

Dismissed and Memorandum Opinion filed December 23, 2010.



In The

**Fourteenth Court of Appeals**

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**NO. 14-10-00580-CR**

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**RICHARD GROVER, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 232nd District Court  
Harris County, Texas  
Trial Court Cause Nos. 1253779 & 1228233**

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**MEMORANDUM OPINION**

Appellant entered a plea of guilty to two counts of aggravated sexual assault of a child. Appellant and the State agreed that appellant's punishment would not exceed confinement in prison for more than 40 years. In accordance with the terms of this agreement with the State, the trial court sentenced appellant on June 22, 2010, to confinement for 40 years in the Institutional Division of the Texas Department of Criminal Justice, for each offense. The trial court ordered the sentences to run concurrently. Appellant filed a timely, written notice of appeal. Although the trial court mistakenly

entered a certification of the defendant's right to appeal in which the court certified that this is not a plea bargain case and the defendant has the right of appeal, we have no jurisdiction over the appeal. *See* Tex. R. App. P. 25.2(a)(2). An agreement that places a cap on punishment is a plea bargain for purposes of Texas Rule of Appellate Procedure 25.2(a)(2). *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, even though trial judge mistakenly certified defendant had right of appeal); *Threadgill v. State*, 120 S.W.3d 871, 872 (Tex. App.—Houston [1st Dist.] 2003, no. pet.) (holding statement in record indicating that there was no agreed recommendation did not convert proceeding into an open plea where plea was entered pursuant to agreed sentencing cap); *see also Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003).

Because appellant's plea was made pursuant to a plea bargain, he may appeal only matters raised by a written pre-trial motion or with the trial court's permission. *See* Tex. R. App. P. 25.2(a)(2). Appellant is not appealing any pre-trial rulings. The trial court's erroneous certification that the case is not a plea bargain case does not constitute permission to appeal. *See Waters*, 124 S.W.3d at 826–27.

Accordingly, we dismiss the appeal.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Brown.

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