



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-15-00371-CR

DONALD RAHEEM JONES, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 52nd District Court
Coryell County, Texas
Trial Court No. FISC-14-22555; Honorable Trent D. Farrell, Presiding

March 7, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Pending before this court is a *Motion to Dismiss Appeal* filed by counsel for Appellant, Donald Raheem Jones, in which counsel represents that Appellant wishes to withdraw his notice of appeal and dismiss this appeal. The motion is signed by counsel but not by Appellant. Attachments to the motion and the limited record before us demonstrate that Appellant instructed counsel to dismiss this appeal. We grant the motion.

On January 4, 2016, Appellant filed in this court an *Unopposed Motion to Abate Appeal and Remand Case to Trial Court* for correction of numerous clerical errors contained in the trial court's judgment and for a corrected *Trial Court's Certification of Defendant's Right of Appeal*. The motion was granted by order of January 14, 2016. See *Jones v. State*, No. 07-15-00371-CR, 2016 Tex. App. LEXIS 468, at *3 (Tex. App.—Amarillo Jan. 14, 2016, order) (not designated for publication). On January 27, 2016, at a hearing ordered by this court, Appellant confirmed on the record that he wished to dismiss this appeal once the errors on the judgment were corrected.

On February 4, 2016, the trial court signed a judgment *nunc pro tunc* reflecting the offense for which Appellant was convicted as aggravated sexual assault of a child younger than fourteen (rather than six) years of age. TEX. PENAL CODE ANN. § 22.021(f)(2) (West Supp. 2015). The judgment also reflects "9/9/2015" as the date sentence was imposed rather than "5/27/2015." Additionally, a corrected *Trial Court's Certification of Defendant's Right of Appeal* has been filed which reflects that this case was "a plea-bargain case, and the [Appellant] has NO right of appeal."

Rule 42.2(a) of the Texas Rules of Appellate Procedure provides that an appeal may be dismissed if an appellant withdraws his notice of appeal by signed motion accompanied by the signature of the appellant's attorney. The purpose of the requirement that a motion to dismiss be signed by both the appellant and counsel is to protect an appellant from having his appeal dismissed by counsel without consent and to ensure that counsel had notice of the dismissal to advise the client on the consequences of a dismissal. *Connors v. State*, 966 S.W.2d 108, 110 (Tex. App.—Houston [1st Dist.] 1998, pet. ref'd).

The decision of whether to take an appeal from a criminal conviction is personal to the accused. See *id.* at 110 (citing *Jones v. Barnes*, 463 U.S. 745, 751, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983)). Thus, based on the record before us, we apply Rule 2 of the Texas Rules of Appellate Procedure to suspend the requirement of Rule 42.2(a) that Appellant's signature appear on the motion to dismiss. No decision of this court having been delivered, we dismiss the appeal. No motion for rehearing will be entertained and our mandate will issue forthwith.

Patrick A. Pirtle
Justice

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