

Dismissed and Memorandum Opinion filed January 14, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-01060-CR

DELFINO RUBEN MORALES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 1201106**

MEMORANDUM OPINION

Appellant entered a plea of guilty to murder. Appellant and the State agreed that appellant's punishment would not exceed confinement in prison for more than thirty-five years. In accordance with the terms of this agreement with the State, the trial court sentenced appellant on November 5, 2009, to confinement for twenty-five years in the Institutional Division of the Texas Department of Criminal Justice. Appellant filed a timely, written notice of appeal. We dismiss the appeal.

We lack jurisdiction over this attempted appeal from a plea bargain. *See* Tex. R. App. P. 25.2(a)(2) (stating defendant in plea-bargain case may appeal only matters raised by a written pre-trial motion or with the trial court’s permission). An agreement that places a cap on punishment is a plea bargain for purposes of Texas Rule of Appellate Procedure 25.2(a)(2). *See Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003) (stating sentence-bargaining may be for recommendations to the court on sentences, including a recommended “cap” on sentencing); *Waters v. State*, 124 S.W.3d 825, 826-27 (Tex. App.—Houston [14th Dist.] 2003, pet. ref’d) (holding reviewing court lacked jurisdiction where defendant pled guilty with a sentencing cap of ten years).

The trial court entered a certification of the defendant’s right to appeal in which the court certified that this is a plea bargain case, the defendant has no right of appeal, and the defendant waived any right to appeal. *See* Tex. R. App. P. 25.2(a)(2) (requiring the trial court to enter a certification of the defendant’s right of appeal). The trial court’s certification is included in the record on appeal. *See* Tex. R. App. P. 25.2(d). The record supports the trial court’s certification. *See Dears v. State*, 154 S.W.3d 610, 615 (Tex. Crim. App. 2005).

Accordingly, we dismiss the appeal. *See* Tex. R. App. P. 25.2(d) (requiring dismissal of the appeal where there is no certification showing the defendant has the right to appeal).

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.

Do Not Publish — Tex. R. App. P. 47.2(b).