Opinion issued March 23, 2011.

In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00825-CR
NO. 01-10-00826-CR

PILAR OSCAR PARRAS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause Nos. 1251355 and 1251356

MEMORANDUM OPINION ON REHEARING

Appellant was charged, in two separate causes, with the felony offense of aggravated sexual assault of a child under 14 years of age. On August 24, 2010, appellant pleaded guilty with an agreed recommendation from the State regarding

punishment of confinement for 35 years. In accordance with the agreement, the trial court assessed punishment at confinement for 35 years in each case, to run concurrently. The trial court certified that this is a plea-bargain case and that there is no right to appeal.

On September 20, 2010, appellant filed a pro se motion to withdraw his plea, contending that he was on medication and thought that he was signing for the purchase of a house when he signed the plea papers. The trial court did not rule on the motion. Appellant timely filed a pro se notice of appeal. On November 4, 2010, we dismissed the appeal for want of jurisdiction on the basis that the trial court certified that appellant did not have a right to appeal.

On November 19, 2010, appellant timely filed a motion for rehearing. *See* TEX. R. APP. P. 49.1. On December 20, 2010, appellant filed a "Request for Leave of Court to File this First Amended/Supplemental Motion for Rehearing and to Abate the Appeal to File an Out of Time Motion for New Trial." Appellant filed his new motion for rehearing and motion to abate with his request for leave.

We grant appellant's motion to supplement his motion for rehearing, grant the motion for rehearing, withdraw our opinion and judgment dated November 4, 2010, and issue this opinion and judgment in their stead. The disposition of the case remains unchanged.

The trial court's certification that appellant has no right of appeal is supported by the record. Appellant is not attempting to appeal any pre-trial motions, and the trial court has not granted permission to appeal. Hence, we lack jurisdiction to hear appellant's appeal, and we must dismiss. *See* TEX. R. APP. P. 25.2(d) (providing that appeal must be dismissed if certification showing that defendant has right of appeal has not been made part of record); *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006) (stating that appeal must be dismissed "without further action, regardless of the basis for the appeal" if the trial court's certification shows there is no right to appeal); *Terrell v. State*, 245 S.W.3d 602, 604–05 (Tex. App.—Houston [1st Dist.] 2007, no pet).

Appellant contends on rehearing that we should take jurisdiction over this case based on his motion to withdraw his plea, in which he contended that his plea was involuntary because was on medication and thought he was signing for the purchase of a house. Appellant requests that we abate the appeal in order to supplement his motion and suggests that he was without counsel at a critical stage of the proceedings.

Appellant cannot, however, raise the voluntariness of his plea or a claim of ineffective assistance of counsel on direct appeal, absent the trial court's permission. *See Cooper v. State*, 45 S.W.3d 77, 81 (Tex. Crim. App. 2001) (holding that

voluntariness of guilty plea may not be raised on appeal from plea-bargained felony conviction); *Estrada v. State*, 149 S.W.3d 280, 283 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd) (concluding that claim of ineffective assistance of counsel may not be raised in appeal from plea-bargained case, unless authorized by trial court). Accordingly, appellant's arguments on rehearing fail to establish that this Court has jurisdiction over the appeal.[1]

Conclusion

We dismiss this appeal for lack of jurisdiction. We grant the motion to supplement the motion for rehearing. We dismiss any other pending motions as moot.

Jane Bland
Justice

Panel consists of Justices Keyes, Higley, and Bland.

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

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1 Appellant may complain that his plea was involuntary because of his medication in an application for writ of habeas corpus. *See Bone v. State*, 77 S.W.3d 828, 837 n.30 (Tex. Crim. App. 2002); *Thompson v. State*, 9 S.W.3d 808, 814–15 (Tex. Crim. App. 1999); *see e.g., Ex parte Powell*, No. WR-70976-01, 2008 WL 5181705, at *2 (Tex. Crim. App. Dec. 10, 2008) (holding petition for habeas relief in abeyance until trial court resolved fact issues concerning whether applicant's plea was involuntary because he was schizophrenic and was taking medication, which impeded his understanding of court proceedings when he entered his plea, and that counsel failed to adequately investigate his mental competency).