

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00560-CR

Ryan Taylor Galindo, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF CONCHO COUNTY, 119TH JUDICIAL DISTRICT
NO. DBU-15-01922, HONORABLE BEN WOODWARD, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

In 2015, Ryan Taylor Galindo pleaded guilty to the offense of burglary of a habitation, and the trial court placed him on deferred-adjudication community supervision. *See* Tex. Penal Code § 30.02(c)(2). In 2017, the State filed a motion to revoke Galindo’s deferred adjudication. At the conclusion of the hearing on the State’s motion, the trial court revoked Galindo’s probation, adjudicated his guilt, and sentenced him to five years’ imprisonment. Galindo now seeks to appeal from the trial court’s judgment adjudicating guilt, signed on July 13, 2017.

The rules of appellate procedure require that a trial court enter a certification of the defendant’s right to appeal “each time it enters a judgment of guilt or other appealable order.” *See* Tex. R. App. P. 25.2(a)(2). In determining whether an appellant in a criminal case has the right to appeal, we examine the trial court’s certification for defectiveness, defined as a certification

that is “correct in form but which, when compared to the record before the court, proves to be inaccurate.” *Dears v. State*, 154 S.W.3d 610, 614 (Tex. Crim. App. 2005). If the certification appears to be defective, we must obtain a correct certification. *Id.* at 614-15.

In this case, the trial court’s certification states that (1) this is a plea-bargain case and Galindo has no right of appeal, and (2) Galindo has waived the right of appeal. However, a defendant may appeal from a judgment adjudicating guilt. *See* Tex. Code Crim. Proc. arts. 42A.108(b), .755(e); *see also Hargesheimer v. State*, 182 S.W.3d 906, 909-10 (Tex. Crim. App. 2006) (holding that case in which defendant pleads true in response to motion to adjudicate is not considered a plea-bargain case under rule 25.2(a)(2)). Moreover, the reporter’s record from the hearing on the State’s motion to revoke reflects that Galindo pleaded “not true” to all of the allegations in the State’s motion and that at conclusion of the hearing, the trial court informed Galindo, “You have the right to appeal. It’s somewhat limited since this was a deferred adjudication. If you want to appeal you must file a motion for new trial or a notice of appeal, and you have to do that within 30 days.” The trial court subsequently appointed an attorney to represent Galindo on appeal.

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 Galindo’s right of appeal from the judgment adjudicating guilt. *See* Tex. R. App. P. 34.5(c); 37.1. Once entered, the certification shall be included in a supplemental record and filed with this Court no later than March 5, 2018.

Before Chief Justice Rose, Justices Field and Goodwin

Abated and Remanded

Filed: February 8, 2018

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