

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00542-CR

LELAND RAY HEBERT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 128th District Court
Orange County, Texas
Trial Cause No. A-030217-R

MEMORANDUM OPINION

On October 29, 2010, the trial court sentenced Leland Ray Hebert on a conviction for possession of a controlled substance. Hebert filed a notice of appeal on November 29, 2010. The trial court entered a certification of the defendant's right to appeal, certifying Hebert had waived his right to appeal, the case involved a plea-bargain, and that Hebert has no right of appeal. *See* Tex. R. App. P. 25.2(a)(2). The district clerk provided the trial court's certification to the Court of Appeals. On December 1, 2010, we notified the parties that we would dismiss the appeal unless the appellant established grounds for

continuing the appeal. In response to our notification, Hebert asked this Court to order the trial court to amend the certificate. He also requests that we abate the appeal and that we remand the case to the trial court for a hearing that relates to the merits of his appeal.

Hebert requests that we abate and remand the case for a hearing for the trial court to determine whether it corrected a clerical error or a judicial error when it struck the trial judge's signature from the space provided for the judge's signature on the motion to dismiss. Hebert concedes that after the trial court struck its signature, he subsequently entered a plea of true to the allegations in the State's motion to proceed with the adjudication of his guilt in exchange for the State's agreement to recommend the confinement for a term permitted as punishment for a Class A misdemeanor. *See* Tex. Penal Code Ann. § 12.44 (West Supp. 2010). Hebert also concedes that he signed a written waiver of his right of appeal, but he claims that he did not waive his right to appeal issues related to the trial court's jurisdiction. However, Hebert's claim that he agreed to a limited waiver claim is not supported by the record, as it shows that after sentencing Hebert to sixty days of confinement in jail, as mutually recommended by the parties, the trial court admonished Hebert of his right to appeal "from anything that's gone on in your case." After that, Hebert stated that he wished to waive his right of appeal.

"A waiver of the right to appeal made voluntarily, knowingly, and intelligently will prevent a defendant from appealing without the consent of the trial court." *Ex parte*

Broadway, 301 S.W.3d 694, 697 (Tex. Crim. App. 2009). Hebert made written and oral waivers of his right of appeal at a time when a challenge to the trial court's authority to proceed with adjudicating his guilt was or should have been known to him. *Id.* at 698; *see Ex parte Reedy*, 282 S.W.3d 492, 498, 501 (Tex. Crim. App. 2009); *Ex parte Insall*, 224 S.W.3d 213, 215 (Tex. Crim. App. 2007). The State gave consideration for the waiver. *Broadway*, 301 S.W.3d at 697-98. The rules that apply in plea-bargained cases do not exempt jurisdictional issues. *Griffin v. State*, 145 S.W.3d 645, 648-49 (Tex. Crim. App. 2004); *see also Davis v. State*, 195 S.W.3d 708, 711-12 (Tex. Crim. App. 2006).

The record supports the trial court's certification that the appellant does not have the right to appeal. *See Dears v. State*, 154 S.W.3d 610, 614-15 (Tex. Crim. App. 2005). Appellant's Motion to Abate Appeal and Remand and Motion to Amend the Trial Court's Certification is denied. We dismiss the appeal for lack of jurisdiction. *See Tex. R. App. P.* 25.2(d).

APPEAL DISMISSED.

HOLLIS HORTON
Justice

Opinion Delivered February 23, 2011
Do Not Publish
Before Gaultney, Kreger, and Horton, JJ.