



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00606-CR

Victor H. **DIAZ** III,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 186th Judicial District Court, Bexar County, Texas
Trial Court No. 2017CR6123
Honorable Jefferson Moore, Judge Presiding

PER CURIAM

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: November 7, 2018

APPEAL DISMISSED

Appellant entered into a plea bargain with the State, pursuant to which appellant pleaded nolo contendere to the offense of burglary of a habitation with the intent to commit assault. The trial court imposed sentence in accordance with the agreement and signed a certificate stating this “is a plea-bargain case, and the defendant has NO right of appeal.” *See* TEX. R. APP. P. 25.2(a)(2). Appellant timely filed a notice of appeal. The clerk’s record, which includes the trial court’s rule 25.2(a)(2) certification and a written plea bargain agreement, has been filed. *See id.* R. 25.2(d).

“In a plea bargain case . . . a defendant may appeal only: (A) those matters that were raised by written motion filed and ruled on before trial, or (B) after getting the trial court’s permission to appeal.” *See id.* R. 25.2(a). This court must dismiss an appeal “if a certification that shows the defendant has the right of appeal has not been made part of the record.” *See id.* R. 25.2(d). The clerk’s record establishes the punishment assessed by the court does not exceed the punishment recommended by the prosecutor and agreed to by the defendant. *See id.* R. 25.2(a)(2). The clerk’s record also establishes the trial court did not give appellant permission to appeal. After reviewing the clerk’s record, we hold the trial court’s certification accurately reflects that this is a plea bargain case and Diaz does not have a right to appeal. *See Dears v. State*, 154 S.W.3d 610 (Tex. Crim. App. 2005) (holding that court of appeals should review clerk’s record to determine whether trial court’s certification is accurate).

On October 4, 2018, we gave appellant notice that this appeal would be dismissed pursuant to Rule 25.2(d) of the Texas Rules of Appellate Procedure unless an amended certification showing that appellant has the right to appeal is made part of the appellate record on or before November 5, 2018. *See* TEX. R. APP. P. 25.2(d); *See id.* R. 37.1; *Daniels v. State*, 110 S.W.3d 174 (Tex. App.—San Antonio 2003, order), *disp. on merits*, No. 04-03-00176-CR, 2003 WL 21508347 (July 2, 2003, pet. ref’d) (not designated for publication). On October 15, 2018, appellant’s counsel filed a response, stating he has reviewed the clerk’s record and has determined this is a plea bargain case in which appellant has no right of appeal. We therefore dismiss this appeal. *See* TEX. R. APP. P. 25.2(d).

PER CURIAM

DO NOT PUBLISH