

representation of Mr. Amaya. Judge Warren granted said order on 7/29/19 and required Mr. Beale to answer the State's questions. On 8/27/19, Mr. Beale filed an affidavit with the Court and served the Applicant and the State via eservice.

4. The Court has reviewed the affidavit and finds that the affidavit fails to answer several questions. The Court further finds that the affidavit does not overcome the information provided in the exhibits attached to Applicant's Writ of Habeas Corpus, which clearly demonstrates Mr. Beale's deficient performance and harm to Applicant.
5. Specifically, Mr. Beale's answers to questions 11 through 22 appear to have no information, irrelevant information, or ambiguous information provided.
6. The Expert noted in the Writ, Patrick F. McCann, lined out several professional norms that Mr. Beale fell below. Mr. Beale failed to conduct a proper pretrial investigation, failed to seek the assistance of private investigator, failed to seek expert assistance, failed to sufficiently research legal issues surrounding the informant and entrapment, and failed to conduct a mitigation investigation. (Exhibit F). The court finds these professional norms of conduct apply to Mr. Amaya's case and that Mr. Beale fell below these norms.

CONCLUSIONS OF LAW

INEFFECTIVE ASSISTANCE OF COUNSEL

1. In reviewing claims of ineffective assistance of counsel, the courts apply a two-prong test. *See Salinas v. State*, 163 S.W.3d 734, 740 (Tex. Crim. App. 2005) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).
2. To establish ineffective assistance of counsel, Applicant must prove by a preponderance of the evidence that (1) his trial counsel's representation was deficient in that it fell below the standard of prevailing professional norms; and (2) there is a reasonable probability that, but for counsel's deficiency, the result of the trial would have been different. *Id.* (citing *Strickland*, 466 U.S. at 687-88).
3. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Mallett v. State*, 65 S.W.3d 59, 63 (Tex. Crim. App. 2001).
4. When evaluating a claim of ineffective assistance, the court looks to the totality of the representation and the particular circumstances of each case. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999).
5. When a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, he may attack the voluntary and

intelligent character of the plea by showing that the advice of counsel was not within the range of competence demanded by attorneys in criminal cases, and that he would not have pled guilty to the offense of conviction. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Ex parte Moody*, 991 SW.2d 856, 858 (Tex. Crim. App.1999).

6. The Court finds that Mr. Beale specifically failed to address whether he obtained and/or otherwise reviewed the Houston Police Department Offense report and whether it was a part of his defense file; as well as whether he reviewed and discussed the Drug Enforcement Administration's Report with the Applicant.
7. The Court has conducted a totality of the circumstances analysis and finds that Applicant met his burden by a preponderance of the evidence, which shows that Mr. Samuel Beale fell below the prevailing professional norms while representing Mr. Amaya, and that these deficiencies prejudiced Mr. Amaya as there is a reasonable probability, that but for Mr. Beale's deficiencies, the result of the proceedings would have been different. The court also finds that Mr. Amaya did not enter into a voluntary and intelligent plea. Further, Mr. Beale did not demonstrate a range of competence demanded by criminal attorneys who handle first degree felony drug offenses, which is what Mr. Amaya was fighting at the time.

The Court further finds that the standard set forth in *Strickland* is satisfied and that Mr. Beale's representation amounted to ineffective assistance of counsel.

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CAUSE NO 1457494A

EX PARTE

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IN DISTRICT COURT

COURT 209

HECTOR AMAYA

HARRIS COUNTY, TEXAS

ORDER

On the ____ day of _____, 2019, this Court orders that the writ of habeas corpus filed in the above-captioned matter be GRANTED.

Signed:
10/3/2019



Harris County District Court 209
Judge Brian Warren

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