

Opinion issued January 25, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00733-CR

ANDREW HARMASON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 337th District Court
Harris County, Texas
Trial Court Case No. 1509927**

MEMORANDUM OPINION

Appellant Andrew Harmason pleaded guilty to the first-degree felony offense of theft with an agreement from the State for a cap on sentencing of 25 years. *See* TEX. PENAL CODE § 31.03(e)(6). In accordance with the plea agreement, the trial court signed a judgment of conviction on September 22, 2017, imposing a sentence

of 20 years in the Institutional Division of the Texas Department of Criminal Justice. Appellant filed a notice of appeal.

An agreement placing a cap on punishment is a plea bargain for purposes of Rule 25.2(a)(2). *See Wilson v. State*, 264 S.W.3d 104, 108 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Waters v. State*, 124 S.W.3d 825, 826–27 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd). Because the record shows that appellant agreed to the State's recommendation of a cap of 25 years on sentencing, this is a plea bargain under Rule 25.2(a)(2) and appellant has no right to appeal. *See* TEX. R. APP. P. 25.2(a)(2)

Here, the trial court's certification is included in the record on appeal. The trial court's certification states that this is a plea bargain case and that the defendant has no right of appeal. *See* TEX. R. APP. P. 25.2(a)(2). The record supports the trial court's certification. *See Dears v. State*, 154 S.W.3d 610, 615 (Tex. Crim. App. 2005). Because appellant has no right of appeal, we must dismiss this appeal. *See Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006) ("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.").

Accordingly, we dismiss the appeal for want of jurisdiction. We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Jennings, Massengale, and Caughey.

Do not publish.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