



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-15-00371-CR

DONALD RAHEEM JONES, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 52nd District Court
Coryell County, Texas
Trial Court No. FISC-14-22555, Honorable Trent D. Farrell, Presiding

January 14, 2016

ORDER OF ABATEMENT AND REMAND

Before **CAMPBELL** and **HANCOCK** and **PIRTLE, JJ.**

Appellant, Donald Raheem Jones, was indicted for aggravated sexual assault of a child younger than six years of age.¹ The official court reporter's record reflects that the indictment was amended in open court on May 27, 2015, to aggravated sexual

¹ TEX. PENAL CODE ANN. §§ 22.021(a)(1)(B)(i), 22.021(a)(2)(B) (West Supp. 2015). As originally indicted, the minimum term of imprisonment was 25 years. *Id.* at § 22.021(f)(1).

assault of a child younger than fourteen years of age.² On May 27, 2015, Appellant pleaded guilty to the amended indictment as part of a plea-bargain agreement in which the State recommended a maximum punishment cap of twenty-five years imprisonment. The reporter's record reflects that the trial court accepted the plea bargain and ultimately sentenced Appellant to twenty years imprisonment on September 9, 2015. Appellant's appointed counsel filed a notice of appeal on September 16, 2015. This appeal was then transferred from the Tenth District Court of Appeals to this court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001 (West 2013).

Pending before the court is Appellant's *Unopposed Motion to Abate Appeal and Remand Case to Trial Court*. In his motion, Appellant requests that the court abate the appeal and remand the cause to the trial court to correct (1) the offense reflected on the judgment; (2) the date of sentencing reflected on the judgment; and (3) the trial court's certification of Appellant's right of appeal.

It is evident from the record that the judgment signed on September 25, 2015, provides the incorrect offense and date of sentencing. The judgment indicates that Appellant was convicted of aggravated sexual assault of a child younger than six years of age and that the sentence was imposed on May 27, 2015. However, Appellant was convicted of aggravated sexual assault of a child younger than fourteen years of age and the sentence was imposed on September 9, 2015.

² TEX. PENAL CODE ANN. §§ 22.021(a)(1)(B)(i), 22.021(a)(2)(B) (West Supp. 2015). As amended, the offense was punishable as a first degree felony. *Id.* at § 22.021(e).

The trial court's certification of Appellant's right of appeal signed on September 9, 2015, is also incorrect. The certification states that this is not a plea-bargain case and Appellant has the right to appeal. However, the record reflects that Appellant pleaded guilty, as part of a plea-bargain agreement, and that the sentence imposed did not exceed the sentence recommended by the State and agreed to by Appellant. See TEX. R. APP. P. 25.2(a)(2); see also *Waters v. State*, 124 S.W.3d 825, 826 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd)(holding that an agreement that places a cap on punishment is a plea bargain for purposes of Rule 25.2(a)(2)). Furthermore, it appears from the record that Appellant expressly waived the right of appeal as part of the plea-bargain agreement and signed a "Waiver of Appeal."

Accordingly, we now grant Appellant's motion, abate the appeal, and remand the cause to the trial court for entry of a judgment *nunc pro tunc* reflecting the offense for which Appellant was convicted as aggravated sexual assault of a child younger than fourteen years of age and the date sentence was imposed as September 9, 2015. We also direct the trial court to enter an amended certification of Appellant's right of appeal in accordance with the facts of this case. The trial court clerk shall forward the judgment *nunc pro tunc* and the amended certification of Appellant's right of appeal to the clerk of this court in a supplemental record on or before March 14, 2016.

It is so ordered.

Per Curiam

Do not publish.