Valdez v. State

2005 | Cited 0 times | Court of Appeals of Texas | December 8, 2005

MEMORANDUM OPINION

A jury convicted appellant, Josias R. Valdez, of the felony offense of injury to a child younger than fifteen years of age pursuant to Texas Penal Code Section 22.04. TEX. PEN. CODE ANN. § 22.04 (Vernon 2003). The jury assessed punishment at ten years' imprisonment and a $10,000 fine. On appeal, Valdez contends his attorney's failure to object on several occasions during trial constitutes ineffective assistance of counsel. We hold that Valdez has not demonstrated that counsel was ineffective and therefore affirm.

Facts

In October 2003, Valdez's neighbors called the police after finding Valdez's son, also named Josias Valdez ("Josias"), screaming for help in the parking lot of their apartment complex. Josias claimed to have been left alone in the apartment by his father. His hands were bound tightly with a piece of cloth, and he had numerous bruises on his body, including multiple dark spots on his back and a large bruise on his left thigh. Josias told police his father hit him with a board, and showed police where his father kept the board. Valdez returned to the apartment complex during the investigation and was arrested.

Standard of Review

To show ineffective assistance of counsel, a defendant must demonstrate both (1) that his counsel's performance fell below an objective standard of reasonableness; and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 694, 104 S.Ct. 2052, 2064, 2068 (1984); Andrews v. State, 159 S.W.3d 98, 101-02 (Tex. Crim. App. 2005). The Texas Court of Criminal Appeals observed that the "purpose of this two-pronged test is to judge whether counsel's conduct so compromised the proper functioning of the adversarial process that the trial cannot be said to have produced a reliable result." Mallett v. State, 65 S.W.3d 59, 63 (Tex. Crim. App. 2001). An appellant has the burden to establish both of these prongs by a preponderance of the evidence, and a failure to make either showing will defeat his ineffectiveness claim. Mitchell v. State, 68 S.W.3d 640, 642 (Tex. Crim. App. 2002); Andrews, 159 S.W.3d at 101.

We must look to the "totality of the representation and the particular circumstances of each case" in evaluating the effectiveness of counsel. Thompson, 9 S.W.3d 808, 813 (Tex. Crim App. 1999); Rivera v.

State, 123 S.W.3d 21, 28 (Tex. App.--Houston [1st Dist.] 2003, pet. ref'd). In so doing, we indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and we will find counsel's performance deficient only if the conduct is so outrageous that no competent attorney would have engaged in it. Andrews, 159 S.W.3d at 101. "[T]he defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Strickland, 466 U.S. at 689, 104 S.Ct. at 2064 (quoting Michel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158, 164 (1955)). In assessing whether a defendant has overcome this presumption, we are limited to the facts of the case. Thompson, 9 S.W.3d at 813. We cannot speculate beyond the record provided, so any allegation of ineffectiveness must be firmly founded in the record, and the record affirmatively must demonstrate the alleged ineffectiveness. Id.

Ineffective Assistance of Counsel

Valdez contends that trial counsel's failure to object on several occasions constitutes ineffective assistance of counsel. Specifically, Valdez contends his counsel was ineffective in failing to object to instances of witness speculation, leading questions on direct examination, a witness answering in the narrative, irrelevant testimony, a non-responsive answer on cross-examination, inadmissible hearsay, and an expert testifying outside his area of expertise.

First, our review of the record reveals much of the complained-of testimony was admissible, and cannot therefore form the basis of an ineffectiveness claim. "When an ineffective assistance claim alleges that counsel was deficient in failing to object to the admission of evidence, the defendant must show, as part of his claim, that the evidence was inadmissible." Ortiz v. State, 93 S.W.3d 79, 93 (Tex. Crim. App. 2002). Here, Valdez contends that a physician's testimony about the typical types of injuries that result from child abuse was irrelevant. However, this information was likely to assist the jury in determining whether Josias's injuries were the result of abuse, as permitted by Texas Rule of Evidence 702. See TEX. R. EVID.702 ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."). Valdez also contends that testimony of Josias's CPS caseworker concerning the types of patients housed at Intracare Psychiatric Hospital was outside the scope of his expertise. The caseworker testified:

Q: What is Intracare Psychiatric Hospital?

A: Intracare is a psychiatric hospital here in Harris county, Houston, Texas, and it's a psychiatric inpatient hospital for patients who go and they're stabilized.

Q: What do you mean, "stabilized"?

A: Sometimes they're having - well, they'll be having psychiatric outbursts or perhaps delusions or

emotional [sic] as a result of trauma.

The caseworker then testified that CPS sends many children to that facility. As a CPS caseworker who sends abused children to that facility often, he would be in a position to know, generally, why people are sent there and how they are treated. Failure to object to this admissible evidence does not constitute deficient performance.

Second, none of the failures to object to potentially inadmissible testimony are sufficient, in themselves, to constitute deficient performance. Isolated failures to object to improper evidence or certain procedural mistakes do not constitute ineffective assistance of counsel. Ingham v. State, 679 S.W.2d 503, 509 (Tex. Crim. App. 1984); see Thompson, 9 S.W.3d at 814 (holding presumption of strategy not rebutted where record was "silent as to why appellant's trial counsel failed to object to the State's persistent attempts to elicit inadmissible hearsay"); see also Garcia v. State, 106 S.W.3d 854, 860 (Tex. App.--Houston [1st Dist.] 2003, pet. ref'd), cert. denied, 541 U.S. 1013, 124 S.Ct. 2076 (2004) (holding presumption of strategy not rebutted where record was silent as to counsel's failure to object to misstatements by the State).

Valdez contends that several witnesses testified to inadmissible hearsay, but directs us to only one such instance in his brief--that of the CPS caseworker's testimony regarding other available facilities. The judge stopped the questioning of the CPS caseworker and admonished defense counsel that he could have been objecting because the testimony concerning what type of foster care facilities exist in Texas was not relevant given that Josias was not staying at any of them. The fact that the judge would have sustained a relevance objection about a discussion regarding other available foster care facilities does not demonstrate that counsel's performance fell below an objective standard of reasonableness. See Ex parte White, 160 S.W.3d 46, 54 (Tex. Crim. App. 2004) (holding counsel's failure to object to irrelevant and highly prejudicial evidence did not constitute ineffective assistance because "we cannot say, if an objection had been sustained and the testimony excluded, the result of the trial probably would have been different"). In Thompson, where counsel failed to object to multiple instances of hearsay, the court concluded it is possible that counsel "at that moment may have reasonably decided that the testimony was not inadmissible and an objection was not appropriate." 9 S.W.3d at 814. Here, Valdez similarly fails to demonstrate that his counsel's decision was not a reasonable determination that the testimony was admissible or that it would have been more harmful to object.

Viewing the totality of the record, Valdez fails to demonstrate that counsel's actions were not part of a reasonable trial strategy. This case is similar to Gamble v. State, 916 S.W.2d 92 (Tex. App.--Houston [1st Dist.] 1996, no pet.), in which defendant complained of multiple failures to object to such things as inadmissible hearsay, admission of an extraneous offense, opinion testimony, improper jury arguments, comments on his post-arrest silence, and tainted in-court identification. There, this Court held that because the record was silent as to why counsel failed to object, the presumption of trial strategy was not overcome. Id. at 93. Here, Valdez did not move for a new trial; thus, no evidence

in the record indicates the reasons behind trial counsel's decisions not to object to the statements of the witnesses. We will not speculate as to why counsel did not object, and in the absence of a record to the contrary, we presume "that trial counsel made all significant decisions in the exercise of reasonable professional judgment." Gamble, 916 S.W.3d at 93. We hold that Valdez fails to overcome the presumption that his counsel's failures to object were part of a reasonable trial strategy.

Conclusion

Valdez fails to satisfy the first prong of Strickland. We therefore affirm the judgment of the trial court.[1] [2]

Panel consists of Chief Justice Radack and Justices Alcala and Bland.

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

1. We note that Valdez filed a motion requesting time to file supplemental briefing, which this court granted. Valdez failed to file such supplemental briefing, so we resolve the case based on the original briefing.

2. We note that Valdez filed a motion requesting time to file supplemental briefing, which this court granted. Valdez failed to file such supplemental briefing, so we resolve the case based on the original briefing.