



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-17-00159-CR

BRANDON JAY DOUTHITT

APPELLANT

V.

THE STATE OF TEXAS

APPELLEE

FROM CRIMINAL DISTRICT COURT NO. 3 OF TARRANT COUNTY
TRIAL COURT NO. 1468978D

MEMORANDUM OPINION¹

On May 9, 2017, as part of a plea-bargain agreement, appellant Brandon Jay Douthitt pleaded guilty to burglary of a habitation. See Tex. Penal Code Ann. § 30.02 (West 2011). In accordance with the agreement, the trial court

¹See Tex. R. App. P. 47.4.

sentenced Appellant to three years' confinement. The trial court certified that Appellant had no right to appeal. See Tex. R. App. P. 25.2(a)(2).

On May 17, Appellant filed a pro se notice of appeal in the trial court. See Tex. R. App. P. 25.2(c), 26.2. On May 24, we notified Appellant that the trial court had certified that he had no right to appeal and that we would dismiss his appeal unless Appellant or any party desiring to continue the appeal filed a response showing grounds for continuing the appeal. See Tex. R. App. P. 25.2(d), 44.3. Appellant responded, asserting that his sentence should have been ordered to run concurrently with a sentence he was already serving at the time of the instant conviction.² He also argued that his attorney's failure to seek a concurrent sentence was constitutionally ineffective assistance.

The record does not show that Appellant's sentence exceeded the State's recommendation, that Appellant desires to appeal a matter that was raised by written motion filed and ruled on before trial, or that the trial court granted Appellant permission to appeal. See Tex. R. App. P. 25.2(a)(2). Thus, in accordance with the trial court's certification, we dismiss this appeal. See Tex. R. App. P. 25.2(d), 43.2(f); *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006).

²We note that the judgment credited Appellant with eight months of confinement and does not include language authorizing the three-year sentence to run consecutively. See, e.g., Tex. Code Crim. Proc. Ann. art. 42.08 (West Supp. 2016).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: GABRIEL, SUDDERTH, and KERR, JJ.

DELIVERED: July 20, 2017