

Appellant's motion denied, State's motion granted; appeal dismissed and Memorandum Opinion filed March 9, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00302-CR

JULIO CESAR MACIAS-SANCHEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 1482963**

M E M O R A N D U M O P I N I O N

Appellant Julio Cesar Macias-Sanchez was indicted for aggravated assault of a family member, a first-degree felony. He pleaded guilty without a sentencing recommendation, but with the agreement that he waived his right to appeal in exchange for the State waiving its right to a jury trial. Appellant has filed a motion to retain the appeal, and the State has filed a motion to dismiss the appeal. Both motions have been on file for more than 10 days, and neither party has filed a

response to the other party's motion.

The trial court entered a certification of the defendant's right to appeal in which the court certified that appellant waived his right of appeal. *See* Tex. R. App. P. 25.2(a)(2). The trial court's certification is included in the record on appeal. *See* Tex. R. App. P. 25.2(d). The records support the trial court's certifications. *See Dears v. State*, 154 S.W.3d 610, 615 (Tex. Crim. App. 2005).

The right to appeal may be waived, *see* Tex. Code Crim. Proc. Ann. art. 1.14(a) (West 2015), and such a waiver is valid if made voluntarily, knowingly, and intelligently. *Ex parte Delaney*, 207 S.W.3d 794, 796–97 (Tex. Crim. App. 2006). 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. *Id.* at 798; *see also Ex parte Broadway*, 301 S.W.3d 694, 699 (Tex. Crim. App. 2009).

The record shows the State's waiver of its right to a jury trial was bargained for. The plea documents state, "In exchange for the State waiving its right to a jury trial, the Defendant waives his right to appeal." *Contra Jenkins v. State*, 495 S.W.3d 347, 351 (Tex. App.—Houston [14th Dist.] May 3, 2016, no pet.) (State's consent to waiver of jury trial, required by Code of Criminal Procedure, was not bargained for and therefore was not consideration for appellant's waiver of right to appeal).

Appellant filed a motion for new trial in which he alleges his plea was not voluntarily made. The voluntariness of a plea cannot be raised on direct appeal from a plea-bargained felony conviction. *Cooper v. State*, 45 S.W.3d 77 (Tex. Crim. App. 2001); *Theus v. State*, Nos. 14-15-01001-CR, 14-15-01002-CR, __S.W.3d __, slip. op. at 2 (Tex. App.—Houston [14th Dist.] Mar. 7, 2017, n.p.h.). A motion for new trial may not be used to circumvent *Cooper*. *Whitfield v.*

State, 111 S.W.3d 786 (Tex. App.—Eastland 2003, pet. ref'd); *accord Estrada v. State*, 149 S.W.3d 280, 285 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd); *Williams v. State*, No. 14-15-00431-CR, 2016 WL 4146108, *1 (Tex. App.—Houston [14th Dist.] Aug. 4, 2016, n.p.h.) (mem. op.) (per curiam) (not designated for publication); *Feathers v. State*, No. 14-02-00188-CR, 14-02-00189-CR, 2002 WL 1958274, *2 (Tex. App.—Houston [14th Dist.] Aug. 22, 2002, no pet.) (mem. op.) (per curiam) (not designated for publication).

Accordingly, appellant's motion to retain the appeal, filed August 1, 2016, is **DENIED**; the State's motion to dismiss, filed January 20, 2017, is **GRANTED**; and the appeal is **DISMISSED**.

PER CURIAM

Panel consists of Justices Boyce, Jamison, and Brown.
Do Not Publish — Tex. R. App. P. 47.2(b).