

Opinion issued July 28, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00858-CR

JEREMY DEANTE WILLIAMS, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from the 338th District Court
Harris County, Texas
Trial Court Case No. 1074601**

MEMORANDUM OPINION

Appellant, Jeremy Deante Williams, pleaded guilty to the offense of assault family violence-second offender. *See* TEX. PENAL CODE ANN. § 22.01 (West 2011). The trial court deferred adjudication of guilt and placed appellant on

community supervision for four years. The State subsequently filed a motion to adjudicate guilt to which appellant pleaded true. The State and appellant agreed to the sentence that the trial court should impose.

The trial court found true the State's allegation that appellant had violated the conditions of his community supervision, found appellant guilty, and sentenced him to confinement for two years, in accordance with the agreement between the State and appellant. Appellant filed a notice of appeal. His counsel on appeal has filed a motion to withdraw and an *Anders* brief stating that the record presents no reversible error and that the appeal is without merit. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967).

The trial court completed a certification of appellant's right to appeal, stating that this is a plea-bargain case and that appellant has no right of appeal. That certification, however, was defective: it is improper for a certification to characterize a sentence as a "plea bargain" when a defendant's agreement to a sentence arose from a community supervision revocation proceeding. *See Dears v. State*, 154 S.W.3d 610, 613 (Tex. Crim. App. 2005); *see also Hargesheimer v. State*, 182 S.W.3d 906, 913 (Tex. Crim. App. 2006) ("There was no second plea bargain with regard to punishment, and even if there had been, Rule 25.2(a)(2) would not apply to restrict appeal because of our holding in *Dears*."). Further, the clerk's record contained other evidence that appellant negotiated a waiver of his

right of appeal in exchange for an agreed sentence. On the day the trial court adjudicated his guilt, appellant signed a stipulation of evidence providing that, as part of his agreement to plead true to the State's adjudication motion, he agreed to waive any right of appeal. The judgment adjudicating guilt likewise indicated a waiver of the right to appeal.

Based on all of the foregoing, we abated this appeal and ordered the trial court to correct its certification. The trial court filed an amended certification in compliance with our order. The amended certification is signed by the trial court judge, appellant, and appellant's counsel. It contains the typed form language "the defendant has waived the right of appeal" along with a handwritten notation "following adjudication of community supervision." No reporter's record of the abatement hearing was filed.

We requested that the parties file supplemental briefs on the issue of why this appeal should not be dismissed based on the waiver of appeal. Neither appellant nor the State filed any supplemental briefing.

"[A] valid waiver of appeal, whether negotiated or non-negotiated, will prevent a defendant from appealing without the consent of the trial court." *Monreal v. State*, 99 S.W.3d 615, 622 (Tex. Crim. App. 2003). "[A] waiver of the right to appeal is valid, i.e., knowing, voluntary, and intelligent, when the waiver is made subject to a bargained-for sentencing recommendation, which is

subsequently followed by the trial court, or when made post-sentencing.” *Moreno v. State*, 327 S.W.3d 267, 268 (Tex. App.—San Antonio 2010, no pet.); *see also Blanco v. State*, 18 S.W.3d 218, 219–20 (Tex. Crim. App. 2000). A waiver under such circumstances is valid because the defendant, at the time of the waiver, knows the likely consequences of the waiver. *See Tufele v. State*, 130 S.W.3d 267, 270 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

In this case, appellant first indicated his choice to waive his right of appeal on the same day the trial court signed its judgment adjudicating guilt. The record reflects that the waiver was bargained for, and the trial court sentenced appellant in accordance with his agreement with the State. Nearly one-and-one-half years later, by his signature on the amended certificate of the right to appeal, appellant confirmed the waiver. The consequences of appellant’s plea were exactly as he and the State agreed they should be, and when appellant signed the amended certificate he knew his punishment. Under these circumstances, we conclude that appellant’s waiver of appeal was knowing, voluntary, and intelligently made. Nothing in the record suggests that the trial court has consented to this appeal despite appellant’s waiver.

Because appellant has waived his right to appeal and does not have the trial court’s consent to appeal, we dismiss this appeal. Appellant’s counsel’s motion to withdraw is dismissed as moot.

PER CURIAM

Panel consists of Justices Higley, Sharp, and Brown.

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