

Dismissed and Opinion Filed August 4, 2020



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

No. 05-20-00589-CR

**MARIO SANTOS, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F20-00069-I**

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Carlyle

Mario Santos has filed a notice of appeal to challenge his conviction for injury to a child. The trial court has filed a certification showing appellant was convicted pursuant to a plea bargain and has no right to appeal. Because the record supports the trial court's certification, we dismiss this appeal for want of jurisdiction.

The record shows appellant and the State entered into a written plea agreement under which appellant agreed to plead guilty and waive his right to appeal in exchange for a three-year sentence. The plea agreement bears the signatures of

appellant, appellant's counsel, the prosecutor, and the trial court. The trial court followed the plea agreement and assessed punishment at three years' imprisonment.

On March 10, 2020, appellant filed a notice of appeal. The district clerk forwarded the notice of appeal to the court on Jun 8, 2020. On July 8, 2020, appellant's counsel filed a letter with the court pointing out the trial court had certified appellant had no right to appeal and conceding that the record shows the trial court followed the plea agreement.

Rule 25.2(a)(2) provides that in a plea-bargained case in which the trial court assesses punishment that does not exceed the punishment to which the defendant agreed, the defendant may appeal only those matters raised by written motion filed and ruled on before trial, after getting the trial court's permission to appeal, or if the appeal is specifically authorized by statute. *See* TEX. R. APP. P. 25.2(a)(2). The record does not show appellant filed any pretrial motions. As the trial court's certification attests, appellant has not received the trial court's permission to appeal. There is no specific statutory authorization for appellant's appeal that would authorize an appeal in this case.

Moreover, when a defendant waives the right to appeal in exchange for valuable consideration from the State, the waiver is enforceable if it is made voluntarily, knowingly, and intelligently. *See Jones v. State*, 488 S.W.3d 801, 807–08 (Tex. Crim. App. 2016). In this case, appellant expressly waived his right to appeal in exchange for receiving an agreed sentence. During the plea hearing,

appellant affirmed to the trial court that he understood the plea agreement. He further affirmed his understanding that he would not be able to appeal. We conclude appellant's waiver of the right to appeal is enforceable. *See id.* at 807–08.

An appeal must be dismissed if a certification showing that the defendant has the right to appeal has not been made part of the record. *See* TEX. R. APP. P. 25.2(d); *Dears v. State*, 154 S.W.3d 610, 613 (Tex. Crim. App. 2005). In this case, the record supports the trial court's certification stating the appeal is a plea-bargained case and appellant has no right to appeal. The record also shows appellant waived his right to appeal in exchange for valuable consideration from the State. Because appellant has no right to appeal, we must dismiss the appeal without further action. *See* TEX. R. APP. P. 25.2(d); *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006).

We dismiss the appeal for want of jurisdiction.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

MARIO SANTOS, Appellant

No. 05-20-00589-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District
Court No. 2, Dallas County, Texas
Trial Court Cause No. F20-00069-I.
Opinion delivered by Justice Carlyle.
Justices Whitehill and Osborne
participating.

Based on the Court's opinion of this date, the appeal is **DISMISSED**.

Judgment entered this 4th day of August, 2020.