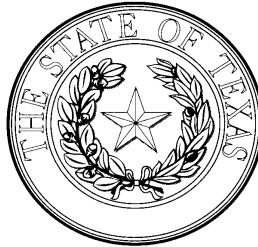


Opinion issued October 12, 2021



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

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NO. 01-20-00320-CR

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**OKECHUKWU OZIRI NWOSU, Appellant**  
**V.**  
**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 179th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 1439656**

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**MEMORANDUM OPINION**

Appellant, Okechukwu Oziri Nwosu, pleaded guilty to the offense of aggravated assault with a deadly weapon, in exchange for the State's agreement to reduce the charge from a first-degree felony to a second-degree felony. *See Windom v. State*, 968 S.W.2d 360, 363 (Tex. Crim. App. 1998) (plea bargain involves

exchange of benefits such as appellant pleading no contest in exchange for benefit of State reducing the charge). By signing this plea, appellant agreed to waive his right to appeal and the trial court signed a certification of the right to appeal indicating that appellant had waived the right to appeal.

The trial court set the case for a presentence investigation hearing, but before that hearing was held, appellant filed a motion to withdraw his plea of guilty. The trial court denied the motion and sentenced appellant to 15 years' incarceration in the Institutional Division of the Texas Department of Criminal Justice. The trial court then signed a second certification finding that this was a plea-bargain case but that matters were raised by written motion and ruled on before trial and that the defendant had the right to appeal. *See* TEX. R. APP. P. 25.2(a)(2).

The State filed a motion to abate the appeal and remand to the trial court for a determination whether this Court has jurisdiction over the appeal, whether this is a plea-bargain case, and whether any written motions were filed and ruled on before trial. We granted the State's motion and issued an order abating the appeal and remanding for the trial court to prepare findings and conclusions on these issues.

On September 10, 2021, a supplemental clerk's record was filed containing the trial court's findings and conclusions. In its findings and conclusions, the trial court determined that the second certification—indicating that appellant had the

right to appeal the ruling on the written motion—was invalid and the first certification finding waiver of the right to appeal was correct.

A certification of the appellant’s right to appeal which is correct in form but inaccurate when compared to the record is a defective certification. *See Dears v. State*, 154 S.W.3d 610, 614 (Tex. Crim. App. 2005). When an appellate court has a record, it is obligated to review the record to ascertain whether the trial court’s certification is defective and, if it is defective, to use Rules 37.1 and 34.5(c) to obtain a correct certification. *Id.* at 614–15; *see* TEX. R. APP. P. 34.5(c), 37.1.

Having reviewed the record and the trial court’s findings and conclusions, we agree that the trial court’s first certification is correct and the second certification is incorrect. “An appellant may withdraw his plea as a matter of right if the motion is filed before a trial court has ‘taken a case under advisement’ or has pronounced judgment.” *Crymes v. State*, No. 01-15-00206-CR, 2015 WL 7455823, at \*2 (Tex. App.—Houston [1st Dist.] Nov. 24, 2015, pet. ref’d) (citing to *DeVary v. State*, 615 S.W.2d 739, 740 (Tex. Crim. App. 1981)). A case has been taken under advisement once the trial court has passed the case for preparation of a pre-sentence investigation, pronounced defendant guilty and is proceeding to judgment, or has accepted the plea and stipulation of evidence and has admonished the defendant. *See Crymes*, 2015 WL 7455823, at \*2. Because appellant’s written motion to withdraw his guilty plea was filed after the trial court had passed the case for preparation of a

presentence investigation, the motion was filed after the case had been taken under advisement and so it is not a written motion filed and ruled on “before trial.” Accordingly, we agree with the trial court’s findings and conclusions, determining that the second certification is incorrect and the first certification is correct.

Because the first certification indicates that appellant waived the right to appeal and the record supports that certification, we dismiss the appeal. Any pending motions are dismissed as moot.

**PER CURIAM**

Panel consists of Justices Kelly, Hightower, and Farris.

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