

Dismiss and Opinion Filed January 4, 2022



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

No. 05-21-01001-CR

**MARKELL DEVORK GAINES-HOLMES, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 401st Judicial District Court
Collin County, Texas
Trial Court Cause No. 401-83916-2021**

MEMORANDUM OPINION

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

After Markell Devork Gaines-Holmes pleaded guilty to assault involving family violence, the trial court found him guilty and assessed punishment at ten years in prison, probated for five years. Appellant then filed a notice of appeal. The district clerk forwarded the notice, along with a copy of appellant's plea bargain agreement, the rule 25.2 certification of appellant's right to appeal, and a copy of the judgment. After reviewing those documents, we asked the parties for letter briefs addressing how the Court had jurisdiction. On December 1, 2021, appointed counsel Jennifer Castleman filed a motion to withdraw, stating that when she contacted appellant

about our letter, he told her he wanted her to withdraw from the case and ordered her not to file any documents on his behalf. To date, the State has not responded.

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). Rule 25.2 also 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, appellant signed a written plea bargain agreement in which the State agreed to ten years of confinement, probated for five years in exchange for, among other things, appellant pleading guilty and waiving his right to appeal. The plea bargain agreement is signed by appellant, his appointed counsel, the representative for the State, and the trial court. No pretrial motions were filed. The judgment states this is a plea bargain agreement and under “special findings or orders” notes: “APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.” The trial court certified (1) this is a plea-bargain case and appellant has no right to appeal and (2) appellant waived his right to appeal. Both appellant and his trial counsel signed the certification. Because appellant waived his right to appeal, we have no other alternative than to dismiss this appeal.

We dismiss this appeal.

211001f.u05

Do Not Publish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

/Ken Molberg//
KEN MOLBERG
JUSTICE



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

JUDGMENT

MARKELL DEVORK GAINES-
HOLMES, Appellant

No. 05-21-01001-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 401st Judicial
District Court, Collin County, Texas
Trial Court Cause No. 401-83916-
2021.

Opinion delivered by Justice
Molberg. Justices Myers and Garcia
participating.

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

Judgment entered this 4th day of January, 2022.