[222] Carter v. State, 656 S.W.2d 468, 468-69 (Tex. Crim. App. 1983).

[223]Pena v. State, 191 S.W.3d 133, 136 (Tex. Crim. App. 2006) (emphasis added).

[224] Tex. R. App. P. 38.1(i).

[225] Sterling v. State, 800 S.W.2d 513, 521 (Tex. Crim. App. 1990), *cert. denied,* 501 U.S. 1213 (1991).

[226] Hailey v. State, 87 S.W.3d 118, 122 (Tex. Crim. App. 2002); *see also* State v. Mercado, 972 S.W.2d 75, 76 (Tex. Crim. App. 1998) (holding that a trial court order granting a motion to suppress could not be overturned on the basis of an argument that was raised for the first time on appeal). Rule 38.1's record citation requirement does not apply to rights that "must be implemented by the [legal] system unless expressly waived" and therefore are not subject to the contemporaneous objection requirement. Marin v. State, 851 S.W.2d 275, 279 (Tex. Crim. App. 1993).

[227] Andrus v. State, No. AP-76,936, 2015 WL 9486133, at *10 (Tex. Crim. App. Dec. 9, 2015); Johnson (Matthew) v. State, No. AP-77030, 2015 WL 7354609, at *33-36 (Tex. Crim. App. Nov. 18, 2015); Cade v. State, No. AP-76,883, 2015 WL 832421, at *8 (Tex. Crim. App. Feb. 25, 2015); Soliz v. State, 432 S.W.3d 895, 900-1 (Tex. Crim. App. 2014); Cargill v. State, No. AP-76,819, 2014 WL 6477109, at *8 (Tex. Crim. App. Nov. 19, 2014); Harris v. State, No. AP-76,810, 2014 WL 2155395, at *19 (Tex. Crim. App. May 21, 2014); Thuesen v. State, No. AP-76,375, 2014 WL 792038, at *33 (Tex. Crim. App. Feb. 26, 2014); Hummel v. State, No. AP-76,596, 2013 WL 6123283, at *6 (Tex. Crim. App. Nov. 20, 2013); Robinson v. State, No. AP-76,535, 2013 WL 2424133, at *7 (Tex. Crim. App. June 5, 2013); Lopez v. State, No. AP-76,327, 2012 WL 5358863, at *9 (Tex. Crim. App. Oct. 31, 2012); Miller v. State, No. AP-76,270, 2012 WL 1868406, at *9 (Tex. Crim. App. May 23, 2012); Broadnax v. State, No. AP-76,207, 2011 WL 6225399, at *11 n. 60 (Tex. Crim. App. Dec. 14, 2011); Leza v. State, 351 S.W.3d 344, 358 (Tex. Crim. App. 2011); Lucio v. State, 351 S.W.3d 878, 896-97 (Tex. Crim. App. 2011); Renteria v. State, No. AP-74,829, 2011 WL 1734067, at *38 (Tex. Crim. App. May 4, 2011); Ramirez v. State, No. AP-76,100, 2011 WL 1196886, at *6 (Tex. Crim. App. Mar. 16, 2011). Freeman v. State, 340 S.W.3d 717, 730 (Tex. Crim. App. 2011); Sparks v. State, No. AP-76,099, 2010 WL 4132769, at *26-27 (Tex. Crim. App. Oct. 20, 2010); Storey v. State, No. AP-76,018, 2010 WL 3901416, at *11 (Tex. Crim. App. Oct. 6, 2010); Lizcano v. State, No. AP-75,879, 2010 WL 1817772, at *22 (Tex. Crim. App. May 5, 2010); Chanthakoummane v. State, No. AP-75,794, 2010 WL 1696789, at *18-19 nn.5 & 6 (Tex. Crim. App. Apr. 28, 2010); Johnson (Dexter) v. State, No. AP-75,749, 2010 WL 359018, at *4 (Tex. Crim. App. Jan. 27, 2010); Jackson v. State, No. AP-75,707, 2010 WL 114409, at *2 (Tex. Crim. App. Jan. 13, 2010); Mays v. State, 318 S.W.3d 368, 385 (Tex. Crim. App. 2010); Davis v. State, 329 S.W.3d 798, 802-03 (Tex. Crim. App. 2010); Williams v. State, 301 S.W.3d 675, 683-85 n. 5 (Tex. Crim. App. 2009); Soffar v. State, No. AP-75,363, 2009 WL 3839012, at *12 (Tex. Crim. App. Nov. 18, 2009); Ramey v. State, No. AP-75,678, 2009 WL 335276, at *12 (Tex. Crim. App. Feb. 11, 2009).

[228] *Harris*, 2014 WL 2155395 at *19 (rejecting the defendant's argument that the trial court erred in overruling a motion to quash because it was multifarious); and *Soliz*, 432 S.W.3d at 900-01 (Tex. Crim. App. 2014) ("To the extent that appellant intends to argue that there was no evidence to corroborate his confession, his point of error is multifarious as well as inadequately briefed.").

[229] Johnson, 2015 WL 7354609 at *33-36 (stating that two of the defendant's arguments were multifarious and that his briefing was inadequate because he did "not apply the law to the facts and relie[d] solely on conclusory statements); Thuesen, 2014 WL 792038 at *("[A]ppellant does not direct us to any authority for his position that the "amount of evidence" could have had an adverse effect on the jury's ability to follow the trial court's instructions. Therefore, this complaint is inadequately briefed and presents nothing for review."); Hummel 2013 WL 6123283, at *6 ("Appellant does not provide separate authority or argument for his state constitutional claim, we decline to address it."); Robinson, 2013 WL 2424133 at *7 ("In a footnote, appellant asserts that the parties either were or should have been aware that this spectator could 'act out' during the trial. Elsewhere, he asserts that the outburst 'perhaps could or should have been anticipated by the State.' If appellant intends by these assertions to claim ineffective assistance of counsel and/or prosecutorial misconduct in failing to prevent the outburst, his claims are inadequately briefed. Additionally, they are not supported by the record."); Lopez, 2012 WL 5358863 at *9 ("Lopez

fails to cite any authority supporting this contention and fails to articulate a legal argument why a sua sponte instruction was required. Because this issue is inadequately briefed, we decline to consider it. Point of error three is overruled."); Miller, 2012 WL 1868406 at *9 ("Furthermore, his claims are inadequately briefed because appellant provides no legal argument for his complaints that the summary is inadmissible hearsay and that its admission violated the Confrontation Clause."); Leza, 351 S.W.3d at 358 ("we regard his arguments under this point of error as inadequately briefed and decline to reach their merits."); Lucio, 351 S.W.3d at 896-97 ("We decide that this point of error is inadequately briefed and presents nothing for review as this Court is under no obligation to make appellant's arguments for her."); Freeman, 340 S.W.3d at 731 (overruling the defendant's challenge to the Texas death penalty scheme as inadequately briefed); Sparks, 2010 WL 4132769 at *26-27 (noting that the defendant's citations preceded the new statute); Renteria, 2011 WL 1734067 at *46 (Tex. Crim. App. May 4, 2011) ("Renteria makes two distinct arguments in one point of error, and he fails to provide legal authority in support of this particular claim. Thus, we decline to address this portion of his argument because it is multifarious and inadequately briefed."); Storey, 2010 WL 3901416 at *11 (Tex. Crim. App. Oct. 6, 2010) (noting that the defendant's summary statements that his Sixth and Fourteenth Amendment rights were violated failed to cite to an adequate legal authority); Lizcano, 2010 WL 1817772 at *22 ("None of the issues raised in this multifarious point of error is adequately briefed.. . Point of error thirty-five is overruled."); Chanthakoummane, 2010 WL 1696789, at *18-19 n.5 & 6 ("In one sentence at the end of his discussion of point of error seven, he mentions that the trial court's ruling also violates Rule 403 of the Texas Rules of Evidence. In point of error eight, he merely 'incorporate[s] by reference the authorities cited in Issue No. 7.' He does not provide any additional argument or authority in support of his Rule 403 argument."); Johnson, 2010 WL 359018 at *4 (defendant's Fifth Amendment argument was inadequately briefed and dismissed); Jackson, 2010 WL 114409 at *2 ("An appealing party has the duty to cite to the relevant portions of the record. Appellant's claim is inadequately briefed and subject to rejection on that ground alone."); Soffar v. State, No. AP-75,363, 2009 WL 3839012 at *12 (declining to address claim "because he does not provide separate authority or argument for it"); Ramey, 2009 WL 335276 at *12 (overruling the defendant's claim because he did not cite to a legal authority supporting it); Williams, 301 S.W.3d at 683-85 & n.5 (overruling the defendant's point of error as multifarious).

[230] Correspondence between the convicting court and the CCA states that Mr. Ramey was represented on direct appeal by his retained trial lawyers. Letter from Hon. Kemper Stephen Williams, District Judge, 135th Judicial District to Abel Acosta, Clerk of Court, Court of Criminal Appeals (May 10, 2007) (copy on file with author) ("attached hereto is that portion of the record in which the Defendant agreed that his retained counsel, Dr. Joseph Willie and Mr. James Evans, would handle the appeal of this case"). Mr. Ramey's lawyer was not on the Fourth Administrative Judicial Region's list of counsel approved for death penalty appointments in effect at the time of Mr. Ramey's conviction. Email from Melissa Barlow Fischer, General Administrative Counsel for the Criminal District Courts of Bexar County to Amanda Marzullo, Texas Defender Service (May 9, 2016) (attaching the Fourth Administrative Judicial Region's list of approved lawyers that was in effect between January and May 2007).

[231] Brief of Appellant at 8, Ramey v. State, No. AP-75,678 (Tex. Crim. App. Oct. 15, 2007) [hereinafter Ramey Brief].

[232] *Id.*

[233] *Ramey*, 2009 WL 335276 at *12.

[234] Ramey Brief, *supra* note 231, at 8-9.

[235] *Ramey,* 2009 WL 335276 at *1 ("The appellant raises eight points of error in direct appeal to this court. Finding no reversible error, we affirm.").

[236] Appellant's Brief on Appeal at 15-20, Storey v. State, No. AP-76,018 (Tex. Crim. App. July 15, 2009).

[237] *Id.* at 19-20.

[238] *Storey,* 2010 WL 3901416, at *11.

[239] *Id.* at *1.

[240] *Lizcano,* 2010 WL 181722, at *22 (Tex. Crim. App. May 5, 2010).

[241] 77 S.W.2d 76, 81 (Tex. Crim. App. 1989) (citing Jones v. State, 742 S.W.2d 398, 407 (Tex. Cr. App. 1987)).

[242] *Lizcano*, 2010 WL 1817772, at *1.

[243] Appellant's Original Brief at 36-45, Rockwell v. State, No. AP-76,737 (Tex. Crim. App. Dec. 3, 2012) (citations for a description of Texas' death penalty scheme included Tex. Code Crim. Proc. art. 37.011, which applies only to offenses that occurred before Sept. 1, 1991); and Brief of Appellant at 2-3, Devoe v. State, No. AP-76,289 (Tex. Crim. App. Nov. 8, 2010) (incorrectly citing Tex. Pen. Code §§ 19.01 and 19.04 as the capital murder statute).

[244] Appellant's Opening Brief on Appeal at 97-1115, Soliz v. State, No. AP-76,768 (Tex. Crim. App. Oct. 8, 2013).

[245] In addition, the CCA has ruled that challenges to the state's lethal injection protocol are premature on direct appeal. *See* Gallo v. State, 239 S.W.3d 757 (Tex. Crim. App. 2007) (holding that a challenge to the state's lethal injection protocol was not ripe for litigation on direct appeal because the defendant's execution date was not imminent).

[246] Busby v. State, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008).

[247] Roberts v. Thaler, 681 F.3d 597, 607 (5th Cir. 2012) ("if the TCCA did invoke the briefing requirements Texas Rule of Appellate Procedure 38.1 to bar Roberts's claim, then its determination constituted an independent and adequate ground for denial of relief that procedurally bars federal habeas review"); Woodward v. Thaler, 702 F.Supp.2d 738, 750-51 & n. 9 (S.D. Tex. 2010) (holding that the direct appeal lawyer's inadequate briefing of the defendant's Fourth Amendment claims was a procedural bar to federal habeas relief); *see also House v. Hatch*, 527 F.3d 1010, 1029-30 (10th Cir. 2008) (holding that New Mexico's adequate briefing requirement is an independent and adequate procedural bar to federal habeas relief); Clay v. Norris, 485 F.3d 1037, 1040-41 (8th Cir. 2007) (Arkansas's proper abstracting rule is an independent and adequate procedural bar to federal habeas relief). The demanding standard under *Strickland* and its progeny also poses a substantial barrier to relief on the grounds that counsel was ineffective, due both to the deference accorded to defense attorneys under this test and the prejudice requirement. *And see, e.g.,* Olalumade v. Johnson, 220 F.3d 588 (5th Cir. 2000)("Olalumade has not shown any probability that the result of the appeal would have been different had his counsel cited authority on that one of his five points of error."); Isenberger v. Thaler, No. 3:12-CV-113, 2013 WL 792150, at *5 (S.D. Tex. Mar. 4, 2013), *vacated sub nom. on other grounds by* Isenberger v. Stephens, 575 F. App'x 548 (5th Cir. 2014) (rejecting the petitioner's claim that his direct appeal lawyer was ineffective in failing to file an adequate brief because he "fail[ed] to show how the outcome of his direct appeal would have been different but for counsel's actions"); Woodard, 702 F. Supp. at 779 (rejecting Woodward's claim that his direct appeal lawyer was ineffective by insufficiently briefing his Fourth Amendment claims on the grounds that the Sixth Amendment right to counsel does not require that counsel research and present all non-frivolous claims).