



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00202-CR

STEVE RAY JACKSON, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court
Red River County, Texas
Trial Court No. 17552

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Steve Ray Jackson, Jr., has appealed from his conviction for driving while intoxicated (DWI), a class A misdemeanor.¹ Because we conclude that Jackson has no right to appeal this conviction—due to the fact that the trial court’s judgment was based on a plea agreement—we dismiss this appeal for want of jurisdiction.

The trial court filed a certification that Jackson waived his right of appeal. The certification recited that this is a plea bargain case and that Jackson has no right of appeal. Rule 25.2(a)(2) of the Texas Rules of Appellate Procedure states, in pertinent part:

(2) . . . A defendant in a criminal case has the right of appeal under Code of Criminal Procedure article 44.02 and these rules. The trial court shall enter a certification of the defendant’s right of appeal in every case in which it enters a judgment of guilt or other appealable order.

TEX. R. APP. P. 25.2(a)(2). If a certification showing that the appellant has the right of appeal is not made a part of the appellate record, we must dismiss the case unless the record affirmatively indicates that the appellant may have the right of appeal. TEX. R. APP. P. 25.2(d); *see Greenwell v. Court of Appeals for Thirteenth Judicial Dist.*, 159 S.W.3d 645, 649 (Tex. Crim. App. 2005); *Dears v. State*, 154 S.W.3d 610, 612 (Tex. Crim. App. 2005).

¹The trial court assessed Jackson’s punishment at one year, probated for two years, and assessed a \$1,200.00 fine.

Apparently conflicting with the above, the initial clerk's record also, however, contained documents indicating that the plea was an open plea. The initial record also does not detail either the existence or the nature of any plea agreement with the State.²

We abated the appeal to the trial court to make findings and to attempt to shed some light on the anomalies. We have now received a supplemental clerk's record containing the trial court's findings.

Jackson signed a document entitled "Waiver of Rights and a Plea of Guilty" containing language acknowledging the right to counsel and stating that defendant has been advised of his rights and warned about self-representation³ and waiving his right to be represented by counsel. That document also acknowledges, however, that, if the plea was not the result of a bargain, Jackson would have the right to appeal and to be represented by counsel on appeal. It does not recite the existence of a plea agreement or its terms.

There is also a document titled "Limited Waiver of Attorney," which indicates that Jackson waived his right to counsel for the purpose of discussing a plea agreement with the State and that,

²Upon receiving the clerk's record, we observed a number of anomalies. Jackson appears to be indigent, but was not represented by counsel at trial. We find nothing in the record to explain how this occurred. The record did show that the State filed a motion to revoke Jackson's community supervision and that, at a joint hearing on revocation and on his motion for new trial, Jackson was represented by counsel, Don Cooksey. Between the time of the hearing and the filing of the notice of appeal, Cooksey surrendered his law license, rendering Jackson again pro se.

³The trial court states that it conducted an en masse admonishment session with Jackson and "other defendants that had misdemeanor cases pending." The court recites that it admonished all defendants of their rights and warned them of the dangers of self-representation.

if he was able to reach an agreement, he asked to plead without representation by counsel. It goes on to state that, if no agreement was reached, Jackson did not waive his right to counsel.

So, the critical question for this appeal is whether there was a plea agreement.

The trial court explained in its post-abatement findings that, in Red River County, a plea agreement is handled during an administrative hearing during which a proposed agreement is tendered. A copy of the undated and unsigned county attorney's plea offer in this case appears not to have been filed until after we abated it, but a copy is now also before this Court in the supplemental record. It states that it is an offer, details proposed punishment, and states that Jackson was to appear before the trial court June 16, 2009. The punishment assessed by the court is the punishment specified by the offer.

The waiver of right of appeal relied on by the trial court in this case is effective only if a plea agreement exists and was followed by the court. We have examined the clerk's record to determine whether the trial court's certification is defective. *See Dears*, 154 S.W.3d at 613. Based on the record as it has now been supplemented, we find no such defect. It appears a plea agreement existed and was followed by the trial court. Therefore, this Court lacks jurisdiction over this appeal.

We dismiss the appeal for want of jurisdiction.

Josh R. Morriss, III
Chief Justice

Date Submitted: January 5, 2010
Date Decided: January 6, 2010

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