

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Tracy B. Miles v. The State of Texas

No. 01-24-00670-CR · No. No. 01-24-00670-CR · Decided May 28, 2026

SUMMARY

The Texas First Court of Appeals held that Tracy B. Miles did not establish ineffective assistance of counsel based on trial counsel’s failure to use a peremptory strike against a prospective juror after challenges for cause were denied. The court reformed the judgment to delete the finding that Miles waived his right to appeal and affirmed the judgment as reformed.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Veronica Rivas-Molloy; Johnson; Dokupil
JURISDICTION	Court of Appeals for the First District of Texas
DECIDED	May 28, 2026
DOCKET	No. 01-24-00670-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Miles appealed his murder conviction and forty-year sentence, challenging trial counsel's failure to use a peremptory strike against a prospective juror and seeking reformation of the judgment's finding that he waived his right to appeal.
STANDARD OF REVIEW	Ineffective-assistance claims are reviewed under the two-pronged Strickland standard, requiring proof by a preponderance of the evidence that counsel performed deficiently and that the deficiency prejudiced the defense. When the record is silent regarding counsel's reasons, deficient performance will not be found unless the challenged conduct was so outrageous that no competent attorney would have engaged in it. An appellate court may reform a judgment when the record contains the necessary information to make it speak the truth.
PRECEDENTIAL VALUE	Unpublished and designated not for publication
PARTIES	Tracy B. Miles v. The State of Texas

TOPICS

ineffective assistance

jury selection

right to counsel

appellate procedure

criminal procedure

PRACTICE AREAS

criminal procedure

criminal appellate practice

constitutional criminal law

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to use a peremptory strike against Juror No. 2 after the trial court denied challenges for cause, thereby failing to preserve appellate review of the denial.
2. Whether the appellate court should reform the judgment to delete the finding that Miles waived his right to appeal.

HOLDINGS

1. Miles failed to establish deficient performance under Strickland because the record was silent about counsel's reasons for not using a peremptory strike against Juror No. 2, and that decision was not so outrageous that no competent attorney would have made it.
2. The judgment should be reformed to delete the special finding stating, 'APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED,' because the record showed that Miles did not waive his right to appeal.

KEY QUOTATIONS

“As the Court of Criminal Appeals recognized in Morales, valid strategic reasons exist for not using a peremptory strike against a prospective juror after a trial court has denied a challenge for cause.” (11)

“We reform the trial court’s judgment by deleting the special finding stating “APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.” We affirm the judgment as reformed.” (13)

FACTUAL BACKGROUND

Miles was convicted by a jury of murdering Deon Kelly. During voir dire, Juror No. 2 stated that he could not consider the minimum punishment for murder, and the trial court denied Miles's challenges for cause. Counsel did not use a peremptory strike against Juror No. 2, who served on the jury, and the jury later assessed a forty-year sentence after finding two felony enhancements true. The written judgment incorrectly stated that Miles waived his right to appeal, while the trial court's certification and the rest of the record showed that he retained that right.

PROCEDURAL HISTORY

A jury found Miles guilty of murder, found two felony enhancement paragraphs true, and assessed forty years' confinement. The trial court initially failed to pronounce sentence orally in Miles's presence; after abatement and a supplemental record showing that the sentence was properly pronounced, the appellate court reinstated the appeal. The court overruled the ineffective-assistance issue, sustained the request to correct the appeal-waiver finding, reformed the judgment, and affirmed it as reformed.

DISPOSITION

affirmed

CASES CITED

- *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011)
- *Strickland v. Washington*, 466 U.S. 668, 686-89, 694 (1984)
- *Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009)
- *Smith v. State*, 286 S.W.3d 333, 340 (Tex. Crim. App. 2009)
- *Menefield v. State*, 363 S.W.3d 591, 593 (Tex. Crim. App. 2012)
- *Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005)
- *Mata v. State*, 226 S.W.3d 425, 431 (Tex. Crim. App. 2007)
- *Cardenas v. State*, 325 S.W.3d 179, 184-85 (Tex. Crim. App. 2010)
- *Davis v. State*, 329 S.W.3d 798, 807 (Tex. Crim. App. 2010)
- *State v. Morales*, 253 S.W.3d 686, 696-99 (Tex. Crim. App. 2008)
- *Delrio v. State*, 840 S.W.2d 443, 446 (Tex. Crim. App. 1992)
- *Jackson v. State*, 877 S.W.2d 768 (Tex. Crim. App. 1994)
- *Jackson v. State*, 617 S.W.3d 916 (Tex. App.—Houston [14th Dist.] 2021, pet. ref'd)
- *Notias v. State*, 491 S.W.3d 371, 378 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd)
- *Morris v. State*, 496 S.W.3d 833, 836 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd)
- *Nolan v. State*, 39 S.W.3d 697, 698 (Tex. App.—Houston [1st Dist.] 2001, no pet.)
- *Johnson v. State*, 550 S.W.3d 247, 255 (Tex. App.—Houston [14th Dist.] 2018, pet. ref'd)

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