



**Fourth Court of Appeals**  
**San Antonio, Texas**

**OPINION**

No. 04-23-00541-CR

James Ray **ADAMS II**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 290th Judicial District Court, Bexar County, Texas  
Trial Court No. 2021-CR-5284  
Honorable Jennifer Peña, Judge Presiding

PER CURIAM

Sitting: Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice  
Irene Rios, Justice

Delivered and Filed: August 16, 2023

**MOTION DENIED; DISMISSED FOR WANT OF JURISDICTION**

Appellant James Ray Adams II seeks to appeal his conviction for Driving While Intoxicated-3D/MORE which resulted from a plea bargain agreement. He asserts that his plea was not voluntary because he had ineffective assistance of counsel, and the trial court erred by denying his motion for new trial. Because Adams did not get the trial court's permission to appeal, we dismiss this appeal for want of jurisdiction.

**BACKGROUND**

In the underlying case, Adams was arrested for driving while intoxicated.

**A. DWI Plea Bargain Case**

The State charged Adams with Driving While Intoxicated-3D/MORE. The State presented evidence of two prior district court convictions for driving while intoxicated, and Adams and the State entered into a plea bargain agreement. In the agreement, Adams waived his right of appeal and pled guilty to the charged offense.

On February 24, 2023, the trial court found Adams guilty, assessed his punishment in accordance with the agreement, and signed a certification of Adams's right to appeal. The certification states "this criminal case . . . is a plea-bargain case, and the defendant has NO right of appeal."

**B. Motion for New Trial**

Adams filed a motion for new trial. In it, he argued that ineffective assistance of counsel made his plea involuntary. He stated, inter alia, that he was not shown the discovery in his case, he was not told that he could challenge the probable cause for his arrest by a motion to suppress, he was not told that he could challenge the blood alcohol test results, and if he had known these things, he would not have agreed to the plea bargain terms.

The trial court denied Adams's motion.

**C. Notice of Appeal**

Adams timely filed a notice of appeal. The certificate of notice of appeal indicated Adams's case was a plea bargain case and he has no right of appeal. Accordingly, we ordered the trial court clerk to file certain documents relevant for our review.

We reviewed the clerk's record and confirmed that it contains a written plea bargain agreement, which waived Adams's right to appeal, the punishment assessed did not exceed the punishment recommended by the State and agreed to by Adams, and the trial court's certification states that Adams has no right of appeal. *See* TEX. R. APP. P. 25.2(a)(2).

**D. Order for Amended Trial Court Certification**

Because the trial court certified that Adams does not have the right of appeal, we ordered him to cause an amended trial court certification to be filed in this court that shows he has the right of appeal. We advised Adams that if no amended trial court certification was filed as ordered, we must dismiss this appeal. *See* TEX. R. APP. P. 25.2(d); *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006).

**E. Motion for New Trial Court Certification**

Subsequently, Adams moved the trial court to grant Adams the right to appeal its order denying his motion for new trial. The trial court denied Adams's motion.

**F. Motion to Abate**

Thereafter, Adams filed a response to our order to file an amended trial court certification, but it did not include an amended trial court certification. *Contra* TEX. R. APP. P. 25.2(d). Instead, Adams filed an unopposed motion to abate this appeal “so a hearing may be held by the trial court allowing [Adams] to present argument to the trial court regarding why a trial court’s certification of [Adams’s] right to appeal allowing an appeal of the denial of a motion for new trial is legally allowed in this case.”

**DISCUSSION****A. Applicable Law**

The Texas Rules of Appellate Procedure “set out procedures which must be followed to invoke a court’s jurisdiction over a particular appeal.” *Chavez*, 183 S.W.3d at 679 (citing *White v. State*, 61 S.W.3d 424, 427–28 (Tex. Crim. App. 2001)); *see also* TEX. R. APP. P. 25.2. Rule 25.2(a)(2) applies to a defendant’s appeal:

In a plea bargain case—that is, a case in which a defendant’s plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant—a defendant may appeal only:

- (A) those matters that were raised by written motion filed and ruled on before trial,
- (B) after getting the trial court’s permission to appeal, or
- (C) where the specific appeal is expressly authorized by statute.

TEX. R. APP. P. 25.2(a)(2).

This rule is clear, and its application has been repeatedly confirmed. *E.g.*, *Chavez*, 183 S.W.3d at 680; *Cooper v. State*, 45 S.W.3d 77, 81 (Tex. Crim. App. 2001). “There is no exception [to Rule 25.2(a)(2) to allow an appeal from a plea bargain case] for the trial court’s refusal to grant permission to appeal. There is no exception for an adverse ruling on a motion for new trial. There is no exception for the voluntariness of waivers.” *Estrada v. State*, 149 S.W.3d 280, 282 (Tex. App.—Houston [1st Dist.] 2004, pet. ref’d).

Where the legislature has not authorized an appeal in a criminal case, “[a] court of appeals . . . must dismiss a prohibited appeal without further action, regardless of the basis for the appeal.” *Chavez*, 183 S.W.3d at 680; *accord Cooper*, 45 S.W.3d at 81 (“When we actually consider the issue of whether voluntariness of a guilty plea may be raised on appeal from a plea-bargained, felony conviction, we find that the answer must be that it may not.”).

## **B. Motion to Abate Appeal**

Here, Adams asks this court to abate this appeal “so a hearing may be held by the trial court allowing [Adams] to present argument to the trial court regarding why a trial court’s certification of [Adams’s] right to appeal allowing an appeal of the denial of a motion for new trial is legally allowed in this case.”

Adams relies on *Rodriguez Oviedo v. State*, No. 03-19-00568-CR, 2021 WL 3709525 (Tex. App.—Austin Aug. 20, 2021, pet. ref’d) (mem. op., not designated for publication). In that case, the appellant pled guilty to two counts of aggravated sexual assault of a child, and the trial court sentenced him in accordance with the plea bargain agreement. *Id.* at \*1. Thereafter, the appellant

filed a motion for new trial; he argued his plea was involuntary due to ineffective assistance of counsel. *Id.* The trial court considered appellant's declaration, trial counsel's affidavit, and affidavits from appellants' brothers. *Id.* It denied the motion for new trial, but it certified appellant's right to appeal its order denying appellant's motion for new trial. *Id.* at \*1 n.3.

Here, Adams filed a motion for new trial, but the trial court denied it. Adams then moved the trial court to grant him the right to appeal the order denying his motion for new trial. The trial court denied his motion, and it left in place its certification that this case is a plea bargain case, and Adams has no right of appeal. *See Estrada*, 149 S.W.3d at 282.

Adams does not assert that the trial court certification is defective, and the record conclusively proves that Adams was sentenced in accordance with his plea bargain agreement. *See* TEX. R. APP. P. 44.4(a) (correcting remediable errors); *Terrell v. State*, 245 S.W.3d 602, 605 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (per curiam) (“There is no defect to correct because the certification conforms to the record and the trial court opted against giving appellant permission to appeal.”). Further, Adams's circumstances did not meet the exceptions in Rule 25.2(a)(2). *See Chavez*, 183 S.W.3d at 680; *Cooper*, 45 S.W.3d at 77–78.

### **C. Motion to Abate Denied; Appeal Dismissed**

“The law is clear that, in plea-bargained cases, we have no authority to address issues that are not authorized by Rule 25.2(a)(2).” *Estrada*, 149 S.W.3d at 283; *see Chavez*, 183 S.W.3d at 680. Rule 25.2(a)(2) does not authorize an appeal for an alleged lack of voluntariness due to ineffective assistance of counsel, and Adams's motion acknowledges that “[t]he trial court has not authorized an appeal from the denial of [his] motion for new trial.”

Further, the trial court's certification shows it has not given Adams permission to appeal. “The simple fact is that the denial of a motion for new trial, regardless of the ground or grounds

raised in the motion, is not appealable in a plea-bargained case without the trial court's permission." *Estrada*, 149 S.W.3d at 285; *accord Cooper*, 45 S.W.3d at 81.

We necessarily conclude that Adams has no right of appeal, and we "must dismiss a prohibited appeal without further action, regardless of the basis for the appeal." *See Chavez*, 183 S.W.3d at 680; *Cooper*, 45 S.W.3d at 81. Accordingly, Adams's motion to abate is denied, and this appeal is dismissed for want of jurisdiction.

**D. Motion to Withdraw Granted**

A few days after Adams's retained attorney filed a docketing statement in this court showing Adams was represented by retained counsel, the trial court appointed the Bexar County Public Defender's Office (BCPDO) to represent Adams on appeal. Subsequently, Dean A. Diachin, on behalf of the BCPDO, moved to withdraw. The motion to withdraw is granted.

PER CURIAM

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