TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00257-CR

Dara Marie Llorens, Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 390TH JUDICIAL DISTRICT
NO. D-1-DC-14-301967, HONORABLE JON WISSER, JUDGE PRESIDING

O R D E R AND M E M O R A N D U M O P I N I O N

PER CURIAM

Dara Marie Llorens was charged with kidnapping and with interference with child custody. *See* Tex. Penal Code §§ 20.03(a) (setting out elements of offense of kidnapping), 25.03(a)-(b) (governing offense of interference with child custody). Llorens entered an open plea of guilty to both charges and requested that the district court assess her punishment for both charges. As part of her plea paperwork, Llorens signed a document confessing to the crime and waiving various rights, including her right to appeal. At the end of the sentencing hearing, the district court sentenced Llorens to two years' imprisonment for the interference charge and to six years' imprisonment for the kidnapping charge. *See id.* §§ 20.03(c) (stating that kidnapping is third-degree felony), 25.03(d) (providing that interference with child custody is state-jail felony); *see also id.* §§ 12.34-.35 (setting out permissible punishment ranges for third-degree and state-jail felonies). After sentencing Llorens,

the district court issued a certification of Llorens's right to appeal and selected the first category. That category typically states that the case "is not a plea bargain, and the defendant has the right of appeal." However, the district court also interlineated additional text suggesting that some type of plea-bargain agreement was entered into. The full text, including the addition made by the district court, reads as follows: "is not a plea bargain *with respect to punishment*, and the defendant has the right of appeal."

This Court initially abated this appeal on January 20, 2017, in an attempt to obtain a corrected certification or findings and conclusions related to appellant's right to appeal. Both judgments of conviction in this appeal state that the presiding judge was the "Hon. Michael Lynch," and when the case was abated, it was remanded to Judge Lunch for further proceedings. However, after the appeal was abated, this Court was informed that Judge Lynch was not the presiding judge, and the signature from the judgments appears to reflect that the case was presided over by Judge Jon Wisser. Accordingly, we reinstated the appeal, and we now abate a second time, instructing the district court to modify the underlying judgments to reflect which judge presided over the trial in addition to providing an amended certification or findings of fact and conclusions of law related to Llorens's right to appeal, as explained below.

Based on the record before this Court, it appears that the district court's certification, signed April 1, 2016, may be incorrect. *See Dears v. State*, 154 S.W.3d 610, 614 (Tex. Crim. App. 2005) (explaining that when determining whether appellant has right to appeal, appellate courts examine trial court's certification for defectiveness, defined as certification that is "correct in form but which, when compared to the record before the court, proves to be inaccurate"). Therefore, we

abate the appeal and remand the case to the district court either to issue a new certification or to convene a hearing and to issue findings of facts and conclusions of law explaining whether there was a plea-bargain agreement in this case; whether that agreement, if any, affects Llorens's ability to challenge her sentences or her convictions; whether the district court granted Llorens permission to appeal if there was a plea bargain; and whether Llorens's presentence waiver of her right to appeal was effective. *See* Tex. R. App. P. 37.1 (requiring appellate court to notify parties if there appears to be defect in certification); *Dears*, 154 S.W.3d at 614 (stating that appellate courts have authority under Rules of Appellate Procedure "to obtain another certification, whenever appropriate"). *Compare Diaz v. State*, No. 10-15-00324-CR, 2016 WL 4498783, at *1-2 (Tex. App.—Waco Aug. 24, 2016, pet. ref'd) (mem. op., not designated for publication) (noting that appellant entered pleas of guilty to charged offenses without mentioning if appellant signed paperwork waiving right to appeal and that trial court modified certification to read that "'this criminal case . . . is not a plea-bargain case as to punishment, and the defendant has the right of appeal on punishment only'" and concluding that appellant was allowed to challenge his convictions on appeal and was not limited to only challenging his punishment because he did not enter guilty plea "pursuant to a plea-bargain agreement or in exchange for the State recommending a sentence"), *and Solis-Caseres v. State*, No. 09-13-00580-CR, 2015 WL 993476, at *5 & n.2, *7-8 (Tex. App.—Beaumont Mar. 4, 2015, no pet.) (mem. op., not designated for publication) (discussing how appellant entered pleas of guilty but refused to sign waiver of right to appeal and how trial court modified certification to read that "'[i]t is not a plea bargain case and the defendant has the right of appeal as to punishment only'" and concluding that appellant did not waive right to appeal his conviction because he

entered open plea without "any consideration given by the State" and that trial court's "additional handwritten notation of 'as to punishment only'" did "not restrict" appellant's right of appeal), *with Ex parte Broadway*, 301 S.W.3d 694, 695, 697-98 (Tex. Crim. App. 2009) (determining that applicant effectively waived right to appeal where applicant entered open plea and where he signed waiver before he was sentenced because applicant obtained benefit by inducing State to agree to waive right to jury trial "in order to ensure that the judge would be able to consider deferred-adjudication community supervision with drug treatment"), *and Cash v. State*, Nos. 14-12-00718—00719-CR, -00728-CR, 2013 WL 4017411, at *2 (Tex. App.—Houston [14th Dist.] July 30, 2013, pet. ref'd) (mem. op., not designated for publication) (noting that trial court gave permission to appeal "as to punishment, only"; explaining that "[f]or a defendant's presentencing waiver of appeal to be valid, it must be part of a plea bargain agreement or the State must give the defendant consideration for the waiver"; concluding that "appellant received consideration for his" waiver of right to appeal; and dismissing appeal because appellant was not challenging assessment of punishment and was instead challenging conviction and because trial court did not give "permission to appeal as to non-punishment issues").

The district court clerk is instructed to forward to this Court a supplemental clerk's record containing the modified judgments of conviction and the amended certification or the findings and conclusions no later than March 8, 2017. *See* Tex. R. App. P. 34.5(c) (stating that if appellate court "orders the trial court to prepare and file findings of fact and conclusions of law as required by law, or certification of the defendant's right of appeal as required by these rules, the trial court clerk must prepare, certify, and file in the appellate court a supplemental clerk's record containing those findings and conclusions").

It is ordered on January 27, 2017.

Before Justices Puryear, Pemberton, and Goodwin

Abated and Remanded

Filed: January 27, 2017

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