

Dismissed and Memorandum Opinion filed December 16, 2010.



In The

**Fourteenth Court of Appeals**

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**NO. 14-10-01165-CR**

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**CARLOS ALBERTO RESENDIZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 337th District Court  
Harris County, Texas  
Trial Court Cause No. 1204923**

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**MEMORANDUM OPINION**

Appellant entered a plea of guilty to aggravated assault on a family member. Appellant and the State agreed that appellant's punishment would not exceed confinement in prison for more than fifteen years. In accordance with the terms of this agreement with the State, the trial court sentenced appellant on October 14, 2010, to confinement for twelve years in the Institutional Division of the Texas Department of Criminal Justice. Appellant filed a timely, written notice of appeal. We dismiss the appeal.

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 and the defendant has no right of 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) (stating sentence-bargaining may be for recommendations to the court on sentences, including a recommended “cap” on sentencing).

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.

#### PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Jamison.  
Do Not Publish — Tex. R. App. P. 47.2(b).