IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4391
Conference Calendar

ALFRED LEON EWELL,

Petitioner-Appellant,

versus

TEXAS DEPARTMENT OF CRIMINAL
JUSTICE-INSTITUTIONAL DIVISION,

Respondent-Appellee.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6-92-CV-651
- - - - - - - - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Pursuant to a plea agreement, Alfred Leon Ewell pleaded guilty in a Texas court in 1991 to aggravated robbery. He was convicted and sentenced to serve 40 years in prison.

Ewell argues that counsel was ineffective for failing to (a) investigate the case to determine whether Ewell caused serious bodily injury to the victim, (b) interview uncalled witnesses, and (c) discuss the legal options available to Ewell. To demonstrate ineffectiveness of counsel, Ewell must establish that

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

counsel's performance fell below an objective standard of reasonable competence and that he was prejudiced by his counsel's deficient performance. Lockhart v. Fretwell, ___ U.S. ___, 113 S. Ct. 838, 842, 122 L. Ed. 2d 180 (1993). Judicial scrutiny of counsel's performance must be highly deferential, and courts must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The petitioner must affirmatively plead the actual resulting prejudice. Hill v. Lockhart, 474 U.S. 52, 60, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). Ewell must demonstrate prejudice by showing that counsel's errors were so serious that they rendered the proceedings unfair or the result unreliable. Fretwell, 113 S. Ct. at 844. In the context of a guilty plea, the petitioner must show that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Joseph v. Butler, 838 F.2d 786, 791 (5th Cir. 1988). The Supreme Court provided, "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Strickland, 466 U.S. at 697.

All of Ewell's allegations are conclusional and speculative. *Perhaps* he would have had a defense to the "serious bodily injury" charge; *perhaps* uncalled witnesses would have corroborated his story; *perhaps* he could have challenged the indictment. Ewell has made no showing that he would have

insisted on going to trial. Professional competence is strongly presumed. Strickland, 466 U.S. at 687. Ewell failed to address counsel's report that, with counsel's help, Ewell got the deal for which he bargained.

Finally, Ewell includes in his brief a request for this Court to order the district court or the state to provide him with his state record. He did not make this request in the district court, and he does not say why he needs the record. Ewell has stated no particularized need or legal requirement for the record, and this Court has no authority to order the state to provide him with the record. See Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1275-76 (5th Cir. 1973).

JUDGMENT AFFIRMED. MOTION TO COMPEL PROVISION OF STATE RECORD DENIED.