Opinion issued October 25, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00722-CR

MICHAEL ALLEN SEATON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Case No. 1448336

MEMORANDUM OPINION ON REHEARING

Appellant, Michael Allen Seaton, pleaded guilty to a reduced charge of injury to a child. In accordance with the plea agreement, the trial court sentenced Seaton to 50 years' confinement. The trial court certified that this is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial, and not

withdrawn or waived, and Seaton has the right to appeal. In three issues on appeal Seaton contends that: (1) jurisdiction never vested in the convicting court because the indictment was presented to it by a grand jury empaneled by a different court; (2) the judgment of conviction is void because there is no evidence that the presiding judge took the required oath of office; and (3) the judge improperly took judicial notice of the presentence investigation (PSI) report. We dismiss for lack of jurisdiction.

Background

We previously dismissed this appeal for lack of jurisdiction because the trial court had certified that this was a plea-bargain case, and Seaton had no right of appeal.[1] *See Seaton v. State*, No. 01-15-00722-CR, 2016 WL 1273474, at *2 (Tex. App.—Houston [1st Dist.] March 31, 2016, no. pet.) (per curiam) (mem. op., not designated for publication). Thereafter, Seaton moved to reinstate the appeal in the trial court arguing that he had filed a motion to suppress that was not included in the appellate record and was denied in a pretrial hearing. The trial court issued an amended certification stating that this "is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial, and not withdrawn or waived, and

[1] At the time of the plea, the trial court entered a certification that this was not a plea-bargain case and the defendant had the right to appeal. Upon receipt, we issued an order suggesting to the trial court that the certification might be defective. The trial court then filed an amended certification indicating this was a plea-bargain case and the defendant had no right to appeal.

the defendant has the right of appeal." Seaton moved to reinstate the appeal in our Court attaching the amended certification and asserting that a pre-trial motion to suppress and the related ruling existed but had not been made a part of the appellate record. We granted Seaton's motion and reinstated the appeal.

Discussion

In three issues on appeal, Seaton argues for the first time that: (1) jurisdiction never vested in the convicting court because a grand jury empaneled by the 209th District Court improperly presented the indictment to the 351st District Court; (2) the judgment is void because there is no evidence that the presiding judge took the required oath of office; and (3) the trial court improperly considered the PSI report in deciding Seaton's sentence because the report was not admitted into evidence.

A. Applicable Law

Texas Rule of Appellate Procedure 25.2(a) states that in a plea bargain case in which a defendant pleaded guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant, a defendant may appeal only "those matters that were raised by written motion filed and ruled on before trial," or "after getting the trial court's permission to appeal." TEX. R. APP. P. 25.2(a)(2). In plea-bargain cases we have no authority to address issues other than as authorized by Rule 25.2(a)(2). *Estrada v. State*, 149

S.W.3d 280, 282 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd). "A court of appeals, while having jurisdiction to ascertain whether an appellant who plea-bargained is permitted to appeal by Rule 25.2(a)(2), must dismiss a prohibited appeal without further action, regardless of the basis for the appeal." *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006).

B. Analysis

The trial court's most recent certification reflects that this "is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial, and not withdrawn or waived, and the defendant has the right of appeal." However, on appeal, Seaton does not challenge the denial of his motion to suppress, or any other ruling on a matter raised by written motion filed and ruled on before trial. Rather, Seaton raises three new, unrelated issues that were neither presented to the trial court by written motion pre-trial nor ruled upon pre-trial. And Seaton has not established—nor do we find—that he received the trial court's permission to appeal on any of these grounds. Accordingly, we must dismiss Seaton's appeal. *See Chavez*, 183 S.W.3d at 680 (defendant who plea-bargained would have right to appeal even jurisdictional issue only if issue was "raised by written motion filed and ruled on before trial, or the trial court granted permission to appeal such an issue").

Seaton contends that, though he did not raise his appellate issues in the trial court, the first two may be raised for the first time on appeal because they implicate

the trial court's jurisdiction. *See Brown v. State*, No. 01-02-00257-CR, 2003 WL 2002545, at *1 (Tex. App.—Houston [1st Dist.] May 1, 2003, pet. ref'd) (mem. op., not designated for publication) (issue of whether judgment was void could be construed as jurisdictional challenge). However, following *Chavez*, we have held that "a defendant must raise even a jurisdictional issue in a pre-trial motion or receive permission from the trial court that accepted the plea bargain in order to bring the issue on appeal." *Conklin v. State*, No. 01-08-00838-CR, 2010 WL 1568578, at *1–2 (Tex. App.—Houston [1st Dist.] April 8, 2010, no pet.) (citing *Chavez*, 183 S.W.3d at 680) (mem. op., not designated for publication). Seaton neither raised his appellate issues in a written motion, filed and ruled upon before trial, nor received permission from the trial court to appeal on these grounds. Thus, we conclude that Seaton does not have the right to appeal these issues.

Likewise, Seaton, who failed to object to the trial court's consideration of the PSI report, did not obtain the trial court's permission to appeal on this basis. Accordingly, we may not consider it on appeal. *See* TEX. R. APP. P. 33.1(a); *Waters v. State*, 124 S.W.3d 825, 826–27 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd) (following plea agreement, defendant could not challenge sentence where she did not raise issue in written motion or obtain trial court's permission to appeal). Because Seaton has not established that he has the right to appeal on any of the grounds that he has raised, we must dismiss the appeal for lack of jurisdiction. *See*

Conklin, 2010 WL 1568578, at *1–2 (dismissing for lack of jurisdiction on appeal appellant's jurisdictional challenge to his indictment where he agreed to plea bargain and did not raise issue in pre-trial motion or obtain permission from trial court to appeal that issue); *Harris v. State*, 149 S.W.3d 285, 288 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd) (holding defendant could not raise alleged jurisdictional errors on appeal where he did not obtain trial court's permission to appeal); *Brown*, 2003 WL 2002545, at *1 (finding appellant did not have the right to appeal question of whether trial court's judgment was void in plea bargain case because he failed to comply with requirements of former Rule 25.2).

Conclusion

We dismiss the appeal for want of jurisdiction.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Higley and Huddle.

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