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

No. 06-10-00080-CR

IRA JERMAINE BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 336th Judicial District Court
Fannin County, Texas
Trial Court No. 23137

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

MEMORANDUM OPINION

Ira Jermaine Brown appeals his jury conviction of delivery of a controlled substance (cocaine), in an amount of one gram or more, but less than four grams. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(c) (Vernon Supp. 2009).

In our review of the trial court's certification of Brown's right of appeal, we noted that the court checked both that this was a plea agreement case and that Brown had no right of appeal, and that Brown had waived his right of appeal.

Upon further review of the clerk's record in this case, we found that a jury had convicted Brown of the offense of delivery of a controlled substance and that after the guilty verdict had been reached by the jury, an agreement, referred to as a "plea bargain," but what is in actuality an agreement between Brown and the State as to punishment was reached in which Brown pled guilty to the charge in the indictment and agreed to a punishment of imprisonment for ten years. A "plea bargain" is defined as a case "in which a defendant's plea was guilty . . . ." TEX. R. APP. P. 25.2(a)(2). In this case, Brown pled "not guilty" and was then convicted by a jury. Logically, a plea bargain as to guilt cannot be entered after a jury has convicted that defendant on his plea of "not guilty." The agreed sentence of ten years' imprisonment was imposed by the trial court on March 10, 2010.

However, as part of his sentencing agreement, Brown also waived his right of appeal, and sentence was imposed in compliance with the agreement. Unless a certification, showing that a

defendant has the right of appeal, is in the record, we must dismiss the appeal. *See* TEX. R. APP. P. 25.2(d). The trial court's certification affirmatively shows that Brown has waived his right of appeal, and the record before us does not reflect that the certification is incorrect. *See Dears v. State*, 154 S.W.3d 610, 615 (Tex. Crim. App. 2005). We must, therefore, dismiss the appeal.

We dismiss the appeal for want of jurisdiction.

Bailey C. Moseley
Justice

Date Submitted: May 10, 2010
Date Decided: May 11, 2010

Do Not Publish