

DISMISS; and Opinion Filed April 5, 2019.



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

No. 05-19-00129-CR

**BRANDON KYRELL JEFFERY, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 59th Judicial District Court
Grayson County, Texas
Trial Court Cause No. 068488**

MEMORANDUM OPINION

Before Justices Brown, Schenck, and Pedersen, III
Opinion by Justice Brown

Brandon Kyrell Jeffery appeals his conviction for manslaughter. Appellant was indicted for murder and manslaughter. He pleaded guilty to manslaughter in exchange for the State's agreement to dismiss the murder charge. The trial court found appellant guilty and assessed punishment at ten years in prison. Appellant then filed his notice of appeal with this Court.

After reviewing appellant's notice of appeal, the trial court's certification of appellant's right to appeal, and the details of his conviction, we had questions regarding our jurisdiction. By letter dated February 7, 2019, we informed the parties that it appeared appellant had waived his right to appeal and asked that they file letter briefs regarding the jurisdictional issue. Appellant's trial counsel responded, informing the Court that while he did not disagree with our preliminary conclusion, he had withdrawn from the case at appellant's request. The State did not respond.

The clerk's record shows that appellant was indicted on two counts: murder and manslaughter. Appellant agreed to plead guilty to count 2, manslaughter, in exchange for the State's agreement to dismiss count 1, the murder charge. The trial court admonished appellant in writing that if he pleaded guilty under a plea bargain agreement with the State and the trial court followed the plea bargain, appellant would not be allowed to appeal his conviction "except for those matter, if any, raised by written motions filed and ruled on by the Court prior to trial." Appellant, appellant's trial counsel, the district attorney, and the trial court signed the agreement. The clerk's record also shows that no substantive written motions were filed or ruled on by the trial court prior to the hearing on appellant's pleas. The trial court then followed the plea bargain agreement, found appellant guilty, and assessed punishment. The trial court certified that this was a plea-bargain case and appellant had no right to appeal.

A defendant in a plea bargain case—that is, a case in which a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant—may appeal only (1) matters that were raised by written motion filed and ruled on before trial or (2) after getting the trial court's permission to appeal. TEX. R. APP. P. 25.2(a)(2). There are two basic kinds of plea-bargaining: charge-bargaining and sentence-bargaining. *Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003). Charge-bargaining involves whether a defendant will plead guilty to the offense that has been alleged or to a lesser or related offense, and whether the prosecutor will dismiss, or refrain from bringing, other charges. *Id.* Sentence-bargaining may be for binding or non-binding recommendations to the court on sentences, including a recommended "cap" on sentencing and a recommendation for deferred-adjudication probation. *Id.*

Here, appellant entered into a charge plea-bargain with the State when he agreed to plead guilty to manslaughter in exchange for the State dismissing the murder charge. As previously

noted, no substantive written motions were filed or ruled on by the trial court prior to the hearing on appellant's plea, and the trial court did not give permission to appeal. Thus, we conclude appellant waived his right to appeal; in other words, he has no right to appeal. TEX. R. APP. P. 25.2(a)(2).

We dismiss this appeal.

/Ada Brown/

ADA BROWN
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)

190129F.U05



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

JUDGMENT

BRANDON KYRELL JEFFERY,
Appellant

No. 05-19-00129-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 59th Judicial District
Court, Grayson County, Texas
Trial Court Cause No. 068488.
Opinion delivered by Justice Brown.
Justices Schenck and Pedersen, III
participating.

Based on the Court's opinion of this date, we **DISMISS** this appeal.

Judgment entered this 5th day of April, 2019.