

DISMISS and Opinion Filed December 8, 2021



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

No. 05-21-00825-CR

**TAYLOR GLEN GRAHAM, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 265th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F21-00261-R**

MEMORANDUM OPINION

Before Justices Myers, Molberg, and Garcia
Opinion by Justice Garcia

Taylor Glen Graham appeals his conviction for “assault bodily injury, family violence.” After appellant entered a guilty plea, the trial court found him guilty and assessed punishment, enhanced by a prior felony conviction, at fifteen years in prison. Appellant then filed this appeal.

After the clerk’s record was filed and reviewed, we notified the parties we had concerns over our jurisdiction. Both appellant and the State file jurisdictional letter responses, and the reporter’s record has been filed. After reviewing the responses and the reporter’s record, we dismiss this appeal.

Two basic kinds of plea bargains affect punishment: (1) sentence bargaining and (2) charge bargaining. *Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003). Sentence bargaining may be for binding or nonbinding recommendations to the court on sentences, including a recommended “cap” on a sentence or the State’s agreement to drop an enhancement paragraph thereby reducing the punishment range. *See id.* Sentence bargains constitute plea bargain agreements under appellate rule 25.2. *Id.* Rule 25.2 governs the perfection of appeals in criminal cases and requires that the trial court certify an appellant’s right to appeal. TEX. R. APP. P. 25.2(a)(2).

As we noted in our letter to the parties, the trial court’s certification of appellant’s right to appeal states (1) this is not a plea-bargain case and appellant has the right of appeal but also (2) this is a plea-bargain and appellant has waived the right of appeal, with the latter statement being circled. Rule 25.2 requires the recitations in a certification to be true and supported by the record. *See Dears v. State*, 154 S.W.3d 610, 613 (Tex. Crim. App. 2005) (certification not supported by record is defective); *Carender v. State*, 155 S.W.3d 929, 930–31 (Tex. App.—Dallas 2005, no pet.).

Here, the record shows appellant was indicted for the third-degree offense of intentionally, knowingly, and recklessly causing bodily injury to the complainant, a member of appellant’s family and with whom he had a dating relationship. *See* TEX. PENAL CODE ANN. § 22.01(b)(2)(A). This third-degree offense was initially

enhanced for punishment purposes with two prior felony convictions, making the punishment range life or a term of not more than 99 years or less than 25 years. *See* TEX. PENAL CODE ANN. § 12.42(d). Appellant entered into a plea agreement with the State in which the State agreed to drop one of the enhancement paragraphs (making the punishment range that of a second-degree felony, i.e., not more than 20 years or less than 2 years) and to cap the punishment range at fifteen years. In exchange, appellant agreed to waive several rights, including the right to appeal. The agreement was signed by appellant, his trial counsel, the district attorney, and the trial court. On August 2, 2021, the trial court admonished appellant and told him he would be able to appeal his sentence. However, at the start of the punishment hearing on September 7, 2021, the trial court informed appellant that contrary to what he had been told at the previous hearing, he would not be entitled to appeal if the trial court followed the agreement he had with the State. Although the trial court allowed appellant the opportunity to withdraw his guilty plea, he declined to do so, stating he wanted to “go forward with this today.”

As evidenced by the appellate record, appellant signed a plea bargain agreement. The trial court followed the agreement by (1) allowing the State to drop an enhancement paragraph and (2) accepting appellant’s plea and sentencing him to fifteen years in prison. In return, appellant waived his right to appeal. *See Shankle*, 119 S.W.3d at 813. The trial court’s certification is defective to the extent it states this is not a plea bargain and appellant has the right to appeal. The portion of the

certification stating this is a plea bargain and appellant has waived his right to appeal is accurate. *See Dears*, 154 S.W.3d at 613. Because appellant waived his right to appeal, we lack jurisdiction to entertain this appeal. *Blanco v. State*, 18 S.W.3d 218, 219–20 (Tex. Crim. App. 2000).

We dismiss this appeal.

/Dennise Garcia/
DENNISE GARCIA
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

TAYLOR GLEN GRAHAM,
Appellant

No. 05-21-00825-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 265th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F21-00261-R.
Opinion delivered by Justice Garcia.
Justices Myers and Molberg
participating.

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

Judgment entered December 8, 2021