



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 2-07-188-CR**

RICKIE WAYNE FAGAN

APPELLANT

V.

THE STATE OF TEXAS

STATE

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FROM THE 396TH DISTRICT COURT OF TARRANT COUNTY  
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**MEMORANDUM OPINION<sup>1</sup> ON REHEARING**  
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On May 22, 2008, we granted the State's motion for rehearing and withdrew this court's prior opinion and judgment of March 27, 2008 because the original certification of appellant's right of appeal was defective.<sup>2</sup>

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<sup>1</sup> See TEX. R. APP. P. 47.4.

<sup>2</sup> Although the trial court's certification of appellant's right to appeal stated that this case "is not a plea-bargain case, and the defendant has the right of appeal," the record shows that appellant pled guilty pursuant to a plea bargain. See TEX. R. APP. P. 25.2(a)(2); *Shankle v. State*, 119 S.W.3d 808,

Accordingly, we abated the appeal so that the trial court could file an amended certification of appellant's right of appeal. On May 29, 2008, we reinstated the case after receiving an amended notice of appeal from the trial court indicating that this case "is a plea-bargain case, and [appellant] has NO right of appeal." We sent appellant a letter giving him until June 26, 2008 to show grounds why the appeal should not be dismissed based upon the new certification, but we have not received any response. See TEX. R. APP. P. 25.2(d), 43.2(f).

Therefore, in accordance with the amended trial court certification, we dismiss this appeal. See *id.*; *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006); *Jackson v. State*, 168 S.W.3d 239, 243 (Tex. App.—Fort Worth 2005, no pet.).

PER CURIAM

PANEL: LIVINGSTON, J.; CAYCE, C.J.; and MCCOY, J.

DO NOT PUBLISH  
TEX. R. APP. P. 47.2(b)

DELIVERED: August 7, 2008

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812–14 (Tex. Crim. App. 2003); *Menjivar v. State*, No. 01-06-00085-CR, 2007 WL 4099409, at \*2 (Tex. App.—Houston [1st Dist.] Nov. 15, 2007, no pet.) ("An agreement to a sentencing cap is an agreed plea bargain for purposes of Rule 25.2(a)(2).").