

Opinion issued August 25, 2022



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

---

NO. 01-22-00239-CR

NO. 01-22-00240-CR

---

**SEAN ANTONI MCLEAN, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

---

**On Appeal from the 230th District Court  
Harris County, Texas  
Trial Court Case Nos. 1643866 & 1643867**

---

---

**MEMORANDUM OPINION**

After appellant, Sean Antoni McLean, without an agreed punishment recommendation from the State, pleaded guilty to the felony offenses of murder<sup>1</sup> and aggravated assault of a family member,<sup>2</sup> the trial court assessed his punishment at confinement for thirty years for the felony offense of murder and confinement for twenty years for the felony offense of aggravated assault of a family member, to run concurrently. On March 25, 2022, appellant filed notices of appeal of his conviction.

We modify the trial court’s judgment in trial court cause number 1643866 and dismiss the appeals for lack of jurisdiction.<sup>3</sup>

### **Background**

In trial court cause number 1643866, a Harris County Grand Jury issued a true bill of indictment, alleging that appellant, on or about August 25, 2019, “unlawfully,

---

<sup>1</sup> See TEX. PENAL CODE ANN. § 19.02; appellate cause no. 01-22-00239-CR, trial court cause no. 1643866.

<sup>2</sup> See *id.* §§ 22.01(a), 22.02(a), (b); see also TEX. CODE CRIM. PROC. ANN. art. 42.013; TEX. FAM. CODE ANN. § 71.004; appellate cause no. 01-22-00240-CR, trial court cause no. 1643867.

<sup>3</sup> Appellant’s appointed appellate counsel filed a brief stating that the record presents no reversible error and the appeals are without merit and are frivolous. See *Anders v. California*, 386 U.S. 738, 744 (1967). However, our review of the record reflects that we lack jurisdiction over the appeals. See, e.g., *Williams v. State*, No. 01-20-00173-CR, 2022 WL 52635, at \*1–2 (Tex. App.—Houston [1st Dist.] Jan. 6, 2022, no pet.) (mem. op., not designated for publication) (dismissing appeal in which appointed appellate counsel filed *Anders* brief because this Court lacked jurisdiction); *Terrell v. State*, 245 S.W.3d 602, 605–06 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (dismissing appeal in which appointed appellate counsel filed *Anders* brief because defendant entered into plea-bargain agreement, defendant had no right to appeal under Texas Rule of Appellate Procedure 25.2(a)(2), and Court was required to dismiss appeal without examining merits of appeal).

intentionally and knowingly cause[d] the death of . . . the [c]omplainant, by shooting the [c]omplainant with [a] deadly weapon, namely a firearm.” The indictment also alleged that appellant, on or about August 25, 2019, “unlawfully intend[ed] to cause serious bodily injury to . . . the [c]omplainant, and did cause the death of the [c]omplainant by intentionally and knowingly committing an act clearly dangerous to human life, namely shooting the [c]omplainant with a deadly weapon, namely[] [a] firearm.”

In trial court cause number 1643867, a Harris County Grand Jury issued a true bill of indictment, alleging that appellant, on or about August 25, 2019, “unlawfully, intentionally and knowingly threaten[ed] . . . the [second] [c]omplainant, a person with whom [appellant] had a dating relationship, with imminent bodily injury by using and exhibiting a deadly weapon, namely[] a firearm.” Further, the indictment alleged that appellant, on or about August 25, 2019, “unlawfully, intentionally and knowingly cause[d] bodily injury to . . . the [second] [c]omplainant, a person with whom [appellant] had a dating relationship, by shooting the [second] [c]omplainant with a firearm, and [appellant] used and exhibited a deadly weapon, namely a firearm.”

Subsequently, appellant signed and filed, in each trial court cause number, a “Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession,” in which he pleaded guilty to the felony offenses of murder and aggravated assault

of a family member and admitted that he committed the acts alleged in each indictment. Appellant's trial counsel also signed the "Waiver[s] of Constitutional Rights, Agreement[s] to Stipulate, and Judicial Confession[s]," affirming that he believed that appellant had entered his guilty pleas knowingly, voluntarily, and after a full discussion of the consequences of the pleas. And trial counsel affirmed that he believed that appellant was competent to stand trial.

The "Waiver[s] of Constitutional Rights, Agreement[s] to Stipulate, and Judicial Confession[s]" also included the following waiver of appellant's right to appeal:

I understand that I have not reached an agreement with the [State] as to punishment. However, in exchange for the State waiving [its] right to a jury trial, I intend to enter . . . plea[s] of guilty without . . . agreed recommendation[s] of punishment from the [State] and request that my punishment[s] should be set by the Judge after a pre-sentence investigation report and hearing. I understand that the [S]tate reserves the right to argue for full punishment at my sentencing hearing. I waive any further time to prepare for trial to which I or my attorney may be entitled. Further, in exchange for the [S]tate giving up [its] right to trial, I agree to waive any right[s] of appeal which I may have.

Appellant also signed written admonishments, informing him that he had been indicted for the felony offenses of murder and aggravated assault of a family member and of the punishment ranges for those offenses. Appellant further acknowledged that he understood that the trial court "must give its permission to [appellant] before [appellant] may prosecute . . . appeal[s] on any matter in th[ese] case[s] except for those matters raised by [appellant] by written motion filed prior

to trial.” And appellant signed a “Statement and Waivers of Defendant” in each trial court cause number, affirming that he was mentally competent; understood the nature of the charges against him, the trial court’s admonishments, and the consequences of his pleas; and freely and voluntarily pleaded guilty. Moreover, appellant represented that he had consulted with his trial counsel about his pleas; he “waive[d] and g[a]ve up any time provide[d] [to him] by law to prepare for trial”; he was “totally satisfied with the representation provided by [his] counsel and [he had] received effective and competent representation”; he “g[a]ve up all rights given [to him] by law, whether of form, substance or procedure”; he “waive[d] and g[a]ve up [his] right to a jury in th[e] case[s] and [his] right to require the appearance, confrontation and cross[-]examination of the witnesses”; he “consent[ed] to [the] oral or written stipulations or evidence in th[e] case[s]”; and he had “read the indictment[s] and [he had] committed each and every element alleged.” Appellant requested that the trial court accept his guilty pleas.

Finally, appellant signed, in each trial court cause number, a document titled, “Advice of Defendant’s Right of Appeal,” explaining that because appellant “waived or gave up [the] right to appeal, [he] c[ould not] appeal [his] conviction[s].”

The trial court found sufficient evidence of appellant’s guilt and that he had entered his guilty pleas freely, knowingly, and voluntarily. The trial court

admonished appellant of his legal rights, accepted the guilty pleas, and ordered a pre-sentence investigation.

After a sentencing hearing, the trial court assessed appellant's punishment at confinement for thirty years for the felony offense of murder and confinement for twenty years for the felony offense of aggravated assault of a family member offense, to run concurrently. The trial court's judgment of conviction in each trial court cause number states: "APPEAL WAIVED, NO PERMISSION TO APPEAL GRANTED." The trial court also signed certifications of appellant's right to appeal, stating that appellant "ha[d] waived the right of appeal." These certifications are supported by the appellate record and were signed by appellant and his trial counsel.

On March 25, 2022, appellant's court-appointed trial counsel filed a notice of appeal in each trial court cause number on appellant's behalf and sought to withdraw as appellant's counsel. The trial court granted the motion to withdraw and appointed appellate counsel to represent appellant in each of his appeals.

### **Jurisdiction**

"Courts always have jurisdiction to determine their own jurisdiction." *Harrell v. State*, 286 S.W.3d 315, 317 (Tex. 2009) (internal quotations omitted). Criminal defendants have a statutory right to appeal their conviction. *See* TEX. CODE CRIM. PROC. ANN. art. 44.02; *Carson v. State*, 559 S.W.3d 489, 492 (Tex. Crim. App. 2018). However, in any non-capital case a defendant may waive his right of appeal.

*See* TEX. CODE CRIM. PROC. ANN. art. 1.14(a); *Carson*, 559 S.W.3d at 492. Where a defendant executes a valid waiver of his right of appeal, a defendant is barred from appealing any issue unless the trial court grants permission to appeal. *See Carson*, 559 S.W.3d at 493.

The Texas Court of Criminal Appeals has held that, as a part of a plea-bargain agreement, a criminal defendant may waive his right to appeal even where there is no agreement with the State as to a punishment recommendation. *See id.* at 494 (“[A] defendant may knowingly and intelligently waive his appeal as a part of a plea when consideration is given by the State, even when sentencing is not agreed upon.”). For this waiver of the right of appeal to be valid, “the record must show that the State gave up its right to a jury in exchange for the defendant’s waiver of his appeal.” *See id.* A written waiver in which the defendant affirmatively states that he is giving up his right of appeal in exchange for the State’s consent to its right to a jury trial satisfies this requirement. *See Lopez. v. State*, 595 S.W.3d 897, 900–01 (Tex. App.—Houston [14th Dist.] 2020, pet. ref’d). Here, the record in each trial court cause number includes such a written waiver signed by appellant and his trial counsel and appellant affirmatively stated that “in exchange for the [S]tate giving up [its] right to trial, [appellant] agree[d] to waive any right of appeal which [he] may have [had].” *See Carson*, 559 S.W.3d at 496 (holding “State’s waiver of its right to a jury was sufficient consideration to render [a]ppellant’s waiver of his right to

appeal knowing and intelligent”); *Lopez*, 595 S.W.3d at 900–01 (“A waiver of appeal prior to sentencing may be valid if it is bargained for—that is, if the State gives some consideration for the waiver, even if a sentence is not agreed upon.”).

Additionally, when a trial court enters a judgment of guilt, it must certify whether the defendant has a right of appeal. *See* TEX. R. APP. P. 25.2(a)(2). Texas Rule of Appellate Procedure 25.2(a) states that in a case where a defendant voluntarily pleaded guilty, the defendant may only appeal “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)(A), (B). In these cases, the trial court certified that appellant waived his right to appeal in each trial court cause number, and appellant signed both of the trial court’s certifications. The trial court’s judgments of conviction also state: “APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.”

Here, the record is clear that appellant voluntarily waived his right of appeal in each trial court cause number and the trial court did not grant appellant permission to appeal. Thus, appellant may not appeal his convictions for the felony offenses of murder and aggravated assault of a family member.

Because appellant has no right of appeal, we must dismiss these appeals. *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 [Texas Rule of Appellate Procedure] 25.2(a)(2), must dismiss a prohibited appeal without further action, regardless of the basis for the appeal.”); *see also Fairley v. State*, Nos. 01-20-00824-CR, 01-20-00825-CR, 2022 WL 210457, at \*1–3 (Tex. App.—Houston [1st Dist.] Jan. 25, 2022, no pet.) (mem. op., not designated for publication).

### **Modification of Judgment**

While we lack jurisdiction to consider the merits of appellant’s appeals, an appellate court has the power to correct and reform a trial court’s judgment to make the record speak the truth when it has the necessary data and information to do so. *See Nolan v. State*, 39 S.W.3d 697, 698 (Tex. App.—Houston [1st Dist.] 2001, no pet.); *see also* TEX. R. APP. P. 43.2(b). This is true no matter who, or if anyone, has called the matter to the attention of the trial court. *See Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet ref’d) (“The authority of an appellate court to reform incorrect judgments is not dependent upon the request of any party, nor does it turn on the question of whether a party has or has not objected in the trial court.”).

Here, the trial court’s written judgment of conviction in trial court cause number 1643866 does not accurately comport with the record in this case in that it, under the section titled, “[t]erms of [appellant’s] [p]lea [b]argain,” incorrectly states an agreed recommendation on punishment of confinement for thirty years. The

record, however, reflects that appellant pleaded guilty in trial court cause number 1643866 without an agreed recommendation on punishment from the State. Accordingly, we modify the trial court’s judgment in trial court case number 1643866 to delete, under the section, “[t]erms of [p]lea [b]argain,” the words: “30 YEARS TDCJ.” And instead to state “without an agreed recommendation on punishment” or “WOAR.”<sup>4</sup> See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993).

### **Conclusion**

We modify the trial court’s judgment in trial court cause number 1643866 and dismiss the appeals for lack of jurisdiction. See TEX. R. APP. P. 43.2(f); see also *Moore v. State*, No. 01-09-00722-CR, 2010 WL 3220656, at \*1–2 (Tex. App.—Houston [1st Dist.] Aug. 12, 2010, no pet.) (mem. op., not designated for publication) (modifying trial court judgment to correct mistake regarding punishment recommendation and dismissing appeal for lack of jurisdiction where appellant pleaded guilty and waived right of appeal). We dismiss any other pending motions as moot.

---

<sup>4</sup> See *Matul v. State*, No. 13-03-062-CR, 2005 WL 1415435, at \*1 (Tex. App.—Corpus Christi–Edinburg June 16, 2005, no pet.) (mem. op., not designated for publication) (indicating “WOAR” stands for “without an agreed sentencing recommendation”).

Amparo Guerra  
Justice

Panel consists of Justices Landau, Guerra, and Farris.

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