



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

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No. 07-16-00446-CR

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**AMANDA DAWN HILTON, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 31st District Court  
Gray County, Texas  
Trial Court No. 10344, Honorable Steven R. Emmert, Presiding

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**June 12, 2017**

**ORDER OF ABATEMENT AND REMAND**

**Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.**

Pursuant to a plea bargain agreement, appellant Amanda Dawn Hilton was convicted of possession with intent to deliver drug paraphernalia, a Class A misdemeanor,<sup>1</sup> and sentenced to thirty days confinement in the Gray County Jail. Through her retained counsel, she filed a notice of appeal from the trial court's denial of her pretrial motion to suppress pursuant to Appellate Rule 25.2(a)(2). We now abate

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<sup>1</sup> TEX. HEALTH & SAFETY CODE ANN. § 481.125(b), (e) (West 2010).

the appeal and remand the cause to the trial court for further clarification of appellant's right of appeal.

On October 26, 2016, the trial court issued a certification stating this "is a plea bargain case, but matters were raised by written motion filed and ruled on before trial and not withdrawn or waived, and the defendant has the right of appeal," and "the defendant has waived the right of appeal." On December 7, 2016, the trial court signed a second certification, included in appellant's notice of appeal, stating: "I, judge of the trial court, certify in this criminal case that the defendant's appeal is in a plea-bargain case, but is on matters that were raised by written motion filed and ruled on before trial, and the defendant has the right of appeal."

Appellant filed the notice of appeal containing the certification. On January 30, 2017, we abated the appeal and remanded the cause to the trial court to determine whether appellant was entitled to have the record furnished without charge. On remand, the trial court issued findings of fact and conclusions of law<sup>2</sup> concluding: (1) "Defendant has waived all rights of appeal and is not entitled to appeal defendant's Motion to Suppress," and (2) "Since defendant has waived all rights of appeal she is not entitled to an appellate record furnished without charge."

The trial court also made the following findings. On July 6, 2016, Judge Emmert denied appellant's motion to suppress after an evidentiary hearing. On October 26, 2016, Judge Vanderpool presided over a plea hearing in which appellant pleaded no

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<sup>2</sup> On April 13, 2017, the Honorable Steven R. Emmert, Judge of the 31st District Court, issued findings of fact and conclusions of law that included the affidavit of the Honorable Phil N. Vanderpool, Judge of the 223rd District Court.

contest to the charges and executed a waiver of appeal pursuant to a plea bargain agreement. According to the findings, “[t]he plea bargain recommendation . . . required that defendant waive all appellate rights and did not include a reservation for defendant to be able to appeal any pretrial matter including defendant’s Motion to Suppress.” At the hearing, Judge Vanderpool also executed a certification of appellant’s right of appeal. The trial court found, however, that the certification is incorrect as the box certifying appellant has the right to appeal certain pretrial matters “was checked in error by someone other than the said trial judge and without the knowledge or approval of the prosecuting attorney or the said trial judge.” Further, the trial court found that only the box certifying appellant waived the right of appeal was correctly checked by Judge Vanderpool.

The findings of fact and conclusions of law and the trial court’s certification of appellant’s right of appeal were filed with this Court, and we reinstated the appeal on our docket. By letter of April 25, 2017, we notified appellant that the trial court had entered findings of fact and conclusions of law certifying appellant had waived her right of appeal and directed counsel to demonstrate grounds for continuing the appeal by May 5, 2017. See TEX. R. APP. P. 25.2(d). Appellant’s retained counsel made no response to this Court’s letter.

Appellate Rule 25.2(d) requires that we dismiss an appeal “if a certification that shows the defendant has the right of appeal has not been made part of the record.” See TEX. R. APP. P. 25.2(d). Here, the trial court signed a certification on December 7 certifying appellant has a right of appeal. Because the December 7 certification was not

addressed in the trial court's findings of fact and conclusions of law,<sup>3</sup> it is unclear to this Court whether the trial court considered the certification in determining appellant has no right of appeal. It is further unclear whether the trial court granted appellant permission to appeal in the December 7 certification. See *id.* 25.2(a)(2)(B).

Accordingly, we abate the appeal and remand the cause to the trial court for further proceedings. On remand, the trial court shall utilize whatever means it finds necessary to determine the following:

1. whether appellant desires to prosecute the appeal;
2. if appellant desires to prosecute the appeal, whether appellant has the right of appeal considering the trial court's certification signed on December 7, 2016;
3. if appellant desires to prosecute the appeal and has the right of appeal, whether appellant is entitled to have the appellate record furnished without charge;
4. if appellant is not entitled to have the appellate record furnished without charge, the date appellant will make acceptable payment arrangement for the appellate record; and
5. what orders, if any, should be entered to assure the filing of appropriate documentation to dismiss appellant's appeal if appellant does not desire to prosecute the appeal.

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<sup>3</sup> The trial court's findings of fact and conclusions of law contains a list of the matters the court considered in making its findings. The list does not include the December 7, 2016 certification of right of appeal that appears on appellant's notice of appeal.

We further direct the trial court to issue findings of fact and conclusions of law addressing the foregoing subjects. Additionally, the trial court shall cause to be developed 1) a supplemental clerk's record containing the findings of fact and conclusions of law, and 2) a reporter's record transcribing the evidence and argument presented at any hearing held. The trial court shall cause the supplemental clerk's record and reporter's record, if any, to be filed with the clerk of this Court on or before July 12, 2017. Should additional time be needed to perform these tasks, the trial court may request same on or before that date.

It is so ordered.

Per Curiam

Do not publish.