

284 S.W.3d 866
Court of Criminal Appeals of Texas.

Ex Parte Spencer Ojeifo IMOUDU, Applicant.

No. AP–75,964.

|
June 3, 2009.

Synopsis

Background: Defendant, who had pled guilty to murder, filed a petition for a writ of habeas corpus. The 187th District Court, Bexar County, Raymond Chris Angelini, J., denied the petition, and defendant appealed.

Holdings: The Court of Criminal Appeals, Meyers, J., held that:

counsel's failure to investigate the possibility that defendant was insane at the time he committed his offense constituted deficient performance, and

counsel's failure to investigate the possibility that defendant was insane at the time he committed the charged offense prejudiced defendant.

Habeas relief granted.

Keller, P.J., filed a dissenting opinion.

Attorneys and Law Firms

*867 Randy Schaffer, Houston, for Appellant.

Enrico B. Valdez, Asst. Criminal District Atty., San Antonio, for State.

OPINION

MEYERS, J., delivered the opinion of the Court in which PRICE, WOMACK, JOHNSON, KEASLER, HERVEY, HOLCOMB, and COCHRAN, JJ., joined.

Applicant was charged with felony murder and manslaughter. He pled guilty to murder in exchange for a 17–year sentence

with an affirmative finding of a deadly weapon. Applicant filed an application for writ of habeas corpus claiming that his plea was involuntary because his trial counsel failed to investigate and advise him of the availability of an insanity defense. The trial court entered findings of fact and conclusions of law recommending that relief be denied. We filed and set this application for writ of habeas corpus to consider whether counsel was ineffective for failing to investigate whether Applicant was insane at the time of the offense. We hold that Applicant was prejudiced by counsel's error. Relief is granted.

FACTS

In August of 2005, Applicant stole a car from outside a pawn shop. The owner of the car was inside the pawn shop at the time, and he and another witness got into the witness's truck and pursued Applicant. During the chase, Applicant drove into oncoming traffic and hit another car, killing the driver. Applicant was arrested and charged with felony murder and manslaughter. *868 Applicant was initially represented by court-appointed counsel.

When Applicant's father visited the jail, he found that Applicant was not himself. A social worker who worked with the mentally ill patients in the detention center informed Mr. Imoudu that she had noticed Applicant's deteriorating mental health. The social worker attempted to contact Applicant's court-appointed attorney, but he had not returned any of her calls. She suggested to Mr. Imoudu that he hire another attorney to represent his son. Acting on her suggestion, in March of 2006, Applicant's family retained counsel to represent him, and his court-appointed attorney was dismissed. When the newly hired attorney first met with him, Applicant “stared into space, struck an odd pose with his fingers on his chin, mumbled, and was incoherent.” Co-counsel met with Applicant and also felt that there was “something wrong” with him. As a result of their separate meetings with Applicant, the attorneys filed a motion for a competency examination. The court-appointed psychiatrist evaluated Applicant and concluded that he was competent. Applicant testified at the competency hearing and was coherent, alert, and aware of the proceedings.¹ After Applicant's testimony at the hearing, his attorney conceded that Applicant was competent to stand trial. A month later, Applicant accepted the State's plea agreement and pled guilty to murder in exchange for a 17–year sentence.

HABEAS

Applicant filed this application for writ of habeas corpus claiming that his guilty plea was involuntary as a result of counsel's failure to investigate whether he was insane at the time of the offense and failure to inform him of the availability of an insanity defense. A psychiatrist who was hired by habeas counsel to review Applicant's medical records concluded that Applicant had a chronic mental illness, probably schizophrenia, and was likely insane at the time of the offense. Habeas counsel argues that if Applicant's trial attorneys had obtained the medical records and hired a psychiatrist to review them, there is a reasonable probability that he or she also would have determined that Applicant was insane at the time of the offense. And, if Applicant and his family had known of the possibility of an insanity defense, then Applicant would have rejected the plea offer and gone to trial.

While there is nothing indicating that Applicant ever received mental-health treatment when he was not in jail, the medical records from the jail are extensive. The records indicate that Applicant had received mental-health treatment within the six months prior to this offense, when he was arrested in January of 2005 for misdemeanor theft. While in jail for the misdemeanor, Applicant was prescribed the anti-psychotic medication Stelazine, which is often used to treat schizophrenia. That case was dismissed, and he was released after over a month in jail. Six months later, Applicant was arrested for the current offense. The medical records dated after this arrest show numerous referrals to the mental-health services of the jail and several requests for psychiatric evaluations, which eventually resulted in Applicant being moved to the area of the jail used to house the mentally ill inmates. While there, he was determined to be "significant for mental illness" and prescribed the medications Haldol and Depakote *869 for a possible diagnosis of schizophrenia.

Applicant's attorneys did not request these records from the jail. Their only consideration of Applicant's mental health was to review the report of the psychiatrist who evaluated his competency to stand trial.

After reviewing the application for writ of habeas corpus, the trial court entered 36 pages of findings of fact and conclusions of law and recommended that the application be denied.² The trial court was "not convinced that the failure to further investigate and pursue the insanity defense, the failure to hire

another psychiatrist to evaluate Applicant, and the failure to advise Applicant to reject the plea bargain, go to trial, and plead insanity as a defense, was representation that fell below an objective standard of reasonableness."³

CASELAW

In order to prevail on a claim of ineffective assistance of counsel, Applicant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). First, he must show that counsel's performance was deficient. However, there is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689, 104 S.Ct. 2052. Second, Applicant must show that he was prejudiced by counsel's deficient performance. To demonstrate prejudice, Applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. 2052. In *Hill v. Lockhart*, the Supreme Court held that the *Strickland* test applies to challenges to guilty pleas based on ineffective assistance of counsel. 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). In the context of a guilty plea, a defendant satisfies the prejudice requirement by showing that he would not have pleaded guilty and would have insisted on going to trial. *Id.* at 59, 106 S.Ct. 366. The Court noted that "where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the 'prejudice' inquiry will depend largely on whether the affirmative defense likely would have succeeded at trial." *Id.*

ANALYSIS

In his affidavit, one of Applicant's attorneys stated that he received a letter from Applicant: "Much of it was gibberish. However, he wrote that he was 'attending programs for illness' and taking various prescription medications." This led the attorneys to request a competency examination, but they never investigated whether he was insane at the time of the offense, did not review his jail medical records or speak to any of the jail personnel who had *870 contact with him after his arrest, did not request an insanity evaluation or hire a psychiatrist to evaluate Applicant's mental condition at the time of the offense, and did not advise him of the insanity defense.

Given Applicant's odd behavior when the attorneys met him, the concerns expressed to the attorneys by his family, and the fact that the attorneys were retained on the advice of the social worker who had observed Applicant's decline in mental-health, Applicant's attorneys should have been alerted that his mental health at the time of the offense may have been in question and thus, they should have looked into past medical records from the jail. Applicant's other attorney filed an affidavit stating, "I explained the [plea] offer to [Applicant] and his family and recommended that he accept it due to my concerns about how [Applicant] would act and what he might say during the punishment hearing in any attempt at mitigation." If the attorney was so concerned about Applicant's bizarre behavior that he recommended that Applicant accept the State's plea offer, he should have considered that the bizarre behavior could indicate that Applicant may have been insane at the time of the offense—at least enough to have looked into it. *See Strickland*, 466 U.S. at 691, 104 S.Ct. 2052 (counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary).

Thus, we feel that counsel had a duty to investigate the possibility that Applicant was insane at the time of the offense given the likelihood of mental illness noted in reports from jail medical personnel. Instead, counsel failed to even obtain Applicant's medical records. If they had, it would have been clear from even a cursory reading of the documents that Applicant was suffering from some mental problems while he was incarcerated. This leads us to conclude that counsel was ineffective for failing to investigate whether Applicant was insane at the time of the offense.

We next turn to whether Applicant was prejudiced by counsel's error. Applicant claims that, but for counsel's errors, he would not have pled guilty and instead would have gone to trial and pled not guilty by reason of insanity. In his affidavit, Applicant states: "The lawyers did not discuss an insanity defense with me. Had they hired a psychiatrist to evaluate me, the psychiatrist concluded that I was insane at the time of the offense, and the lawyers explained the insanity defense to me, I would have rejected the plea bargain, pled not guilty by reason of insanity, and gone to trial." Applicant's father also filed an affidavit claiming that "[t]he lawyers did not advise me of the insanity defense or request funds to hire a psychiatrist to determine whether [Applicant] was insane at the time of the offense. I would have provided funds upon request. Had a psychiatrist concluded that [Applicant] was insane at the time of the offense, and the lawyers advised me

of the insanity defense, I would have encouraged [Applicant] to plead not guilty by reason of insanity and go to trial." Thus, Applicant has shown a reasonable probability that counsel's ineffective assistance affected the outcome of the plea process.

Under *Hill*, part of this analysis necessarily includes a consideration of whether the insanity defense would have been validly raised and likely to succeed at trial. 474 U.S. at 59, 106 S.Ct. 366. In this case, the psychiatrist hired by habeas counsel reviewed Applicant's medical records and determined that Applicant was actively schizophrenic at the time of the offense and that the nature of the schizophrenic process includes the inability at any given moment to discern right from wrong. He stated in his affidavit:

*871 Given the likelihood that [Applicant] was psychotic and paranoid when he stole the car, his psychosis and paranoia probably were exacerbated during the chase, causing him to believe that someone was trying to kill him. Therefore, it is my opinion, based on reasonable medical probability, that [Applicant] was suffering from untreated schizophrenia, was unable to discern right from wrong, and was insane at the time of the offense on August 1, 2005.

Had Applicant gone to trial, such testimony by a psychiatrist may have raised a reasonable doubt in the mind of the trier of fact.⁴ This satisfies *Strickland's* prejudice requirement. 466 U.S. at 695, 104 S.Ct. 2052.

CONCLUSION

We conclude that counsel erred in failing to investigate Applicant's sanity at the time of the offense. Additionally, Applicant has shown that there is a reasonable probability that if his attorneys had informed him of the possibility of pursuing an insanity defense, he would not have pled guilty and would have gone to trial. Therefore, Applicant was prejudiced by counsel's error and he is entitled to relief.

KELLER, P.J., filed a dissenting opinion.

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The trial court finds that counsel was not ineffective; I would defer to that finding. We normally defer to such findings, and the finding is supported by the record.¹ The Court criticizes defense counsel for failing, after witnessing bizarre behavior

by applicant, to investigate whether applicant was insane at the time of the offense and to review applicant's jail medical records. But the fact that applicant “was suffering from some mental problems”² is not necessarily any indication that he was legally insane at the time the offense was committed. Legal insanity involves a failure to appreciate the illegality of one's conduct,³ and very few people with mental illness are actually legally insane.

The record shows, and the trial court's findings reflect, that applicant's bizarre behavior did lead defense counsel to request a competency examination. Dr. John Tennison examined applicant and found him to be competent to stand trial. Dr. Tennison further found that applicant understood the meaning of a plea of not guilty by reason of insanity.

At the competency hearing, applicant testified in some detail about the events surrounding the incident that was the basis for his prosecution. This is his recollection of the event:

***872** [APPLICANT] Okay, Juan was out, you know, with the car running and I was in the parking lot plaza over here southeast. The car was started and I went inside the car, got inside the passenger's seat and then I went to the driver's seat and then I sped off the parking lot and then I went to, like, the freeway, the highway exit, and I was in traffic. And then when I exited the highway, I kept going straight. I was on the freeway and I kept on going straight. And then they said that there was a T-bone collision. By that time, Juan already followed me. He got into another car. He was hitchhiking. Well, not hitchhiking. He got into another car and he was chasing me. They were on the phone trying to get the police. By the time the accident happened, the police, they showed up.

Applicant acknowledged on cross-examination that he stole Juan's car. He also testified about matters such as his memory of the wreck, where he was working before the wreck, and his treatment at the hospital for the broken leg he sustained during the wreck. He acknowledged that he had “a good recollection of all that.” Applicant's testimony coincided with the actual events of that day. There is absolutely nothing in his testimony to suggest in any way that he was divorced from reality at the time of the accident, that he thought demons were chasing him, or that he was unaware that he acted illegally when he stole Juan's car. If applicant's attorney had actually pursued an insanity defense, I think that applicant's own testimony showing that he knew exactly what was going on during the offense would provide decent grounds for claiming

his attorney was ineffective for adopting a strategy that was bound to lose.

Further, in connection with his guilty plea—at which time applicant was competent—he signed a waiver and admonishments form that included the statement that he was “legally sane at the time that this offense was committed.”

Given these circumstances, defense counsel had no reason to further investigate whether applicant was insane at the time of the offense. There was no evidence that counsel was aware of the existence of, or possible existence of, jail records reflecting possible schizophrenia or otherwise suggesting that applicant might have been insane at the time of the offense. And the evidence that counsel did have indicated that applicant was in fact sane at the time of the offense, and that the best strategy was to obtain a favorable plea agreement, which counsel was able to do.

And even if the jail records are considered, I would defer to the trial court's findings with respect to those records. The Court relies upon the testimony of applicant's expert witness, Dr. Brener. The trial court found that Dr. Brener claimed that jail records “suggested” schizophrenia during a separate incarceration for criminal mischief seven months before this offense. It was Dr. Brener's opinion that applicant had a chronic, psychotic mental illness—“probably” schizophrenia—on the date of the offense. Dr. Brener believed that applicant was probably schizophrenic, that he was actively schizophrenic on the date of the offense, that when a schizophrenic does not take his medication his capacity to discern right from wrong becomes compromised, and that *if* applicant was schizophrenic *and* not taking his medication on August 1, 2005, his mental condition deteriorated, contributing to his aberrant judgment. According to Dr. Brener, given the “likelihood” that applicant was psychotic and paranoid when he stole the car, his psychosis and paranoia “probably” were exacerbated ***873** during the case, causing him to believe that someone was trying to kill him.

There are several problems with relying on Dr. Brener's opinion. First, it is dependent upon a number of assumptions: “if” applicant was schizophrenic and “if” he was not taking his medication, there was a “likelihood” that he was psychotic and this psychosis was “probably” exacerbated.

Second, the trial court found Dr. Brener's opinion “questionable” because it appeared that he did not personally

examine applicant and did not review any medical records other than those from the jail.

Third, the trial court found that the crux of applicant's claims (and thus Dr. Brener's conclusion) appeared to be based entirely on jail records from the earlier incarceration for criminal mischief, and the trial court made additional findings that those jail records did not point to a diagnosis of schizophrenia. Applicant's intake records for the earlier criminal mischief offense showed no indication that applicant was a mental health risk. Further, those records indicated that he had never received MH–MR services and that he answered correctly the questions posed to him. Intake personnel did not see any signs of mental problems. Progress notes during that incarceration showed some increasing bizarre mannerisms, but nowhere is there a physician's diagnosis of schizophrenia. The court found that applicant's attorney for that offense was credible when she said that applicant never appeared to be in an altered state and he never gave her the impression that he was unable to distinguish right from wrong.

Fourth, the trial court made findings about applicant's incarceration after the current offense that are inconsistent with the view that he might have schizophrenia. The hospital notes taken after the current offense show that applicant was awake and alert. Two days after the offense, when he was discharged from the hospital, he answered “no” to the question of whether he had or ever had had “nervous problems, mental problems or treatment.” It wasn't until five days after the offense that notes indicate “possible mental problems.” As the months passed, applicant showed signs of increasing mental problems.⁴

Finally, counsel had other information that applicant was not insane when he committed the current offense that would militate against any possible indication of insanity in the jail records. Counsel had the benefit of personal interaction with applicant and of applicant's testimony at the competency hearing. The testimony at the competency hearing seems especially probative because applicant gave a lucid account of events but, contrary to Dr. Brener's speculation, did not say he thought someone was trying to kill him.

I do not think counsel's performance was substandard, but even if he were found to have performed deficiently in failing to investigate the issue of insanity, applicant fails on the prejudice prong of an ineffective assistance claim. To prevail, applicant needs to demonstrate a reasonable probability that an insanity defense *874 would have succeeded. For reasons discussed above, he has not done so. His expert's testimony was speculative and given without the benefit of a personal examination. Applicant's testimony at the competency hearing convincingly supports a conclusion that he knew his conduct was illegal and that he was not laboring under any sort of mental delusion when he stole the car. Applicant will now have an opportunity to try out his insanity defense. Given the improbability of success, and given the plea bargain his “ineffective” attorney was able to obtain for him, applicant may end up being sorry he ever complained.

I respectfully dissent.

All Citations

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Footnotes

- 1 At the time of the hearing, Applicant had already been prescribed anti-psychotic medications.
- 2 While the findings of fact and conclusions of law are indeed quite thorough, some of them indicate a misreading of the record. Specifically, the trial court concluded, in both the findings of fact and the conclusions of law, that schizophrenia was ruled out as a diagnosis due to the notation “R/O Schizophrenia” in Applicant's medical records from the jail. However, “R/O” is the medical abbreviation for “rule out.” Thus, “R/O schizophrenia” actually means that the observer suspects that the patient may have schizophrenia and the patient should be evaluated in order to rule out the diagnosis.
- 3 We note that the cases cited by the trial court in support of the conclusion that counsel were not ineffective for failing to obtain an examination of Applicant or to further investigate an insanity defense were cases in which the attorneys at least investigated the defendant's medical history and made an educated decision to not pursue an insanity defense.
- 4 We are not called upon here to decide if Applicant actually was insane at the time of the offense. Our concern is simply that, due to counsel's failure to investigate Applicant's medical history, Applicant was not able to make an educated decision regarding whether to proceed to trial and raise an insanity defense. We acknowledge that the 17–year sentence

Applicant received was favorable in light of the fact that he was charged with murder, for which he could have been sentenced to 5 to 99 years or life, and with manslaughter, for which he could have received 2 to 20 years. However, a lenient sentence does not indicate a lack of prejudice.

- 1 *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex.Crim.App.2008)(This Court usually defers to trial judge's findings on habeas corpus when those findings are supported by the record).
- 2 Court's op. at 870.
- 3 *See Ruffin v. State*, 270 S.W.3d 586, 592 (Tex.Crim.App.2008)(A person is insane only if he does not know his conduct is "wrong," and by "wrong" Texas law means "illegal").
- 4 The trial court found that the jail record notation "R/O" meant "ruled out," so that the notation "R/O Schizophrenia" meant that schizophrenia had been ruled out. The trial court explained that its interpretation of the "R/O" notation was verified by Theresa Scepanski, Vice President over Detention Health Care Services at University Health Systems. The trial court further found that Dr. Brener's opinion diagnosing schizophrenia was "questionable" because Dr. Brener misconstrued the notation "R/O." Dr. Brener's opinion assumed that R/O meant "rule out," leaving schizophrenia as a possibility until it is ruled out. I express no opinion on whether this particular finding of the trial court was correct.

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