

Motion Granted; Appeal Dismissed and Memorandum Opinion filed June 15, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00954-CR

CHRISTOPHER LEE SOTO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 1498573**

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

Appellant was indicted for super-aggravated sexual assault of a child under six years of age. The State agreed to reduce the charge in exchange for appellant's guilty plea to aggravated sexual assault of a child. Appellant pled guilty without an agreed recommendation to punishment, but with an agreement that the State would reduce the charge to sexual assault of a child. Reducing the charge to sexual assault of a child reduced the punishment range considered by the trial court

from that of super-aggravated sexual assault of a child under six years of age (twenty-five years to life imprisonment) to that of a first-degree felony (five years to life imprisonment). *See* Tex. Penal Code Ann. §§ 12.32, 22.021(e),(f). In accordance with this agreement, the trial court sentenced appellant to twenty years in prison and certified that Appellant had no right of appeal.

Appellant filed a timely notice of appeal. The State filed a motion to dismiss the appeal contending that appellant waived his right of appeal based on a bargain with the State reducing the charge and lowering the applicable punishment range in exchange for his guilty plea to the reduced charge. Because we conclude the trial court's certification is supported by the record, we grant the State's motion and dismiss the appeal.

ANALYSIS

If there is no certification showing that the defendant has the right to appeal in the record, an appeal must be dismissed. *See* Tex. R. App. P. 25.2(d); *Dears v. State*, 154 S.W.3d 610, 613 (Tex. Crim. App. 2005). The trial court's certification indicates appellant has no right of appeal. We review the record to determine whether it supports the trial court's certification. *See Jones v. State*, 488 S.W.3d 801, 805 (Tex. Crim. App. 2016); *Dears*, 154 S.W.3d at 615.

The record shows that on October 11, 2016, the State filed a document entitled "Plea Terms" which states "Sentence: Without an Agreed Rec. Unlimited Arg." and "Other: Reduce to Agg. Sexual Aslt." The appellant did not sign that document. In support of his plea, on October 11, 2016, appellant signed a "Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession," which indicates that he agreed to waive his right to a trial by jury. This document further indicates appellant intended to enter a plea of guilty without an agreed recommendation as to punishment. Although entered without an agreed

recommendation as to punishment, this document states “I waive any right of appeal which I may have should the court accept the foregoing plea bargain agreement between myself and the prosecutor.” Additionally, the trial court signed a “Trial Court’s Certification of Defendant’s Right to Appeal” on October 11, 2016. The certification states this case “is a plea-bargain case, and the defendant has NO right of appeal.” Appellant signed this document.

Where consideration is given by the State for the waiver, a defendant may knowingly and intelligently waive his appeal as part of a plea, even when sentencing is not agreed upon. *See Jones*, 488 S.W.3d at 808; *Ex parte Broadway*, 301 S.W.3d 694, 699 (Tex. Crim. App. 2009). We find the bargain made by appellant in this case is similar to the bargain discussed in *Jones*. In *Jones*, the defendant agreed to enter a guilty plea, without an agreed recommendation on sentencing, in exchange for the State abandoning one of two enhancements thereby reducing the mandatory minimum sentence. *Jones*, 488 S.W.3d at 807–08. The Court of Criminal Appeals held there was a voluntary, knowing, and intelligent waiver of the right of appeal by the defendant and he had no right of appeal. *Id.* at 808. Here, the State provided consideration by agreeing to reduce the charge in exchange for a guilty plea and waiver of right of appeal, resulting in the applicable punishment range being lowered. The trial court subsequently sentenced appellant to twenty years in prison, five years less than the minimum had the State not reduced the charge to aggravated sexual assault. We conclude the waiver of the right of appeal was made voluntarily, knowingly, and intelligently by appellant and is binding. *See id.* at 807. Accordingly, the trial court’s certification accurately reflects that appellant has no right of appeal. *See id.* at 808.

CONCLUSION

We conclude the record reflects that appellant waived his right to appeal as

consideration, along with his plea, for the State reducing the charge to aggravated sexual assault. Because the trial court's certification that appellant has no right of appeal is supported by the record and the trial court has not given permission to appeal, appellant has no right of appeal. Accordingly, we grant the State's motion to dismiss and dismiss the appeal.

PER CURIAM

Panel consists of Justices Christopher, Brown, and Wise.
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