
BEFORE: JANET HEALY WEEKS, Chief Justice (Acting)¹; BENJAMIN J. F. CRUZ and JOAQUIN C. ARRIOLA, Sr.², Associate Justices.

CRUZ, J.:

[1] The Appellant, Henry Taitague Quintanilla (hereinafter “Quintanilla”), appeals his conviction for possession of a controlled substance and promotion of prison contraband. Although he raises several grounds on appeal, of significance is the issue that he received ineffective assistance of counsel at the trial court level. Quintanilla contends that defense counsel failed to set forth the theory that his cell mate, who had previously plead guilty to possession of the controlled substances was in fact responsible for the drugs in their cell, thereby calling into question Quintanilla’s own guilt.

[2] The court finds that defense’s counsel performance constituted ineffective assistance of counsel. Accordingly, the matter is REVERSED and REMANDED.

FACTUAL AND PROCEDURAL BACKGROUND

[3] This case arises out of the discovery of drug laden paraphernalia within a shared cell at the Department of Corrections (DOC). Cell nine, occupied by Quintanilla and John Junior Pangelinan (hereinafter “Pangelinan”), was one of the many cells authorized to be searched pursuant to a warrant sworn before a Superior Court judge on March 7, 1995. The search uncovered numerous items, many of which are prohibited within the confines of the prison. The items consisted of currency in Pangelinan’s utility box, Kentucky Fried Chicken wrappers, a Krazy Glue container with a plastic straw, a box of Carnation Cocoa mix and two single serving cereal boxes filled with plastic sheets, an open box of Q-tips with a one-inch plastic straw sealed at one end, three unopened capsules containing foil packaging materials, a cigarette pack containing two (2) plastic syringes, cigarette wrapping papers, metal tweezers, and a straw sealed on one side. Trace amounts of methamphetamine were found on the sealed straw, located in the trash can as well as the Krazy Glue container.

[4] Pursuant to the aforementioned search, Quintanilla, Pangelinan and five (5) other defendants were indicted on March 16, 1995 for various possession and conspiracy charges. Subsequently, on

¹Chief Justice Siguenza was disqualified from hearing this matter. Associate Justice Healy Weeks presided as the Acting Chief Justice.

²Part-time Associate Justice.

March 27, 1995, a superceding indictment was filed charging the same seven (7) defendants. Quintanilla was charged with possession of methamphetamine, as a controlled substance, as a third (3rd) degree felony and promoting prison contraband as a second (2nd) degree felony. Pangelinan was charged with possession with intent to distribute methamphetamine, promotion of prison contraband, possession of a controlled substance, and possession of a controlled substance while confined in a detention facility. On July 17, 1995, Quintanilla made a motion to dismiss the possession charge as a lesser included offense of the contraband charges. The trial court denied the motion.

[5] On February 22, 1996, Pangelinan plead guilty to promotion of prison contraband as a second (2nd) degree felony and thereby admitted to intentionally possessing methamphetamine while confined in the detention facility. Pangelinan's plea agreement was a matter of record in the file, but was never admitted as evidence in the trial.

[6] Quintanilla, maintaining his innocence, went to trial on August 6, 1996. Officer Jose Palacios had searched cell nine and testified that he believed the Krazy Glue container was found on Quintanilla's bunk. However, in the chain of custody report, prepared shortly after the search, the Krazy Glue container was described by Officer Palacios as being found on Pangelinan's bunk. Evidence of Pangelinan's guilty plea was never introduced at trial. During closing arguments, defense counsel stated that the drugs could have been attributable to Pangelinan and not Quintanilla. Quintanilla was found guilty on both the possession and the prison contraband charges and was sentenced to serve ten years consecutively with his prior felony conviction. The judgment was entered on the docket on August 12, 1997 and a timely appeal was filed on August 20, 1997.

ANALYSIS

[7] This court has jurisdiction over this matter pursuant to 48 U.S.C. § 1424-3(d) (1984) and 7 GCA §3107(b) (1994). Although numerous issues were raised by Quintanilla on appeal, this court's opinion focuses on one specific issue— whether Quintanilla received ineffective assistance of counsel at the trial court level. The court analyzes the issue as follows.

I.

[8] Whether a defendant has received ineffective assistance of counsel is a question of law. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). This court reviews questions of law *de novo*. *Camacho v. Camacho*, 1997 Guam 5, ¶ 24. Quintanilla's claim of ineffective assistance

of counsel is predicated on defense counsel's failure to pursue the possibility that the controlled substance found within his cell did not belong to Quintanilla, but was instead the property of his cell mate, Pangelinan. Quintanilla contends that the pursuit of this theory would call his culpability into question and raise doubt as to his responsibility for the possession of the items in question. In *Strickland*, the United States Supreme Court explored the issue of ineffective assistance of counsel and established a bifurcated test to determine whether counsel has performed inadequately. 466 U.S. at 687, 104 S.Ct. at 2064. First it must be demonstrated that (1) trial counsel's performance was deficient, and (2) that this deficient performance prejudiced his defense. *Id.*

[9] Addressing the first prong of the *Strickland* test, Quintanilla contends that defense counsel's performance in preparing a proper defense for trial was deficient. In establishing whether the first prong is satisfied, an appellant must demonstrate that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Id.* at 687, 104 S.Ct. at 2064. Although practice norms, for example the American Bar Association standards, provide a guide for determining what conduct of counsel is considered reasonable in providing a defendant with an effective criminal defense, no specific rules exist to govern counsel's conduct. *Id.* at 688, 104 S.Ct. at 2065. In fact no set of rules could be exhaustive in accounting for the wide range of circumstances and legitimate decisions defense counsel has available in representing a criminal defendant. *Id.*

Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. At the same time, the court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Id. at 690, 104 S.Ct. at 2066.

[10] The existence of such rules would also act to hinder counsel's independence and latitude of discretion in making appropriate strategic and tactical decisions. *Id.* Therefore, a court must give deference to defense counsel and remain mindful of several considerations.

[11] In the case of *Washington v. Murray*, 952 F.2d 1472 (9th Cir. 1991), the court found deficient performance of counsel through defense counsel's failure to introduce directly exculpatory evidence at trial. The court held that "counsel inexplicably had failed to recognize the significance of, hence

to proffer in Washington's defense, facially exculpatory scientific evidence." *Id.* at 1477. The *Washington* court concluded that the record did not reflect the existence of any tactical considerations justifying defense counsel's failure to proffer or explore the significance of the forensic evidence as exculpatory in nature. *Id.*

[12] A distinction has been made in cases involving tactical decisions by defense attorneys. In *U.S. v. Chambers*, 918 F.2d 1455, 1461 (9th Cir. 1990), the court determined that "[t]rial counsel's conduct was not deficient merely because he chose to pursue a different line of defense than appellate counsel would have pursued." The Ninth Circuit has taken the position that it will not "second-guess counsel's strategic decision to present or to forego a particular theory of defense when such decision was reasonable under the circumstances." *Id.* In *Chambers*, the court found that it was reasonable for a competent trial counsel to determine that foregoing the defense that the defendant was not in possession of cocaine to pursue an alternative defense theory was in the defendant's best interest. *Id.*

[13] In the case at bar, defense counsel never pursued the one theory that would account for the existence of the drugs in Quintanilla's cell while maintaining the innocence of his client. Although it was not mentioned during the evidentiary phase of the proceedings, Pangelinan had plead guilty to the possession charges, thereby admitting that the drug laden items in the cell were his. The evidence in the instant case may not have been directly exculpatory; however, the introduction of the cell mate's guilty plea, at a minimum, could create inferences that call Quintanilla's guilt into question. If the defense maintains that the drugs were not in Quintanilla's possession, then through the process of elimination, the other occupant of the cell stands as a highly culpable party. Counsel's failure to pursue the notion that the drugs could have belonged to the cell mate, and not to Quintanilla, coupled with the failure to admit the plea agreement at trial, calls into question the fundamental fairness of the proceeding.

[14] Additionally, defense counsel's performance at the trial court level did not evidence a decision to pursue a different line of defense, but rather a decision to forego presentation of the one defense that would account for the defendant's innocence as he proclaims it. Counsel's error cannot be deemed trial strategy due to the fact that he proceeded to allude to the cell-mate defense in closing arguments even after failing to present any supporting evidence during the evidentiary phase of the trial. The tardy raising of the defense accentuates the fact that defense counsel was fully aware of the defense, yet neglected to raise it at a time when the jury could properly deliberate upon it. In *Strickland*, the court noted that "[f]rom counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause" 466 U.S. at 688, 104 S.Ct. at 2065. We conclude counsel did not adequately advocate the defendant's cause in this case, in failing to raise

a defense which would offer the jury evidence that it was not Quintanilla who was in possession of the controlled substance in cell nine. This falls short of reasonable advocacy of Quintanilla's cause and constitutes deficiency that satisfies the first prong of the *Strickland* test.

[15] The second prong of the *Strickland* test requires a showing that the deficient performance by counsel had a prejudicial effect on the outcome of the case. "This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687, 104 S.Ct. at 2064. The defendant must demonstrate actual prejudice by showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694, 104 S.Ct. at 2068. The Court has further asserted that in regards to criminal cases the standard applies as follows: "[w]hen a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder [sic] would have had a reasonable doubt respecting guilt." *Id.* at 695, 104 S.Ct. at 2068-69.

[16] The question remains then whether the cell-mate theory being presented would have raised reasonable doubt with respect to Quintanilla's guilt. An appellant must affirmatively prove actual prejudice in order to support a claim of ineffective assistance.³

[17] In this case, although the jury was provided with notice of Pangelinan's guilty plea, the jury was not permitted to properly consider it in its deliberation of the charges against Quintanilla.⁴ Because the theory of defense of Pangelinan's guilt versus Quintanilla's was not presented during the trial, but instead was raised, seemingly as an afterthought, at a time when such could not be considered as evidence, it is as if the defense was never raised at all. Pangelinan and Quintanilla were cell mates. The controlled substances in question were found in their cell to which each had equal access. Pangelinan's guilty plea was entered well before Quintanilla's trial. The court concludes from these facts that not only was it unreasonable for defense counsel to have failed to present evidence as to Pangelinan's guilt at trial, but additionally that such failure prejudiced Quintanilla.

³Only when an actively represented conflicting interest adversely affecting defense counsel's performance exists will the court presume prejudice to the defendant. *Cuyler v. Sullivan*, 446 U.S. 335, 345-350, 100 S.Ct., 1708, 1716-1719. (1980).

⁴In accordance with the jury instruction "[w]hat the lawyers have said in their opening statements and their closing arguments and their objections or questions is not evidence," the jury was not permitted to consider as evidence statements made by defense counsel during closing arguments. Therefore, in order for the defense to have any bearing on the proceedings, it must be raised and explored during the evidentiary phase of the trial.

[18] The failure to present evidence that Quintanilla was not the only person possibly accountable for drugs in cell nine created a reasonable possibility that the jury would have had a reasonable doubt as to Quintanilla's guilt, thereby undermining the confidence in the outcome of the proceedings.

CONCLUSION

[19] Based on the foregoing, the court finds that Quintanilla received ineffective assistance of counsel at the trial court level. The case is REVERSED and REMANDED to the trial court for further proceedings consistent with this opinion.

BENJAMIN J. F. CRUZ,
Associate Justice

JOAQUIN C. ARRIOLA, SR.,
Associate Justice

JANET HEALY WEEKS,
Chief Justice (Acting)