

Denied and Opinion Filed March 23, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00285-CV

IN RE THOMAS BONNER, Relator

Original Proceeding from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F13-34236

MEMORANDUM OPINION

Before Justices Lang, Evans, and Stoddart
Opinion by Justice Evans

In this original proceeding, relator asks the Court to order the trial court to “comply with Tex. R. App. P. 25.2(a),(d),” to provide a free record, and to allow an appeal of multiple pretrial motions. Relator complains that the trial court’s certification of defendant’s right to appeal did not give him a right to appeal matters raised by written motion filed and ruled on before trial, as permitted by Rule 25.2(a)(2)(A). TEX. R. APP. P. 25.2(a)(2)(A) (in a plea bargain case, a defendant may appeal “matters that were raised by written motion filed and ruled on before trial”). Relator’s petition for writ of mandamus does not comply with the rules of appellate procedure. *See* TEX. R. APP. P. 52.3(j), 52.3(k), 52.7(a)(1). Although these deficiencies alone constitute sufficient reason to deny mandamus relief, in the interest of judicial economy we address the petition.

Background

Relator entered a negotiated plea of guilty to the offense of possession of four grams or more but less than 200 grams of gamma hydroxybutyrate. Under the plea agreement, appellant signed a judicial confession and pleaded guilty to the offense in exchange for the State's agreement to recommend punishment at five years. As further consideration for the plea bargain, appellant waived his right to appeal. After finding appellant guilty, the trial court assessed punishment at five years in prison in accordance with the plea agreement. The trial court's certification of defendant's right of appeal states that the case is a plea bargain case, defendant has no right of appeal, and defendant waived the right of appeal. Relator appealed, and this Court dismissed the appeal for want of jurisdiction on March 8, 2017. *See Bonner v. State*, No. 05-16-01441-CR, 2017 WL 912149, at *1 (Tex. App.—Dallas Mar. 8, 2017, no. pet. h.) (mem. op.). Relator now seeks a writ of mandamus directing the trial court to amend its certification and provide him with a right to appeal rulings on pretrial motions.

Applicable Law

To demonstrate entitlement to a writ of mandamus in a criminal case, a relator must establish that the trial court failed to perform a ministerial duty, and that the relator has no other adequate legal remedy. *See State ex rel. Hill v. Court of Appeals for the Fifth Dist.*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001).

Although rule 25.2(a)(2)(A) grants defendants who plead guilty as part of a plea bargain the right to appeal pretrial motions filed and ruled on before trial, a defendant may waive this right, as long as the waiver is made “voluntarily, knowingly, and intelligently.” *Marsh v. State*, 444 S.W.3d 654, 660 (Tex. Crim. App. 2014) (citing TEX. CODE CRIM. PROC. art. 1.14 (“The defendant in a criminal prosecution for any offense may waive any rights secured him by law.”)) and *Ex parte Broadway*, 301 S.W.3d 694, 697 (Tex. Crim. App. 2009)). When a defendant

waives his right of appeal as part of an agreement on sentencing and the agreement is followed by the court, his waiver is made knowingly, intelligently, and voluntarily. *See Oliver v. State*, No. 05-14-00308-CR, 2015 WL 1862920, at *2 (Tex. App.—Dallas Apr. 22, 2015, no pet.) (citing *Ex parte Delaney*, 207 S.W.3d 794, 798–99 (Tex. Crim. App. 2006)). For example, in *Marsh*, the defendant signed a plea agreement that explicitly set out the defendant’s waiver of his right to appeal matters raised by written motions filed and ruled on before trial, verbally acknowledged the general waiver of his appellate rights at the plea hearing, signed the trial court’s certification of right to appeal, and acknowledged at the sentencing hearing that he indicated by his signature that if the court abided by the plea agreement, then the defendant would waive his right to appeal. 444 S.W.3d at 656. The defendant later moved for new trial and for amendment of the certification, claiming that he never waived his right to appeal the motion to suppress as part of the plea agreement. *Id.* The Court of Criminal Appeals disagreed, holding that the defendant knowingly and voluntarily waived his right to appeal the motion to suppress by signing the plea agreement and certification of right of appeal. *Id.* at 660. The Beaumont court of appeals reached a similar decision in *In re Arehart*, No. 09-11-00140-CV, 2011 WL 1420930, at *1 (Tex. App.—Beaumont Apr. 14, 2011, orig. proceeding) (mem. op.). In *Arehart*, the court denied a petition for writ of mandamus seeking an amended certification to permit appeal of pretrial motion for speedy trial where the relator signed written plea admonishments as well as the trial court’s certification, both of which affirmatively stated that relator waived the right of appeal. *Id.*

Discussion

Relator signed the plea agreement that included the statement that he understands that he has a right to appeal but does “expressly, voluntarily, knowingly, and intelligently give up and waive my right **to any appeal** if the Court follows the terms of the State’s recommendation as to

sentencing.” (emphasis added). Relator also signed the trial court’s certification of defendant’s right of appeal, which did not check the box allowing appeal of pretrial motions and, instead, checked the boxes stating that relator has no right of appeal and has waived the right of appeal. By signing the trial court’s certification, he also acknowledged that he had been informed of his rights concerning any appeal. Here, like in *Marsh* and *Arehart*, the signing of the plea agreement and the certification show that relator voluntarily waived the right to any appeal, including orders on pretrial motions. The trial court had no duty to provide relator with the right to appeal rulings on pretrial motions. Accordingly, we deny the petition for writ of mandamus.

/David W. Evans/
DAVID EVANS
JUSTICE

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