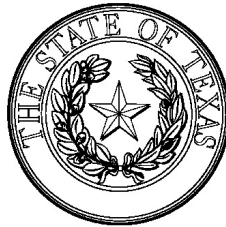


Opinion issued October 16, 2008



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-08-00697-CR

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**ANTHONY JAMES DELEON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 351st District Court  
Harris County, Texas  
Trial Court Cause No. 1156672**

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**MEMORANDUM OPINION**

Appellant, Anthony James Deleon, pleaded guilty, with an agreed punishment recommendation from the State, to the offense of evading arrest with a motor vehicle and pleaded true to the allegations in two enhancement paragraphs that

he had two prior felony convictions. Appellant signed, under oath, a document containing a written waiver of constitutional rights, an agreement to stipulate to evidence, and a judicial confession. The document included, among other provisions,<sup>1</sup> the following:

I intend to enter a plea of guilty and understand that the prosecutor will recommend that my punishment should be set at two years TDC; I agree to that recommendation...Further, I waive my right of appeal which I may have should the court accept the foregoing plea bargain agreement between myself and the prosecutor.

The document was also signed by appellant's counsel, the prosecutor and the trial court. In addition, appellant signed and swore to a trial court document styled "Advice of Defendant's Right to Appeal" that states in part:

The court, pursuant to TEX. R. APP. P. 25.2, advises the Defendant as follows: (1) Texas law gives a defendant convicted of a crime the right o to appeal his conviction. (2) If you **pled guilty** or **no contest** and accepted the punishment recommended by the prosecutor, however, you **cannot** appeal your conviction unless this Court gives you permission. If you **waived** or gave up your right to appeal, you **cannot** appeal your conviction.

After the trial court sentenced appellant to two years in prison, a punishment that fell within the terms of the plea bargain, the trial court certified that appellant had waived his right of appeal. The trial court's certification of right of appeal is signed

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<sup>1</sup> Appellant waived a court reporter to record the plea.

by the trial court, appellant and appellant's counsel. *See* TEX. R. APP. P. 25.2 (a)(2).

The trial court did not give appellant permission to appeal.<sup>2</sup>

A pretrial or presentencing waiver of right to appeal is binding if the waiver is made voluntarily, knowingly, and intelligently. *See Ex Parte Delaney*, 207 S.W. 3d 794, 796-97 (Tex. Crim. App. 2006). One way to indicate that the waiver was knowingly and intelligently is for the actual punishment to have been determined by the plea agreement when the waiver was made." *Id.* at 799.

Therefore, we conclude that the certification of the right of appeal filed by the trial court is supported by the record and that appellant has waived his right of appeal. Because appellant has no right of appeal, we must dismiss this appeal "without further action." *Chavez v. State*, 183 S.W. 3d 675, 680 (Tex. Crim. App. 2006).

Accordingly, we dismiss the appeal.

We deny any pending motions as moot.

**PER CURIAM**

Panel consists of Justices Jennings, Hanks, and Bland.

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

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<sup>2</sup> No pretrial motions were filed or ruled upon by the court.