

*Court Of Appeals
Fourth Court of Appeals District of Texas
San Antonio*



MEMORANDUM OPINION

No. 04-10-00361-CR

Andre **DENNIS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 227th Judicial District Court, Bexar County, Texas
Trial Court No. 2009-CR-5269A
Honorable Philip A. Kazen, Jr., Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Justice
Phylis J. Speedlin, Justice
Rebecca Simmons, Justice

Delivered and Filed: June 16, 2010

DISMISSED

Defendant Andre Dennis pled nolo contendere to aggravated robbery and was sentenced within the terms of a plea bargain. The trial court's Certification of Defendant's Right of Appeal states: "the defendant has waived the right of appeal" and that this "is a plea-bargain case, and the defendant has NO right of appeal." *See* TEX. R. APP. P. 25.2(a)(2). Defendant filed a pro se notice of appeal in which he asserts the trial court overruled his motion to suppress. "In a plea bargain case

... a defendant may appeal only: (A) those matters that were raised by written motion filed and ruled on before trial, or (B) after getting the trial court's permission to appeal." TEX. R. APP. P. 25.2(a)(2). The clerk's record does not contain a written motion ruled on before trial nor does it indicate the trial court granted defendant permission to appeal.

This court must dismiss an appeal "if a certification that shows the defendant has the right of appeal has not been made a part of the record." TEX. R. APP. P. 25.2(d). Accordingly, on May 24, 2010, this court issued an order stating this appeal would be dismissed pursuant to Rule 25.2(d) unless an amended trial court certification that shows defendant has the right of appeal was made part of the appellate record. *See Daniels v. State*, 110 S.W.3d 174 (Tex. App.—San Antonio 2003, order); TEX. R. APP. P. 25.2(d); 37.1. On May 25, 2010, defendant's appellate counsel filed a letter stating "this court has no choice but to dismiss the appeal." In light of the record presented, we agree with defendant's counsel that Rule 25.2(d) requires this court to dismiss this appeal. Accordingly, this appeal is dismissed.

PER CURIAM

DO NOT PUBLISH