

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00660-CR

Austin Taylor Rose, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 299TH JUDICIAL DISTRICT
NO. D-1-DC-10-205399, HONORABLE KAREN SAGE, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

Appellant Austin Taylor Rose pleaded guilty to the offense of possession of a controlled substance, gamma hydroxybutyric acid, and the trial court placed him on deferred-adjudication community supervision. The State subsequently filed a motion to proceed with an adjudication of guilt. Rose pleaded “true” to at least one of the allegations in the motion to adjudicate and was sentenced to two years’ imprisonment. Rose has filed a notice of appeal from the trial court’s judgment adjudicating guilt.

The rules of appellate procedure require that a trial court enter a certification of the defendant’s right of appeal “each time it enters a judgment of guilt or other appealable order.” *See* Tex. R. App. P. 25.2(a)(2). A defendant may appeal from a judgment adjudicating guilt. *See* Tex. Code Crim. Proc. art. 42.12, § 5(b). As a result, a trial court is required to enter a written certification of a defendant’s right of appeal from the judgment adjudicating guilt.

The trial court’s certification in this case states that this is a plea-bargain case and the defendant has no right of appeal. A plea-bargain case is defined as one in which a defendant’s plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant. Tex. R. App. P. 25.2(a)(2). Here, Rose did not plead guilty or nolo contendere. Instead, he pleaded true to the State’s allegations in the State’s motion to adjudicate. *See Hargesheimer v. State*, 182 S.W.3d 906, 909-10 (Tex. Crim. App. 2006) (holding that case in which defendant pleads true in motion to adjudicate is not considered plea-bargain case under rule 25.2(a)(2)); *Dears v. State*, 154 S.W.3d 610, 614 (Tex. Crim. App. 2005) (noting that rule 25.2(a)(2) specifically limits the right to appeal plea bargains and “refers only to plea bargains with regard to guilty pleas, not pleas of true on revocation motions”).

In light of the apparent discrepancy between the certification and the record, we abate the appeal and remand the cause to the trial court for entry of an amended certification addressing Rose’s right of appeal from the judgment adjudicating guilt. *See Dears*, 154 S.W.3d at 614 (concluding that appellate courts may examine certification for defectiveness and, when appropriate, use rules 37.1 and 34.5(c) of the rules of appellate procedure to obtain another certification). Once entered, the certification shall be included in a supplemental record and filed with this Court no later than January 13, 2017. *See Tex. R. App. P. 34.5(c)(2)*.

Before Justices Pemberton, Field, and Bourland

Abated and Remanded

Filed: December 16, 2016

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