2016 IL App (2d) 140622-U
No. 2-14-0622
Order filed July 20, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROBERT MEZA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 07-CF-2771 Honorable George J. Bakalis, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed defendant's postconviction petition, which alleged that trial counsel was ineffective for failing to probe for anti-gang bias during *voir dire*: defendant could not show prejudice (which under the circumstances would not be presumed), as the State's evidence (including defendant's confession) was overwhelming.

¶ 2 Following a jury trial, defendant, Robert Meza, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) in the death of Lorenzo Salazar-Cortez. He was sentenced to 45 years' imprisonment. Defendant filed a postconviction petition alleging, *inter alia*, that defense counsel was ineffective for failing to question prospective jurors about their potential

bias against street-gang members, and that appellate counsel was ineffective for failing to raise the issue on direct appeal. The trial court dismissed the petition, and defendant appeals. He contends that the petition stated the gist of a claim of ineffective assistance of counsel. We affirm.

¶ 3 The State contended that defendant was accountable for the actions of Antonio Aguilar, who shot Salazar-Cortez. The State's theory was that defendant and Aguilar went to an apartment building in Addison in an attempt to kill a member of a rival gang.

¶ 4 During *voir dire*, defense counsel, John Paul Carroll, asked potential jurors various hypothetical questions about bias and prejudice. For example, he asked whether someone who merely drove a car while his companion, without his knowledge, robbed a bank would be guilty. At another point, he asked, "Would it be fair enough to say that even the Irish, there are good and bad Irish?"

¶ 5 Carroll asked one prospective juror, "Just because a person might be in a gang, which is not a healthy organization, doesn't mean that they perhaps committed this particular murder or this particular burglary or this particular robbery; wouldn't that be fair?" Another prospective juror stated that he had friends who were police officers and often discussed "gang-related stuff" with him. Both prospective jurors stated that they could be fair to both sides, and both sat on the jury.

¶ 6 At trial, evidence showed that shots were fired through the window of an apartment, resulting in the death of Salazar-Cortez, who was not a gang member. Defendant and Aguilar were members of the Imperial Gangsters. At the time of the murder, that gang was trying to move into the Highview neighborhood of Addison, where the murder occurred, which had been

Latin King territory. Shortly after the crime, graffiti showing disrespect for the Latin Kings began to appear on nearby buildings.

¶ 7 Based on an informant's tip, police arrested defendant, and he gave a recorded statement. Defendant drove Aguilar into Latin King territory. He knew that Aguilar had a gun. Defendant and Aguilar tried to get into an apartment building, but the door was locked. Defendant then followed Aguilar and saw him shoot toward a group of people near a window. Aguilar then ran away. Defendant drove Aguilar away from the scene. When defendant dropped him off at home, Aguilar kept the gun. Defendant returned to the area and wrote the graffiti because he was a better "tagger" than Aguilar.

¶ 8 The jury found defendant guilty. The trial court sentenced him to 45 years' imprisonment. On direct appeal, defendant argued that the police did not have probable cause to arrest him (which tainted his subsequent confession) and that he was denied his right to confront witnesses because Aguilar's hearsay statements implicating him could be heard on the recording of his confession. We affirmed. *People v. Meza*, 2011 IL App (2d) 100001-U.

¶ 9 Defendant filed a postconviction petition, raising more than 80 issues. The trial court appointed the public defender, who filed an amended petition. In that petition, defendant argued that trial counsel was ineffective for failing to examine prospective jurors about possible bias against gang members, and that appellate counsel was ineffective for failing to raise the issue on direct appeal.

¶ 10 The trial court granted the State's motion to dismiss, finding that counsel's performance, while deficient, did not prejudice defendant because of the strength of the State's evidence. Defendant timely appeals.

¶ 11 Defendant contends that the trial court erred by dismissing his petition, because it stated the gist of a claim that counsel was ineffective. He argues that the State's case relied extensively on gang-related evidence, which provided the motive for the killing, and that, except for one juror, trial counsel took virtually no steps to probe prospective bias against gang members. He maintains that counsel should have been more aggressive in probing for possible anti-gang bias, particularly where one prospective juror had friends who were police officers and often discussed such matters with him. Finally, he contends that, because the claim has merit, counsel on direct appeal was ineffective for not raising the issue there.

¶ 12 The State responds that the trial court correctly held that defendant was not prejudiced because the evidence against him—including his own confession—was overwhelming. The State further contends that the trial court erred by finding that counsel's conduct of *voir dire* was substandard, given that whether to pursue a particular line of questioning on *voir dire* is virtually always considered trial strategy.

¶ 13 A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). The prejudice prong of *Strickland* entails more than an " 'outcome-determinative' " test; a defendant must show that his counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000).

¶ 14 Here, defendant cannot establish prejudice, because the evidence against him was overwhelming. See *People v. Johnson*, 128 Ill. 2d 253, 271 (1989) (ineffective-assistance claim can be disposed of on ground that defendant suffered no prejudice without deciding first prong of

Strickland). The strongest evidence in the State's case consisted of defendant's recorded statement, in which he admitted that he and Aguilar went to the apartment, he heard shots, and then he drove Aguilar away from the scene. See *People v. Murray*, 254 Ill. App. 3d 538, 548 (1993) (defendant's admission that he went with codefendants in their search for the victims and that he drove them away from the crime scene once the murders were committed was sufficient evidence to establish his guilt by accountability). Defendant also admitted writing anti-Latin King graffiti in the area after the crime. Given the strength of the State's case, any arguable error by defense counsel in failing to question prospective jurors about their anti-gang bias did not affect the result of the trial.

¶ 15 Defendant does not seriously dispute the strength of the evidence, but argues that prejudice should be presumed under the circumstances. He argues that "[t]rial counsel's failure to question prospective jurors for gang bias, in a case where gang evidence would pervade the trial evidence and argument, rendered the trial fundamentally unfair."

¶ 16 The supreme court rejected similar arguments in *People v. Metcalfe*, 202 Ill. 2d 544 (2002), and *People v. Manning*, 241 Ill. 2d 319 (2011). In *Metcalfe*, the defendant argued that he was deprived of a fair trial where the trial court failed to strike, *sua sponte*, a juror who indicated during *voir dire* that she could not be fair and impartial. He argued alternatively that trial counsel was ineffective for failing to challenge the juror in question. After rejecting the claim that the trial court should have struck the juror *sua sponte*, the supreme court rejected the ineffective-assistance claim. The defendant cited *United States v. Cronic*, 466 U.S. 648 (1984), for the proposition that "there are certain 'circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.' " *Metcalfe*, 202 Ill. 2d at 560 (quoting *Cronic*, 466 U.S. at 658). The defendant argued that allowing a biased

juror to serve on the jury was so inherently inimical to the right to a fair trial that prejudice should be presumed under *Cronic*. The court rejected this argument, noting that, under *Cronic*, counsel's failure to challenge the prosecution's case must be complete and that the defendant did not claim a complete failure to challenge the State's case, but the failure to do so only in one particular respect. *Id.* at 560-61 (citing *Bell v. Cone*, 535 U.S. 685, 696-97 (2002)).

¶ 17 In *Manning*, the defendant argued that defense counsel's failure to strike a particular juror because of his answers to questions about the defendant's status as a sex offender was presumptively prejudicial, the equivalent of a structural error under *Cronic*, and urged the court to overrule *Metcalfe*. The defendant argued that the *Strickland* prejudice analysis presupposes that the defendant received a fair trial before an impartial jury and that seating a potentially biased juror undermined that presumption. *Manning*, 241 Ill. 2d at 330 (citing *Strickland*, 466 U.S. at 685). The court characterized the argument as an "end run around *Cronic*," and reiterated its position that ineffective assistance of counsel during *voir dire* is not a structural error. *Id.* at 333; see also *Metcalfe*, 202 Ill. 2d at 560-62.

¶ 18 As in *Metcalfe* and *Manning*, the error here was not structural such that we must presume prejudice. If allowing an actually biased juror to sit does not render a trial fundamentally unfair, it necessarily follows that the failure to detect possible bias does not do so, either. Put another way, given the overwhelming evidence, a completely unbiased jury would have found defendant guilty in any event, so defendant suffered no prejudice from the possible presence of one or more jurors predisposed to convict him. Moreover, defendant does not argue that any of the jurors who sat actually were biased against gang members. See *People v. Thompson*, 238 Ill. 2d 598, 615 (2010) (defendant failed to establish prejudice for purposes of plain-error review where he did not show that trial court's failure to comply with Illinois Supreme Court Rule 431(b) (eff.

May 1, 2007) actually resulted in a biased jury). Notably, the two jurors defendant specifically cites in his argument both stated that they could be fair.

¶ 19 Because we conclude that defendant was not prejudiced, we need not reach the State's alternative argument that counsel's conduct was not deficient. Moreover, given that defendant suffered no prejudice, it follows that appellate counsel was not ineffective for failing to raise the issue on direct appeal. See *People v. Johnson,* 206 Ill. 2d 348, 378 (2002) (where underlying claim lacks merit, defendant did not receive ineffective assistance of appellate counsel).

¶ 20 The judgment of the circuit court of Du Page County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls,* 71 Ill. 2d 166, 179 (1978).

¶ 21 Affirmed.