



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00079-CR

CODY JOE PICKETT, Appellant

v.

THE STATE OF TEXAS

On Appeal from the 432nd District Court
Tarrant County, Texas
Trial Court No. 1590572D

Before Birdwell, Bassel, and Womack, JJ.
Per Curiam Memorandum Opinion

MEMORANDUM OPINION

Pursuant to a charge bargain, Cody Pickett entered an open plea¹ of guilty to two counts of aggravated assault with a deadly weapon and three counts of abandoning or endangering a child. Under that bargain, the State agreed to waive the repeat-offender-enhancement paragraph of the indictment. This bargain is reflected in the trial court’s certification of Pickett’s right of appeal, which shows that this is a plea-bargain case for which Pickett has no right of appeal. *See* Tex. R. App. P. 25.2(a)(2), (d)–(e).

We notified the parties that we lack jurisdiction over the appeal based on the trial court’s certification and stated that unless a party filed a response showing grounds for continuing the appeal, we would dismiss it. *See* Tex. R. App. P. 44.3. In Pickett’s response, he conceded that this case involves a charge bargain and that he has no right of appeal, correctly asserting that this court “must dismiss this appeal.” Therefore, we dismiss Pickett’s appeal. *See* Tex. R. App. P. 25.2(a)(2), 43.2(f); *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006).

Per Curiam

¹The term “open plea” is often utilized to refer to a myriad of different types of pleas that a defendant might enter, but it is sometimes a misnomer. *See Harper v. State*, 567 S.W.3d 450, 454 (Tex. App.—Fort Worth 2019, no pet.) (discussing the use of the term “open plea” in the various settings it has been used, interpreted, and reviewed and whether it should be used at all). Here, Pickett entered his plea without the benefit of an agreement with the prosecutors regarding sentencing (a sentencing bargain). Rather, Pickett’s punishment was left for the trial court to decide. We use the term “open plea” in this case because that is how the plea is referred to in the trial court’s written plea admonishments and the trial court’s judgments.

Do Not Publish
Tex. R. App. P. 47.2(b)

Delivered: September 15, 2022