

SEVENTH COURT OF APPEALS OF TEXAS AT AMARILLO

Emanuel Escobedo v. State

Escobedo v. State · No. 07-13-00114-CR · Decided September 17, 2015

SUMMARY

This document is an appellant's brief in a Texas criminal appeal arising from Emanuel Escobedo's conviction for delivery of a controlled substance and a 50-year sentence. The brief argues that trial counsel provided ineffective assistance by failing to timely file motions, object to evidence, and challenge the admission of juvenile adjudication and probation-related information during punishment. It requests reversal and dismissal or, alternatively, a new trial.

CASE DETAILS

COURT	Seventh Court of Appeals of Texas at Amarillo
JURISDICTION	Texas
DECIDED	September 17, 2015
DOCKET	07-13-00114-CR
PROCEDURAL POSTURE	Appellant's brief in a direct criminal appeal from a jury conviction and enhanced sentence, asserting ineffective assistance of trial counsel.
STANDARD OF REVIEW	The brief invokes the Strickland v. Washington two-prong standard for ineffective assistance of counsel: deficient performance and a reasonable probability of a different result, with the burden on the appellant to prove the claim by a preponderance of the evidence.
PRECEDENTIAL VALUE	none; appellate brief, not a judicial decision
PARTIES	Emanuel Escobedo v. State of Texas

TOPICS

ineffective assistance sixth amendment sentencing appellate procedure evidence

PRACTICE AREAS

criminal appellate practice ineffective assistance of counsel sentencing and punishment evidence

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to timely object to the indictment and enhancement allegations, failing to pursue discovery, failing to object to evidence of another drug sale,

and failing to challenge the admission of juvenile-record and alleged probation-violation evidence during punishment.

2. Whether there was a reasonable probability that counsel's alleged errors affected the outcome, particularly the punishment assessed by the jury.

KEY QUOTATIONS

“To show ineffective assistance of counsel, an appellant must demonstrate that (1) counsel's representation fell below an objective standard of reasonableness based on prevailing professional norms, and (2) but for counsel's errors, there is a reasonable probability the result of the proceeding would have been different.” (5)

“Notwithstanding Tex. R. Evid. 609(d) and subject to subsection (h) evidence may be offered by the state and defendant of an adjudication of delinquency based on a violation by the Defendant of a penal law of the grade of (a) a felony or (b) misdemeanor punishable by confinement in jail...” (8)

FACTUAL BACKGROUND

The prosecution arose from an undercover drug purchase in Amarillo in which Officer Treadwell purchased methamphetamine from Escobedo. Escobedo was later arrested and convicted of delivery of a controlled substance. During punishment, the State introduced evidence concerning a juvenile burglary adjudication and alleged probation violations involving firearms and shootings, and the jury found the enhancement paragraph true and assessed a fifty-year sentence.

PROCEDURAL HISTORY

Escobedo was convicted by a jury in the 108th District Court of Potter County of delivery of a controlled substance and received a fifty-year sentence and a \$10,000 fine after an enhancement finding. He filed notices of appeal, a motion for new trial, and a motion in arrest of judgment. The document is an appellant's brief filed in the Seventh Court of Appeals; the source does not contain the appellate court's disposition.

CASES CITED

- *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984)
- *Arrington v. State*, 413 S.W.3d 106, 110 (Tex. App.—San Antonio 2013, pet. granted)
- *Cosio v. State*, 353 S.W.3d 766, 771 (Tex. Crim. App. 2011)
- *Fulcher v. State*, 274 S.W.3d 713, 716 (Tex. App.—San Antonio 2008, pet. ref'd)
- *Gelinas v. State*, 398 S.W.3d 703, 710 (Tex. Crim. App. 2013)
- *Hutch v. State*, 922 S.W.2d 166, 171 (Tex. Crim. App. 1996)
- *Phillips v. State*, 193 S.W.3d 904, 913–14 (Tex. Crim. App. 2006)
- *Ngo v. State*, 175 S.W.3d 738, 752 (Tex. Crim. App. 2005)
- *Stuhler v. State*, 218 S.W.3d 706, 717 (Tex. Crim. App. 2007)
- *Rivera v. State*, 123 S.W.3d 21, 28 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd)
- *Strickland v. Washington*, 466 U.S. 668, 687–88, 694, 104 S. Ct. 2052, 2064–65, 2068, 80 L. Ed. 2d 674 (1984)

- *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527, 2535, 156 L. Ed. 2d 471 (2003)
- *Hernandez v. State*, 726 S.W.2d 53, 57 (Tex. Crim. App. 1986)
- *Thompson v. State*, 9 S.W.3d 808, 812–13 (Tex. Crim. App. 1999)
- *Jackson v. State*, 973 S.W.2d 954, 956 (Tex. Crim. App. 1998)
- *McFarland v. State*, 845 S.W.2d 824, 843 (Tex. Crim. App. 1992)
- *Garcia v. State*, 57 S.W.3d 436, 440 (Tex. Crim. App. 2001)
- *Clark v. United States*, 606 F.2d 550, 551 (5th Cir. 1979)
- *United States v. Childs*, 571 F.2d 315, 316 (5th Cir. 1978)
- *Fitzgerald v. Estelle*, 505 F.2d 1334, 1337 (5th Cir. 1975) (en banc)