

IN THE COURT OF APPEALS 02/27/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00492 COA

ARTHUR SAUCIER A/K/A AUTHOR SAUCIER

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. KOSTA N. VLAHOS

COURT FROM WHICH APPEALED: HANCOCK COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JAMES G. TUCKER, III.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART

DISTRICT ATTORNEY: CHARLES E. WOOD

NATURE OF THE CASE: CRIMINAL: SALE OR TRANSFER OF A CONTROLLED
SUBSTANCE (COCAINE)

TRIAL COURT DISPOSITION: GUILTY VERDICT: SENTENCED TO TWENTY (20) YEARS
IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AND PLACED
IN THE DRUG AND ALCOHOL REHABILITATION PROGRAM AT PARCHMAN

BEFORE FRAISER, C.J., BARBER, DIAZ, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Arthur Saucier, A/K/A/ Author Saucier, was convicted of the sale or transfer of cocaine in the Circuit Court of Hancock County. On appeal, Saucier contends that he was denied a fair trial because of ineffective assistance of counsel. We affirm.

FACTS

During the course of an undercover operation on October 6, 1992, a drug agent and a confidential informant purchased a piece of crack cocaine from Saucier and Emmett Galloway, Saucier's co-defendant. Saucier was present at the transaction and was given a twenty-dollar bill in payment for the crack cocaine which his co-defendant handed to the agent. Saucier then gave the bill to his co-defendant. Saucier presented a general denial to the charge, but offered no special defense. The jury found him guilty of the sale or transfer of cocaine. Saucier was sentenced to twenty years in prison and placed in a drug and alcohol rehabilitation program.

DISCUSSION

Saucier argues that he was denied effective assistance of counsel. In order to prevail on this issue, Saucier must prove that his attorney's performance was deficient, and that the deficiency was so substantial as to deprive him of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687-96 (1984); *Moody v. State*, 644 So. 2d 451, 456 (Miss. 1994). Saucier must demonstrate a reasonable probability that the result of his trial would have been different but for his counsel's deficiencies. *Nicolaou v. State*, 612 So. 2d 1080, 1086 (Miss. 1992). There is a strong but rebuttable presumption that a counsel's conduct fell within the wide range of reasonable professional assistance. *Moody*, 644 So. 2d at 456. Accordingly, appellate review of a counsel's performance is "highly deferential." *Strickland*, 466 U.S. at 689.

Saucier maintains that the following alleged deficiencies support his claim of ineffective assistance of counsel: (1) his lawyer gave no opening statement; (2) his lawyer did not object to questioning about, and the admission of, evidence relating to the fact that Saucier's co-defendant was in prison on drug charges; and (3) his lawyer did not provide jury instructions. We disagree.

Regarding Saucier's first alleged deficiency, the supreme court has held that "the decision to make an opening statement is 'a strategic one.'" *Cabello v. State*, 524 So. 2d 313, 318 (Miss. 1988). Attorneys are permitted wide latitude with matters of defense strategy. *Edwards v. State*, 615 So. 2d 590, 597 (Miss. 1993); *Woodward v. State*, 635 So. 2d 805, 808-09 (Miss. 1993). Yet, even if we were to find the want of an opening statement somehow deficient, no prejudice resulted. Accordingly, this error is denied.

The second alleged deficiency occurred during the cross-examination of Saucier and involves the following line of questioning about Saucier's co-defendant, Galloway.

Q. Now, Rusty Galloway -- Emmett Galloway is his real name, isn't it?

A. Yeah, Emmett Galloway.

Q. Do you know where he is now?

A. I think he's in prison.

Q. Do you know why he's there?

A. I believe he in there for drug charges.

The above excerpt is all that was said on the matter. Saucier claims that the failure to object to this line of questioning and its admission into evidence denied him a fair trial.

The supreme court has prohibited the admission of evidence proving that a co-defendant has already been convicted of the *same crime* for which the defendant is being tried, as an earlier jury's decision about the events should not intrude on this jury's deliberations. *Henderson v. State*, 403 So. 2d 139, 141 (Miss. 1981). A key distinction exists between evidence that a co-defendant has been convicted of a like charge and evidence that a co-defendant has been convicted of the same crime for which the defendant is now being tried. While it is proper for the State to show the former, the admission of testimony revealing the latter is reversible error. *Johns v. State*, 592 So. 2d 86, 90 (Miss. 1991) (citing *Griffin v. State*, 293 So. 2d 810, 812 (Miss. 1974)).

In *Johns*, the supreme court held that the defendant was denied a fair trial where it was apparent from the testimony that the offense for which the accomplice was convicted was the same drug transaction. *Johns*, 592 So. 2d at 90. In contrast, Saucier's testimony regarding his co-defendant's imprisonment on drug charges did not reveal to the jury any specific details of his co-defendant's crime, such as the time, date, location, or evidence. Although the jury may have wondered about the details of Galloway's drug charges, no implication arose that these charges involved the same crime for which Saucier was now being tried. Thus, Saucier's counsel's failure to object to the questioning at issue was not constitutionally deficient.

Saucier's third alleged deficiency concerns counsel's failure to provide jury instructions. The judge fully and accurately instructed the jury on the applicable law. Saucier does not argue that there was any instruction that should have been requested, or one that should have been deleted. Instead, he somehow equates the fact that his lawyer did not provide instructions with deficient performance. This is not the law. *Griffin*, 610 So. 2d at 356.

We find that the alleged errors, whether taken individually or collectively, do not support Saucier's claim of ineffective assistance of counsel.

THE JUDGMENT AND CONVICTION OF HANCOCK COUNTY CIRCUIT COURT OF SALE OR TRANSFER OF A CONTROLLED SUBSTANCE (COCAINE) AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE ASSESSED TO HANCOCK COUNTY.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.

THOMAS, P.J., NOT PARTICIPATING.