



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

No. 07-16-00327-CR

DANGO SHAWN MCCLAIN, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 108th District Court
Potter County, Texas
Trial Court No. 70,294-E, Honorable David Gleason, Presiding

September 30, 2016

ABATEMENT AND REMAND

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Appellant, Dango Shawn McClain, appearing *pro se*, appeals his conviction for manufacture or delivery of a controlled substance in an amount of four grams or more, but less than 200 grams. The trial court's certification of appellant's right of appeal certifies that this "is a plea-bargain case, and the defendant has NO right of appeal" and that "the defendant has waived the right of appeal." However, the record indicates that the sentence imposed by the trial court, forty-five years imprisonment, exceeded the sentence recommended by the prosecutor and agreed to by appellant in the plea-

bargain agreement of twenty-seven years imprisonment. See TEX. R. APP. P. 25.2(a)(2). The State has informed the court that the certification of appellant's right of appeal is defective and the State will present an amended certification to the trial court. Appellant has moved for appointment of appellate counsel.

Accordingly, we abate this appeal and remand the cause to the 108th District Court of Potter County (trial court) with directions to amend the certification of appellant's right of appeal consistent with the record. TEX. R. APP. P. 25.2(f). The trial court shall file the amended certification in a supplemental record by October 31, 2016. TEX. R. APP. P. 34.5(c)(2).

Upon remand, the trial court shall also determine the following:

1. whether appellant desires to prosecute the appeal; and
2. whether appellant is indigent and entitled to appointment of counsel. See TEX. CODE CRIM. PROC. ANN. art 1.051(d)(1).

The trial court is directed to enter such orders necessary to address the aforementioned questions. So too shall it include its findings on those matters in a supplemental record and cause that record to be filed with this court by October 31, 2016. If it is determined that appellant desires to proceed with the appeal and is indigent, the trial court may appoint him counsel; the name, address, email address, and phone number of any appointed counsel shall be included in the aforementioned findings. Should further time be needed to perform these tasks, then same must be requested before October 31, 2016.

It is so ordered.

Per Curiam

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