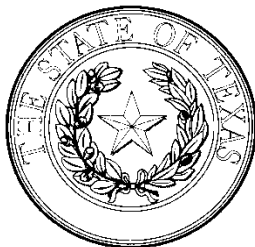


Opinion issued November 17, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00516-CR

MICHAEL RAYMOND PETER, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from County Court at Law No. 2
Fort Bend County, Texas
Trial Court Case No. 125330

MEMORANDUM OPINION

A jury found appellant, Michael Raymond Peter, guilty of the misdemeanor offense of driving while intoxicated. Prior to commencement of the punishment phase of trial, appellant reached an agreement with the State regarding punishment. In accordance with the agreement, the trial court assessed punishment at a fine of

\$1,500 and confinement for 180 days, suspended for two years. The trial court certified that appellant waived the right of appeal. Appellant filed a motion for new trial and a pro se notice of appeal.

In its motion to dismiss, the State asserts that this court lacks jurisdiction to hear this appeal because appellant waived his right to appeal when the trial court accepted his plea agreement as to punishment, citing *Blanco v. State*, 18 S.W.3d 218 (Tex. Crim. App. 2000).

A valid waiver of the right to appeal will prevent a defendant from appealing without the consent of the trial court. TEX. CODE CRIM. PROC. ANN. art. 1.14(a) (Vernon Supp. 2009); *Monreal v. State*, 99 S.W.3d 615, 617 (Tex. Crim. App. 2003). 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 Ex parte Delaney*, 207 S.W.3d 794, 798-99 (Tex. Crim. App. 2006); *see also Blanco*, 18 S.W.3d at 219-20.

In *Blanco*, after the jury convicted the defendant, he waived his right to appeal pursuant to an agreement that the State would recommend a 16-year sentence. *Id.* at 219. The State made the recommendation, and the trial court assessed punishment in accordance with the agreement. *Id.* Nevertheless, the defendant appealed. *Id.* The appellate court dismissed, and the court of criminal appeals granted review. *Id.* The issue presented was whether a defendant could be

bound to a post-conviction, pre-sentencing waiver of appeal. *Monreal*, 99 S.W.3d at 618-19.

Prior to *Blanco*, the court of criminal appeals had held that pre-sentencing waivers were not binding because they could not, as a matter of law, be made knowingly, voluntarily, and intelligently. *Id.* at 618 (citing *Ex parte Thomas*, 545 S.W.2d 469 (Tex. Crim. App. 1977)). The rationale in *Thomas* was, in part, that the defendant had no way of knowing what his punishment would be. *Id.*

In *Blanco*, unlike *Thomas*, the appellant had bargained for a sentencing recommendation. *Blanco*, 18 S.W.3d at 219. This fact was significant because the defendant knew his punishment, which put him in the position of being able to knowingly, voluntarily, and intelligently waive appeal. *Monreal*, 99 S.W.3d at 618. In affirming the appellate court's dismissal, the court of criminal appeals concluded that the defendant's waiver of appeal was valid and prevented him from appealing without the trial court's consent. *Id.* Nothing in *Blanco* depended on the existence of a plea bargain as defined by Rule 25.2; rather, it was the existence of an agreement that allowed the defendant to know what his punishment would be that was of significance. *Monreal*, 99 S.W.3d at 620

Here, as in *Blanco*, the record shows that appellant bargained for an agreed sentence in exchange for waiving, inter alia, his right of appeal.

The transcript of the punishment hearing states, in pertinent part, as follows:

THE COURT: The jury has previously returned with a verdict of guilty. We are now in the punishment stage. . . .

. . . .

. . . . It's my understanding that both the State and the Defendant have reached an agreement on punishment so that you do not have to go to the jury for punishment; is that correct?

[Defense counsel]: That's correct.

THE COURT: All right. Recite the terms of the agreement and [State], . . . let me know if that is the agreement.

[Defense counsel]: The State has agreed to a \$1,500 fine plus court costs, [and] 180 days probated for 24 months

THE COURT: [Appellant], you understand what the terms of this agreement are?

[Appellant]: Yes, sir, I do.

THE COURT: And, you have participated in arranging these terms and agree to them?

[Appellant]: Yes, sir.

. . . .

THE COURT: And, you are willing to accept that?

[Appellant]: Yes, sir, I am.

The record also reflects that after being found guilty and then reaching a plea agreement as to punishment, appellant was admonished in writing that if the trial court acted in accordance with the plea agreement he would have a limited right of appeal, which he then waived by signing a document stating as follows:

With the knowledge and understanding of the above, I intelligently, knowingly, and voluntarily, waive my right to file a “Motion for New Trial,” a “Motion in Arrest of Judgment,” a “Notice of Appeal,” or any right to appeal that I have in this cause of action as evidenced by my signature below.

A valid waiver of the right to appeal prevents a defendant from appealing without the consent of the trial court. *See id.* The Trial Court’s Certification of Defendant’s Right to Appeal indicates that “the Defendant has waived the right of appeal.”

When a defendant waives his right of appeal as part of an agreement on sentencing and the agreement is followed by the trial court, his waiver is made knowingly, intelligently, and voluntarily, and he may not appeal any matters unless the trial court first grants permission. *Ex parte Delaney*, 207 S.W.3d 794, 798–99 (Tex. Crim. App. 2006); *Blanco*, 18 S.W.3d at 219–20. The record supports the trial court’s certification that appellant waived his right of appeal.

Accordingly, we dismiss the appeal for want of jurisdiction. All pending motions are dismissed as moot.

We direct the Clerk to issue the mandate within 10 days of the date of this opinion. *See* TEX. R. APP. P. 18.1.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Bland and Huddle.

Do not publish. TEX. R. APP. P. 47.2(b).