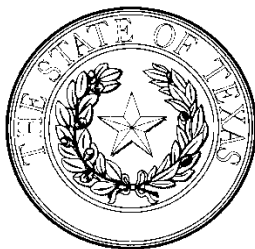


Opinion issued August 5, 2010



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

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NO. 01-09-00794-CR

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**JIMMY LEE FIELDS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 183rd District Court  
Harris County, Texas  
Trial Court Case No. 1153390**

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**MEMORANDUM OPINION**

Appellant, Jimmy Lee Fields, pleaded guilty to the offense of sexual assault of a child. Along with his plea of guilty, appellant signed under oath a written waiver of constitutional rights, agreement to stipulate to evidence, and judicial confession. The document provided, among other things, as follows:

I waive the right of trial by jury. I also waive the appearance, confrontation, and cross-examination of witnesses and my right against self- incrimination . . . I intend to enter a plea of guilty and the prosecutor will recommend that my punishment should be set at PSI with cap of 20 and I agree to that recommendation. . . . Further, I waive any 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. After a presentence investigation hearing, the trial court followed the plea-bargain agreement and sentenced appellant to confinement for 10 years. The Trial Court's Certification of Defendant's Right of Appeal signed by the trial court judge, appellant, and appellant counsel, states that "the defendant has waived the right of appeal" is supported by the record. TEX. R. APP. P. 25.2.

Despite having waived his right to appeal, appellant filed a notice of appeal. The trial court appointed appellate counsel who has filed a motion to withdraw.<sup>1</sup> After conducting an independent review of the record, we find that this Court does not have jurisdiction over this appeal.

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<sup>1</sup> Appellant's counsel on appeal has filed a motion to withdraw and a brief stating that the record presents no reversible error, the appeal is without merit and is frivolous, and the appeal must be dismissed or affirmed. *See Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, (1967). Upon receipt of a motion to withdraw and a brief from an appellant's court-appointed attorney asserting that there are no arguable grounds for reversal on appeal, we must determine that issue independently by conducting our own review of the entire record. *See Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400 (1967) (emphasizing that reviewing court—and not appointed counsel—determines, after full examination of proceedings, whether case is "wholly frivolous"); *Stafford v. State*, 813 S.W.2d 503, 509 (Tex. Crim. App. 1991). Counsel represents that she has served a copy of the brief on appellant and advised him of his right to examine the appellate record and file a pro se brief. *See Stafford v. State*, 813 S.W.2d 503, 510 (Tex. Crim. App. 1991). More than 30 days have passed, and appellant has not filed a pro se brief. The State has waived its right to file a response.

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). The Court of Criminal Appeals has held that 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 v. State*, 18 S.W.3d 218, 219-20 (Tex. Crim. App. 2000).

An agreement to a sentencing cap is an agreed plea bargain for purposes of Rule 25.2(a)(2). See *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006); *Shankle v. State*, 119 S.W.3d 808, 813 Tex. Crim. App. 2003); *Harris V. State*, 149 S.W.3d 285, 286 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd); *Threadgill v. State*, 120 S.W.3d 871, 872 (Tex. App.—Houston [1st Dist.] 2003, no pet.). The record in this case shows that in exchange for appellant's agreement to plead guilty to a sentence that was capped, he agreed to waive his right of appeal. The plea papers state the maximum punishment and the trial court followed the agreement. Based on the hearing record before this Court, we find that appellant voluntarily, knowingly, and intelligently, waived his right of appeal as part of his sentencing agreement with the State. We also note that the trial court has not given its permission to appeal, and that the trial court's judgment is stamped "Appeal waived. No permission to Appeal Given." Therefore, we find that appellant is bound by his waiver of appeal. See TEX. R. APP. P. 25.2(d).

Accordingly, we dismiss the appeal in trial court cause number 1153390 and grant counsel's motion to withdraw.<sup>2</sup> Attorney, Leah M. Borg, must

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<sup>2</sup> Appointed counsel still has a duty to inform appellant of the result of this appeal and that he may, on his own, pursue discretionary review in the Texas

immediately send appellant the notice required by Texas Rule of Appellate Procedure 6.5(c) and file a copy of that notice with the Clerk of this Court.

**PER CURIAM**

Panel consists of Justices Keyes, Hanks, and Higley.

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

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Court of Criminal Appeals. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).