

COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT
AMARILLO

Natasha Marie Heller v. State

No. 07-06-0466-CR · No. 07-06-0466-CR · Decided March 9, 2007

SUMMARY

This is a per curiam, unpublished order from the Texas Court of Appeals for the Seventh District at Amarillo directing the trial court to file a certification of Natasha Marie Heller's right to appeal. The order notes that the clerk's record lacked the certification required by Texas Rule of Appellate Procedure 25.2(d) and sets a deadline for a supplemental clerk's record. The supplied text also contains a separate, unrelated appellate opinion concerning aggravated robbery and post-adjudication issues.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	Mackey K. Hancock; Campbell, J.; Hancock, J.; Pirtle, J.
JURISDICTION	Texas
DECIDED	March 9, 2007
DOCKET	07-06-0466-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment adjudicating appellant guilty following deferred adjudication proceedings, sentencing appellant to fifty-five years' incarceration, and ruling on post-adjudication matters.
STANDARD OF REVIEW	Ineffective-assistance claims are reviewed under Strickland v. Washington. Counsel's performance is reviewed deferentially, with a presumption that counsel provided reasonable professional assistance and acted as a matter of sound trial strategy. Issues not preserved under Texas Rule of Appellate Procedure 33.1(a), and issues inadequately supported by record citations, are waived.
PRECEDENTIAL VALUE	Unpublished and designated do not publish; limited precedential value.
PARTIES	Natasha Marie Heller v. The State of Texas

TOPICS

appellate jurisdiction

criminal procedure

ineffective assistance

plea bargaining

preservation of error

PRACTICE AREAS

Texas criminal appellate procedure

criminal procedure

ineffective assistance of counsel

plea bargaining

QUESTIONS PRESENTED

1. Whether Reed rendered ineffective assistance by failing to communicate the State's ten-year plea offer.
2. Whether the court of appeals had jurisdiction to review Reed's appointment and alleged conflict of interest when Reed's representation ended before adjudication.
3. Whether appellant's parole eligibility was improperly calculated as though an affirmative deadly-weapon finding existed.
4. Whether Hinshaw rendered ineffective assistance by failing to include alleged constitutional errors in appellant's motion for new trial.

HOLDINGS

1. The court of appeals lacks jurisdiction to review a trial court's determination to adjudicate guilt, but may review proceedings conducted after adjudication, including sentencing and post-adjudication motions.
2. Reed's efforts to communicate the State's ten-year plea offer were within objectively reasonable professional norms and did not constitute ineffective assistance.
3. The court lacked jurisdiction to review Reed's appointment and withdrawal because they occurred before adjudication; to the extent the issue affected post-adjudication matters, appellant failed to preserve the specific conflict for review.
4. Appellant was not entitled to reformation of the judgment based on the claimed parole-eligibility calculation because the judgment contained no affirmative deadly-weapon finding and the record contained no evidence showing how parole eligibility was calculated; the inadequately supported issue was waived.
5. Appellant failed to establish ineffective assistance based on Hinshaw's failure to include alleged constitutional errors in the motion for new trial.

KEY QUOTATIONS

“The Code of Criminal Procedure expressly denies a criminal defendant the right to appeal from a trial court's determination to adjudicate guilt.” (unpaginated)

“We fail to see, and appellant has failed to show, how Reed's efforts to convey the ten year offer to appellant fell below an objective standard of professional reasonableness.” (unpaginated)

FACTUAL BACKGROUND

Counsel Reed attempted to communicate a ten-year plea offer by telephone, by obtaining appellant's contact information from the bail bonds company, and by mailing a letter to appellant's last known address. Appellant

refused to recognize Reed as counsel and sought Reed's removal based on a perceived conflict arising from Reed's prior prosecution of appellant's wife; the trial court then appointed Curtis Hinshaw. After appellant rejected a later twenty-year offer and pleaded not true to the alleged violations, the trial court found thirteen violations true, adjudicated appellant guilty of aggravated robbery, and sentenced appellant to fifty-five years' incarceration. Hinshaw later advised appellant regarding appeal and habeas-corpus remedies and filed a motion for new trial.

PROCEDURAL HISTORY

The trial court adjudicated appellant guilty after finding thirteen of nineteen alleged violations true and, after a separate sentencing hearing, imposed a fifty-five-year sentence. Appellant raised issues concerning ineffective assistance of counsel, an alleged conflict of interest, parole eligibility, and counsel's performance in connection with a motion for new trial. The court of appeals held that it lacked jurisdiction to review the adjudication decision itself but could review sentencing and post-adjudication matters, rejected the preserved claims, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Thomas v. State, 129 S.W.3d 158 (Tex. App.—Eastland 2003)
- Connolly v. State, 983 S.W.2d 738, 741 (Tex. Crim. App. 1999)
- Olowosuko v. State, 826 S.W.2d 940, 942 (Tex. Crim. App. 1992)
- Strickland v. Washington, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Hernandez v. State, 988 S.W.2d 770, 770 (Tex. Crim. App. 1999)
- Stafford v. State, 813 S.W.2d 503, 506 (Tex. Crim. App. 1991)
- Ex parte Lemke, 13 S.W.3d 791, 795 (Tex. Crim. App. 2000)
- Butler v. State, 872 S.W.2d 227, 236 (Tex. Crim. App. 1994)
- Lawton v. State, 913 S.W.2d 542, 558 (Tex. Crim. App. 1995)
- Smith v. State, 959 S.W.2d 1, 7 (Tex. App.—Waco 1997, pet. ref'd)