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**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-11-00146-CR

No. 05-11-00147-CR

ROBERT REY GARZA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the Criminal District Court No. 6
Dallas County, Texas
Trial Court Cause Nos. F08-34845-X, F08-34846-X**

MEMORANDUM OPINION

Before Chief Justice Wright and Justices Bridges and Myers
Opinion By Chief Justice Wright

Robert Rey Garza was charged with two offenses of aggravated sexual assault of a child under 14 years of age. Initially, Garza pleaded not guilty to the charges. However, after the trial court granted appellant's motion to quash the jury panel, Garza waived a jury trial, changed his plea to nolo contendere, and pleaded true to one enhancement paragraph in each case. After finding appellant guilty, the trial court assessed punishment at twenty five years' imprisonment in each case. The court also assessed a \$5,000 fine in cause no. 05-11-00146-CR.

In a single point of error, appellant requests that the trial court's judgments be modified to correctly reflect appellant's no contest pleas and to show there were no plea bargain agreements. The

State agrees the judgments should be modified. We modify the trial court's judgments and affirm as modified.

The trial court's judgments recite appellant's pleas as not guilty in both cases. However, the record shows appellant pleaded no contest. Also, in cause no. 05-11-00146-CR, the section of the judgment entitled "Terms of Plea Bargain" states there was an agreement to twenty five years' imprisonment and a \$5,000 fine. The record shows there was no plea bargain agreement. Therefore, the judgments are incorrect and must be modified. We sustain appellant's sole point of error.

An appellate court has the authority to correct a trial court's judgment to speak the truth when it has the necessary data and information to do so. *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd). Accordingly, we modify the trial court's judgments as follows:

In cause no. 05-11-00147-CR, we modify the section of the trial court's judgment entitled "Plea to Offense" to state "Nolo Contendere."

In cause no. 05-11-00146-CR, we modify the section of the trial court's judgment entitled "Plea to Offense" to state "Nolo Contendere, and modify the section entitled "Terms of Plea Bargain" to state "Open."

As modified, we affirm the trial court's judgments.

CAROLYN WRIGHT
CHIEF JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ROBERT REY GARZA, Appellant

No. 05-11-00146-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the Criminal District Court
No. 6 of Dallas County, Texas. (Tr.Ct.No.
F08-34845-X).

Opinion delivered by Chief Justice Wright,
Justices Bridges and Myers participating.

Based on the Court's opinion of this date, we **MODIFY** the trial court's judgment as follows:

We **MODIFY** the section entitled "Plea to Offense" to state "Nolo Contendere."

We **MODIFY** the section entitled "Terms of Plea Bargain" to state "Open."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered August 22, 2012.

/Carolyn Wright/

CAROLYN WRIGHT
CHIEF JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ROBERT REY GARZA, Appellant

No. 05-11-00147-CR

V.

THE STATE OF TEXAS, Appellee

Appeal from the Criminal District Court
No. 6 of Dallas County, Texas. (Tr.Ct.No.
F08-34846-X).

Opinion delivered by Chief Justice Wright,
Justices Bridges and Myers participating.

Based on the Court's opinion of this date, we **MODIFY** the trial court's judgment as follows:

We **MODIFY** the section entitled "Plea to Offense" to state "Nolo Contendere."

As modified, we **AFFIRM** the trial court's judgment.

Judgment entered August 22, 2012.

/Carolyn Wright/

CAROLYN WRIGHT
CHIEF JUSTICE