



**NUMBER 13-17-00452-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**JOHN DAVID SERNA,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 370th District Court  
of Hidalgo County, Texas.**

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## **MEMORANDUM OPINION**

**Before Chief Justice Valdez and Justices Contreras and Benavides  
Memorandum Opinion by Justice Benavides**

Appellant, John David Serna, has filed a notice of appeal with this Court from his conviction in trial court cause number CR-3071-16-G for aggravated sexual assault of a child. See TEX. PENAL CODE ANN. 22.021 (West, Westlaw through 2017 1st C.S.). The

trial court's certification of the defendant's right to appeal states that this “is a plea bargain case, and the defendant has NO right of appeal.” See TEX. R. APP. P. 25.2(a)(2).

On August 14, 2017, we ordered appellant's retained counsel to, within thirty days, review the record and advise this Court as to whether appellant has a right to appeal. See TEX. R. APP. P. 44.3, 44.4. Appellant's counsel did not respond to this Court's order. Therefore, we abated this appeal and remanded this cause to the trial court for a hearing to determine why counsel failed to comply with this Court's order. We have received the trial court's findings and conclusions following abatement. Appellant's retained counsel informed the trial court that, inter alia, he had not filed his response yet because he wished to review the appellate record before responding to our directive. In its findings and conclusions, the trial judge stated that he “continues to believe that Defendant Serna does not have a right to appeal this case.”

On October 12, 2017, appellant's retained counsel informed this Court by phone that he would file a response regarding whether appellant has a right to appeal by October 20, 2017. Nevertheless, counsel did not file the response. On October 26, 2017, the Clerk of the Court requested that counsel inform the Court as to the status of the response and notified him that the matter would be referred to the Court for appropriate orders if the response was not filed within ten days. To date, appellant's retained counsel has still not filed a response regarding the accuracy of the trial court certification.

We have reviewed the documents before the Court, which include the judgment of conviction, trial court's certification, the appellant's waiver of the right to appeal, and the reporter's record of the hearing wherein appellant pleaded guilty pursuant to a plea

bargain. The record before the Court does not establish that the certification currently on file with this Court is incorrect or that appellant otherwise has a right to appeal.

The Texas Rules of Appellate Procedure provide that an appeal must be dismissed if the trial court's certification does not show that the defendant has the right of appeal. TEX. R. APP. P. 25.2(d); see TEX. R. APP. P. 37.1, 44.3, 44.4. Accordingly, this appeal is DISMISSED.

GINA M. BENAVIDES,  
Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed the  
14th day of December, 2017.