



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

No. 07-17-00031-CR
No. 07-17-00032-CR
No. 07-17-00033-CR
No. 07-17-00034-CR

TOMMY DALE SELLS, JR., APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 108th District Court
Potter County, Texas
Trial Court No. 67,074-E (Counts I, II, III & IV); Honorable Douglas R. Woodburn, Presiding

March 9, 2017

MEMORANDUM OPINION

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

Pursuant to a plea bargain agreement, Appellant, Tommy Dale Sells, Jr.,¹ was convicted of two counts of indecency with a child by sexual contact² and two counts of

¹ The judgments for counts two and three incorrectly identify "Tommy Dale, Jr. Sells" as the defendant.

² TEX. PENAL CODE ANN. § 21.11(a)(1) (West 2011).

aggravated sexual assault of a child under the age of fourteen.³ Appellant was sentenced to twenty years imprisonment for each count of indecency and thirty-five years imprisonment for each count of aggravated sexual assault, with the sentences to run concurrently. The trial court's certifications of Appellant's right of appeal reflect that all counts were plea-bargained cases with no right of appeal and that Appellant waived the right of appeal. The certifications notwithstanding, Appellant filed a notice of appeal, through his appointed counsel, Mr. Mike Watkins, challenging his convictions. Appellant also filed a *Request for Permission to Appeal* in the trial court on January 16, 2017. See TEX. R. APP. P. 25.2(a)(2)(B).

By letter dated January 18, 2017, this court notified Appellant's counsel of the consequences of the certifications and invited him to file amended certifications showing a right of appeal or demonstrate other grounds for continuing the appeals on or before February 1, 2017. Counsel did not respond to the court's letter. On February 10, 2017, the district clerk filed with this court an order appointing Mr. Brooks Barfield as Appellant's counsel. Thus, by letter dated February 13, 2017, we notified both Mr. Watkins and Mr. Barfield that the appeals were subject to dismissal if they did not file amended certifications or demonstrate other grounds for continuing the appeals by February 27, 2017.

To date, Appellant's attorneys have not filed any amended certifications reflecting a right of appeal and have not responded to this court's letters. Further, the district clerk has notified this court that the trial court has not filed any order ruling on Appellant's

³ TEX. PENAL CODE ANN. § 22.021(a)(1)(B), (2)(B) (West Supp. 2016). The judgments for counts two and three incorrectly recite "PC 21.11(a)(1)" as the Statute for Offense.

Request for Permission to Appeal. Consequently, we have no alternative but to dismiss the appeals based on the certifications signed by the trial court. See TEX. R. APP. P. 25.2(d).

Before doing so, however, we will modify the judgments of counts two and three. This court has the power to modify the judgment of the court below to make the record speak the truth when we have the necessary information to do so. *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993). Appellate courts have the power to reform whatever the trial court could have corrected by a judgment *nunc pro tunc* where the evidence necessary to correct the judgment appears in the record. *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd). The power to reform a judgment is “not dependent upon the request of any party, nor does it turn on the question of whether a party has or has not objected in the trial court.” *Id.* at 529-30. We, therefore, reform the judgments of counts two and three to reflect the correct name of the defendant, Tommy Dale Sells, Jr., and to provide “PC 22.021(a)(1)(B), (2)(B)” as the Statute for Offense.

Because the trial court’s certifications show Appellant has no right of appeal, we dismiss the appeals. See TEX. R. APP. P. 25.2(d).

It is so ordered.

Per Curiam

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