court accept said plea[.] . . . Joined by my counsel, I state that I understand the foregoing admonishments and I am aware of the consequences of my plea. I am mentally competent to stand trial and my plea is freely and voluntarily made. . . . I am totally satisfied with the representation provided by my counsel and I received effective and competent representation. . . . Joined by my counsel, I waive and give up my right to a jury trial in this case and my right to require the appearance, confrontation and cross examination of the witnesses. . . . I have read the indictment and I committed each and every element alleged.

Although appellant waived his rights to have the trial court orally admonish him and to have a court reporter record his plea, the trial court nonetheless conducted plea proceedings on the record. During these proceedings, the trial court admonished appellant that he was charged with the first-degree felony offense of aggravated sexual assault. When asked how he pleaded to that charge, appellant responded, "Guilty." When asked, "Are you pleading guilty because you are guilty and for no other reason," appellant replied, "Yes, sir." After being admonished that by pleading guilty to the charged offense appellant forfeited his rights to a jury trial and to confront the witnesses against him, appellant agreed that he wanted to give up those "guaranteed rights" and enter his guilty plea.

Appellant's trial counsel admonished appellant on the record that appellant faced the full range of punishment:

> Before we take the plea, I would like to have -- I'd like to admonish Mr. Scott on the record that before we were doing this PSI [pre-sentence investigation] that we were set to take a plea for 33 years, and Mr. Scott at that time informed me that he wanted to plead to the Court. I just want to make Mr. Scott aware that the Court has the full punishment range in regards to this particular offense.

Appellant agreed that he was "set for a plea today to take 33 years," but that he told his counsel that he changed his mind and wanted to plead without an agreed recommendation. Additionally, the trial court explained to appellant that the full range of punishment for the offense "is between 5 years and 99 years or life and up to a 10,000-dollar fine." The trial court emphasized that, at sentencing, it would "consider the full range of punishment according to what was contained in the presentence investigation report, in addition to whatever testimony either side wishes to proffer."

Appellant agreed that his counsel had spoken to him "in detail, made [him] aware of what can possibly happen in this particular case, and . . . went over all of the evidence with [him.]" Appellant agreed that he had "plenty of time" to speak with his trial counsel before pleading guilty and that his counsel "answered all of [his] questions." At the end of the hearing, the trial court accepted his plea, ordered a pre-sentence investigation ("PSI"), and continued proceedings until the investigation was complete "to decide the proper punishment."

Before the PSI was completed, appellant was charged with an unrelated capital murder in the 182nd District Court of Harris County. The instant case was transferred to that court. Appellant's trial counsel moved to withdraw, and the trial court signed an order granting the motion. The trial court appointed new counsel.

Appellant filed a motion to withdraw his plea of guilty to the aggravated sexual assault charge. Appellant asserted that his guilty plea was involuntary and unknowing because "he incorrectly believed that he was pleading not guilty, waiving his right to a jury, and agreeing to a trial before the court." He further asserted that "he did not understand the consequences of his guilty plea." He attached an affidavit to his motion in which he asserted that he wanted to go to trial because he was innocent.

The 182nd District Court heard appellant's motion to withdraw his plea. The reporter's record from appellant's plea hearing in the 209th District Court was admitted into evidence. During the hearing, appellant's former trial counsel testified that he negotiated an offer from the prosecutor to recommend a sentence of 33 years, so appellant initially was prepared and agreed to plead guilty with that recommendation. But according to appellant's former counsel, "at the last moment," appellant decided that he did not want to take the 33-year offer. Former counsel stated that he specifically asked whether appellant wanted a jury trial or a court trial; appellant did not want either of these options. Instead, appellant wanted the trial court to sentence him. Counsel testified that appellant never maintained his innocence, nor did appellant request a bench trial. Former counsel denied that he pressured appellant to plead guilty.

Additionally, the PSI report author testified at the hearing. She stated that during her interview with appellant, he accepted responsibility for the sexual assault and admitted his guilt. She explained that appellant did not maintain his innocence, but "had a hard time accepting the amount of time that was offered, and he also stated that he did not want to be labeled a rapist." Appellant did not indicate to the PSI report author that he was not guilty or that he wanted a court or jury trial. The PSI report was admitted into evidence.

Appellant testified that he did not tell the PSI report author that he was guilty of this offense. He stated that he was "totally . . . confused" and "only 20 years old" when he discussed with his former counsel pleading guilty to the aggravated sexual assault. Appellant explained that his former counsel told him he needed to get a new lawyer or he had to "take the 33 years." According to appellant, he thought he was going to have a trial to the court where he could tell the trial judge that he was not guilty of the offense. However, appellant acknowledged that he did not ask for a new attorney, did not assert that he was unhappy with his counsel, and did not say he was pressured into pleading guilty. After considering the evidence, the trial court denied appellant's motion to withdraw his plea, and then conducted the PSI hearing.

Following the PSI hearing, during which both the complainant and a second person whom appellant sexually assaulted testified,[1] the trial court found appellant guilty based on appellant's plea and assessed his punishment at 60 years' confinement in the Texas Department of Criminal Justice, Institutional Division. Appellant timely filed this appeal.

Denial of Motion to Withdraw Guilty Plea and Request to Put Off Sentencing

In his first issue, appellant contends that the trial court abused its discretion by denying his motion entitled "Motion to Withdraw Plea of Guilty and Request to Put Off Sentencing until after Capital Murder Case is Resolved." We first address appellant's argument that the trial court should have allowed him to withdraw his guilty plea. Appellant contends that the trial court abused its discretion in denying his motion to withdraw his plea because he "was confused, pressured by counsel,

[1] No evidence concerning the capital murder offense with which appellant was charged was presented during the hearing.

and did not commit the offense with which he was charged." Appellant claims his guilty plea was involuntary.

A defendant may withdraw a guilty plea as a matter of right until judgment has been pronounced or the case has been taken under advisement and, after that point, may do so at the trial court's discretion. *See Jackson v. State*, 590 S.W.2d 514, 515 (Tex. Crim. App. 1979). When, as here, a trial court has admonished a defendant, received the plea and evidence, and passed the case for pre-sentence investigation, the case has been taken under advisement. *DeVary v. State*, 615 S.W.2d 739, 740 (Tex. Crim. App. 1981); *Jagaroo v. State*, 180 S.W.3d 793, 802 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). We review for an abuse of discretion a trial court's denial of a motion to withdraw a plea after a case is taken under advisement. *See Jackson*, 590 S.W.2d at 515; *Jagaroo*, 180 S.W.3d at 802. To show a trial court abused its discretion in denying a motion to withdraw a guilty plea, the appellant must show the trial court's ruling lies outside the zone of reasonable disagreement. *Jagaroo*, 180 S.W.3d at 802.

A guilty plea must be entered into voluntarily and freely. Tex. Code Crim. Proc. art. 26.13(b). In determining whether a plea is voluntary, a reviewing court considers the record as a whole. *Williams v. State*, 522 S.W.2d 483, 485 (Tex. Crim. App. 1975); *Minassian v. State*, 490 S.W.3d 629, 641 (Tex. App.—Houston [1st Dist.] 2016, no pet.). A record indicating that the trial court properly admonished the defendant before the plea presents a prima facie showing that the guilty plea was made voluntarily and knowingly. *See Martinez v. State*, 981 S.W.2d 195, 197 (Tex. Crim. App. 1998). The burden then shifts to the defendant to show he pleaded guilty without understanding the consequences of his plea and, consequently, suffered harm. *Lawal v. State*, 368 S.W.3d 876, 883 (Tex. App.—Houston [14th Dist.] 2012, no pet.); *Houston v. State*, 201 S.W.3d 212, 217 (Tex. App.—Houston [14th Dist.]

2006, no pet.). We have described this burden as a "heavy" one. *See, e.g.*, *Chapa v. State*, 407 S.W.3d 428, 432 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *Doubout v. State*, 388 S.W.3d 863, 865 (Tex. App.—Houston [14th Dist.] 2012, no pet.).

Our record presents prima facie evidence that appellant pleaded guilty knowingly and voluntarily. Appellant signed written admonishments described above, in which he stated that his plea was free and voluntary. *See Chapa*, 407 S.W.3d at 432; *Lawal*, 368 S.W.3d at 883. During the recorded plea proceedings, appellant pleaded guilty to the offense and agreed that he did so because he was guilty and for no other reason. In response to the court's oral admonishments, he agreed that he was pleading guilty "freely and voluntarily." He also agreed that his counsel had discussed the case with him and answered his questions.

Thus, the burden shifted to appellant to show that he pleaded guilty without understanding the consequences of his plea and, consequently, suffered harm. *Lawal*, 368 S.W.3d at 883. In signing the written admonishments described above, appellant clearly acknowledged that he was aware of the consequences of pleading guilty, and the record contains ample evidence that the trial court admonished appellant regarding those consequences. Further, at the hearing on his motion to withdraw the guilty plea, appellant's former counsel explained that he and appellant "discussed the case tremendously." Former counsel stated that appellant understood the State had an "extremely good case" against appellant and that counsel spoke "at length" with appellant about pleading guilty to this offense. As noted above, former counsel explained that he negotiated a 33-year plea deal with the prosecutor and that appellant was set to plead guilty and take the deal. Counsel testified that appellant told him he did not want a jury trial or a bench trial; instead, appellant wanted to plead guilty and have the judge sentence him when he decided, at the last moment,

to reject the 33-year plea bargain. Former counsel testified that he did not pressure appellant to plead guilty.

Appellant's affidavit was admitted into evidence during the hearing. In it, appellant stated that he incorrectly believed that he was "pleading to a Trial before the Court to determine [his] guilt or innocence." He averred that he misunderstood his former counsel's advice and the trial court's admonishments. He stated he did not understand that the consequence of his guilty plea was to admit his guilt and submit to future sentencing. Additionally, appellant testified that he and his former counsel ended their "deal" because appellant was not able to pay. He stated that former counsel told him he needed to get a new lawyer or "take the 33 years." Appellant explained that he was young and confused and thought he would be able to "tell [his] side of the story" to the judge.

Appellant does not dispute that the trial court admonished him both orally and in writing. He claims to have misunderstood what he was told but there exists nothing in the record supporting his assertion other than his own affidavit statements, which the trial court was entitled to discredit due to its self-serving character. *Cf. Kober v. State*, 988 S.W.2d 230, 233-34 (Tex. Crim. App. 1999) (explaining that, in motion for new trial hearing, trial court is best positioned to determine credibility of witnesses); *Ex parte Fassi*, 388 S.W.3d 881, 888 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (trial court "free to disbelieve [defendant]'s self-serving testimony that he would not have pled guilty if he had been aware of the immigration consequences of his plea").

We conclude that appellant did not meet his heavy burden to show that he pleaded guilty without understanding the consequences of his plea and, consequently, suffered harm. Accordingly, the trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea. *See Lawal*, 368 S.W.3d

at 883-84; *Jagaroo*, 180 S.W.3d at 803; *Houston*, 201 S.W.3d at 217-18 ("A guilty plea is not involuntary simply because the sentence exceeded what an accused expected, even if that expectation was raised by his attorney."); *cf. Doubout*, 388 S.W.3d at 865-66.

In a single sentence, appellant also challenges the trial court's denial of his request to delay sentencing for the aggravated sexual assault offense until after resolution of appellant's capital murder charge. Appellant provides no explanation and cites no authorities in support of his contention, but our independent review of the record shows no abuse of discretion by the trial court in conducting the PSI hearing and sentencing appellant when it did.

We overrule appellant's first issue.

Ineffective-Assistance-of-Counsel Claim

In issue two, appellant claims that his trial counsel at the time of his guilty plea "rendered ineffective assistance of counsel by failing to clearly advise Appellant of the consequences of pleading guilty."

A defendant has the right to the effective assistance of counsel in guilty-plea proceedings. *Ex parte Harrington*, 310 S.W.3d 452, 458 (Tex. Crim. App. 2010). A guilty plea is not knowing or voluntary if it is based on ineffective assistance of counsel. *Ex parte Moussazadeh*, 361 S.W.3d 684, 689 (Tex. Crim. App. 2012). The two-prong *Strickland* test applies to guilty pleas alleged to result from ineffective assistance of counsel. *See Harrington*, 310 S.W.3d at 458. Under *Strickland*, the defendant must prove that his trial counsel's representation was deficient, and that the deficient performance was so serious that it deprived him of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's representation is deficient if it falls below an objective standard of reasonableness. *Id.* at 688. But a

deficient performance will deprive the defendant of a fair trial only if it prejudices the defense. *Id.* at 691-92. To demonstrate prejudice, the defendant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694. Failure to make the required showing of either deficient performance or prejudice defeats the claim of ineffectiveness. *Id.* at 697. Any allegation of ineffectiveness must be "firmly founded" in the record. *See Menefield v. State*, 363 S.W.3d 591, 592 (Tex. Crim. App. 2012).

Appellant's ineffective-assistance contention is not "firmly founded" in the record. Appellant claims that his trial counsel was ineffective because counsel did not advise him of the consequences of his guilty plea. The record belies this contention. First, to the extent appellant asserts that he was unaware he was pleading guilty to this offense, the record reveals that he signed a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession," which detailed the allegations against him and stated, "I understand the above allegations and I confess that they are true. . . ." This document makes clear that there is "no agreement on punishment" and provides that appellant was satisfied with his counsel's performance and that counsel "fully discussed this case" with him. Appellant initialed an admonishment stating that he was charged with the first-degree felony offense of aggravated sexual assault and detailed the full range of punishment. He initialed another admonishment providing, "I fully understand the consequences of my plea herein, and after having fully consulted with my attorney, request that the trial court accept said plea." One of the other admonishments appellant initialed stated, "I understand the consequences, as set out above, should the trial court accept or refuse to accept the plea bargain or plea without an agreed recommendation."

Appellant acknowledged, in writing, the consequences of his guilty plea as communicated to him by his lawyer. In addition, the trial court orally admonished appellant about the full range of punishment associated with this offense and confirmed that appellant discussed the case with his counsel, who answered all his questions. The record from the plea proceedings reflects that both the trial judge and appellant's counsel fully advised him of the consequences of his guilty plea and that he understood those consequences. *See Menefield*, 363 S.W.3d at 592 ("An ineffective-assistance claim must be 'firmly founded in the record' and 'the record must demonstrate' the meritorious nature of the claim.") (quoting *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005)).

Appellant does not specify any plea consequences of which he purportedly lacked knowledge. Despite the State offering him a plea bargain with a 33-year recommended sentence, appellant forewent that recommendation and entered an open plea to the trial court. The 60-year sentence the trial court imposed falls within the range of punishment for the offense with which appellant was charged. *See* Tex. Penal Code § 12.32(a) (punishment for first-degree felony). Further, during the PSI hearing, evidence was adduced that appellant sexually assaulted both the complainant and another individual during the commission of a robbery. Thus, there was evidence of at least two other offenses presented to the trial court, in addition to the aggravated sexual assault to which appellant pleaded guilty, before the trial court sentenced appellant.

Additionally, appellant claims that his counsel was ineffective because, after appellant was charged with capital murder, counsel "abruptly withdrew from the case without even consulting with Appellant as to how the new charge of capital murder would adversely affect his pending sexual assault case, leaving Appellant in a state of confusion and misunderstanding as to what was going on with his pending

cases." Yet, appellant pleaded guilty to the sexual assault on April 21, 2017, and he was not charged with capital murder until several months later, in June 2017. Accepting appellant's assertions as true, counsel's actions taken months after appellant pleaded guilty could not have affected appellant's awareness of the consequences of having done so.

In sum, the record does not support appellant's position that his counsel did not advise him of the consequences of appellant's guilty plea. Appellant therefore failed to meet the first *Strickland* prong of showing that counsel performed deficiently. Because appellant failed to satisfy his burden of demonstrating his counsel was ineffective, we overrule appellant's second issue.

Conclusion

Having overruled both of appellant's issues, we affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Frost and Justices Jewell and Spain.
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