



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

No. 07-18-00378-CR

DAVID MARTIN SCHMITT, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 47th District Court
Potter County, Texas
Trial Court No. 66,873-A, Honorable Dan L. Schaap, Presiding

October 19, 2018

ORDER OF ABATEMENT AND REMAND

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

Appellant, David Martin Schmitt, appeals his conviction of aggravated sexual assault¹ and sentence to eight years' confinement. The trial court's certification of appellant's right of appeal indicates this "is not a plea-bargain case, and the defendant has the right of appeal." The certification appears defective, however, as appellant signed

¹ TEX. PENAL CODE ANN. § 22.021 (West Supp. 2018).

a waiver of his right of appeal after his sentence was imposed. *See Monreal v. State*, 99 S.W.3d 615, 622 (Tex. Crim. App. 2003).

Accordingly, we abate this appeal and remand the cause to the 47th District Court of Potter County to prepare an amended certification of appellant's right of appeal consistent with the record. *See* TEX. R. APP. P. 25.2(f); *Dears v. State*, 154 S.W.3d 610, 613-14 (Tex. Crim. App. 2005) (requiring an appellate court to determine whether the trial court's certification comports to the record). The trial court shall utilize whatever means it finds necessary to secure appellant's signature on the amended certification. *See* TEX. R. APP. P. 25.2(d). The amended certification shall be included in a clerk's record filed with this Court by November 19, 2018. TEX. R. APP. P. 34.5(c)(2). Should further time be needed to perform these tasks, then same must be requested before November 19, 2018.

It is so ordered.

Per Curiam

Do not publish.