

Opinion issued August 4, 2011



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

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NO. 01-10-00099-CR

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**TYMESHIA RANDLE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 230th District Court  
Harris County, Texas  
Trial Court Case No. 1231243**

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**MEMORANDUM OPINION**

Tymeshia Randle was charged with the offense of theft of property worth less than \$1,500. *See* TEX. PENAL CODE ANN. § 31.03 (West Supp. 2010). The indictment alleged that Randle previously had been convicted of two other

misdemeanor theft offenses and two felony offenses. Randle pleaded guilty without an agreed recommendation. However, as part of the plea agreement, the State abandoned the enhancement allegations pertaining to the two prior felony offenses.

This appeal was abated for clarification of the trial court's certification of Randle's right to appeal, which appeared to indicate both that Randle had waived her right to appeal and that this was a plea-bargain case. On remand, the trial court held a hearing and found that Randle had entered into a plea bargain with the State, pleading guilty in exchange for the State's abandonment of the enhancement allegations. The trial court specifically found that the certification of Randle's right to appeal was intended to indicate that she has no right to appeal because of this plea bargain.

*Charge bargains.* A plea bargain case is one in which “a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant.” TEX. R. APP. P. 25.2(a)(2). There are two basic kinds of plea bargains that affect punishment: sentence bargaining and charge bargaining. *Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003); *Carender v. State*, 155 S.W.3d 929, 930 (Tex. App.—Dallas 2005, no pet.).

Sentence bargaining may be for binding or nonbinding recommendations to the court on sentences, including a recommended

“cap” on sentences and a recommendation for deferred adjudication community supervision. Charge bargaining involves questions of whether the defendant will plead guilty to the offense that has been alleged or a lesser or related offense and whether the prosecutor will dismiss or refrain from bringing other charges. Both sentence bargaining and charge bargaining affect punishment.

*Carender*, 155 S.W.3d at 930–31. In *Carender*, the court of appeals held that the prosecutor’s agreement to abandon an enhancement paragraph in exchange for the defendant’s guilty plea was a plea bargain because the habitual offender statute would have provided for longer prison terms and abandoning the enhancement effectively placed a cap on the sentence the defendant could receive. *Id.* at 931.

*Punishment and the habitual offender statute.* Theft of property less than \$1,500 is a state jail felony if the defendant previously has been convicted two or more times of any grade of theft. TEX. PENAL CODE ANN. § 31.03(e)(4)(D) (West Supp. 2010). A state jail felony is punishable by confinement in state jail for not less than 180 days or more than two years. *Id.* § 12.35(a) (West Supp. 2010). The habitual offender statute provides, however:

If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies, on conviction the defendant shall be punished for a third-degree felony. If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished for a second-degree felony.

*Id.* § 12.42(a)(1), (2) (West Supp. 2010). A second degree felony is punishable by imprisonment for not more than 20 years or less than two years. *Id.* § 12.33(a) (West Supp. 2010). A third degree felony is punishable by imprisonment for not more than 10 years or less than two years. *Id.* § 12.34(a) (West Supp. 2010).

*Analysis.* Without the plea agreement, Randle could have faced punishment of up to 10 or 20 years in prison, depending upon the fact finder's determination of the enhancement allegations. *See id.* §§ 12.33(a), 12.34(a). By abandoning the felony enhancement paragraphs, the State effectively capped Randle's potential sentence at two years, the maximum punishment for a state jail felony. *See id.* § 12.35(a). Randle pleaded guilty, and the trial court sentenced Randle to nine months in state jail. *See id.* We conclude that this was a plea bargain and that the record supports the trial court's certification that Randle has no right to appeal. *Dears v. State*, 154 S.W.3d 610, 614–15 (Tex. Crim. App. 2005). We must dismiss an appeal if the trial court's certification shows there is no right to appeal. *See* TEX. R. APP. P. 25.2(d).

## CONCLUSION

Accordingly, we reinstate this case on the Court's active docket, and we dismiss the appeal for lack of jurisdiction.

We dismiss any pending motions as moot.

Michael Massengale  
Justice

Panel consists of Justices Jennings, Bland, and Massengale.

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