



NUMBER 13-20-00192-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ALLEN ANTHONY ARREDONDO-BRAATEN,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 226th District Court
of Bexar County, Texas.**

MEMORANDUM OPINION

**Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes**

Appellant Allen Anthony Arredondo-Braaten appeals his conviction for aggravated sexual assault, asserting, among other things, that he did not enter a “plea bargain,” and

his waiver of appeal was not made knowingly, voluntarily, or intelligently.¹ See TEX. PENAL CODE ANN. § 22.021. We dismiss the appeal for want of jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant was indicted on aggravated sexual assault, aggravated kidnapping, and thirty-two counts of possession of child pornography on November 21, 2019. See *id.* §§ 20.04, 22.021, 43.26. Appellant pleaded not guilty and proceeded to trial on the offense of aggravated sexual assault; the remaining counts were severed. On December 13, 2019, a jury returned a guilty verdict, and appellant thereafter requested that the trial court assess punishment.

On December 19, 2019, appellant signed a document entitled “Plea Bargain,” wherein it was “mutually agreed and recommended by the parties,” that (1) the State would “proceed only on Count(s) I AGGRAVATED SEXUAL ASSAULT”; (2) “punishment [was] to be assessed at thirty five years[”] imprisonment with a \$1,500 fine; and (3) “AS PART OF THIS PLEA AGREEMENT[,] [appellant] AGREES TO WAIVE ALL RIGHTS OF APPEAL AS TO ALL PROCEEDINGS BOTH PRETRIAL AND AT TRIAL . . . REGARDING THE INCIDENTS ON DECEMBER 4TH 2017 AGAINST [the complainant].” Appellant separately signed a “Waiver of Appeal,” and the clerk’s record further contains a trial court certification, signed by the trial court and appellant, stating: “[T]he defendant has waived the right of appeal.” The trial court executed a final judgment sentencing appellant to thirty-five years in prison and no fine.

¹ This case is before this Court on transfer from the Fourth Court of Appeals in San Antonio pursuant to a docket-equalization order issued by the Supreme Court of Texas. See TEX. GOV’T CODE ANN. § 73.001. Because this is a transfer case, we apply the precedent of the San Antonio Court of Appeals to the extent it differs from our own. See TEX. R. APP. P. 41.

II. WAIVER

For an appellant to proceed with an appeal, the record must contain the trial court's certification showing he has a right to appeal. See *Jones v. State*, 488 S.W.3d 801, 808 (Tex. Crim. App. 2016); *Chavez v. State*, 183 S.W.3d 675, 680 (Tex. Crim. App. 2006); *Faulkner v. State*, 402 S.W.3d 507, 510 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). Should an appellant claim the certification of appeal is defective, “[a]n appellate court is obligated to review the record to determine if the certification is contrary to the record and therefore defective.” *Jones*, 488 S.W.3d at 805; see also *Marsh v. State*, 444 S.W.3d 654, 659 (Tex. Crim. App. 2014) (providing that an appellate court is “obligated to compare the certification with the record to ascertain whether a certification is defective and act accordingly”). The appellate court, however, may not create a certification of appeal where one does not exist or modify the language of an existing certification. *Marsh*, 444 S.W.3d at 659–60.

A defendant found guilty of committing an offense may waive his right to appeal in exchange for a mutually agreed upon sentencing recommendation from the State. See *Jones*, 488 S.W.3d at 807–08; *Blanco v. State*, 18 S.W.3d 218, 219–20 (Tex. Crim. App. 2000) (providing that where the State and the appellant agree the appellant will waive his right of appeal in exchange for the State's sentencing recommendation and the trial court follows the sentencing recommendation, “[t]here is no valid or compelling reason why appellant should not be held to his bargain”); see also *Berry v. State*, No. 02-19-00300-CR, 2020 WL 1808598, at *1 (Tex. App.—Fort Worth Apr. 9, 2020, no pet.) (mem. op., not designated for publication); see generally TEX. CODE CRIM. PROC. art. 1.14(a) (“The defendant in a criminal prosecution for any offense may waive any rights secured him by law.”). Such a waiver warrants the dismissal of any appeal. See *Dears v. State*, 154

S.W.3d 610, 613–14 (Tex. Crim. App. 2005) (holding a court of appeals is “required to dismiss the appeal unless it concluded that the trial court’s certification was defective”); *see also Brundage v. State*, No. 04-19-00060-CR, 2019 WL 2194077, at *1 (Tex. App.—San Antonio May 22, 2019, no pet.) (per curiam) (mem. op., not designated for publication) (finding dismissal of appeal appropriate where appellant attempted to appeal the case after a jury found appellant guilty, the appellant subsequently waived the right to appeal in exchange for the State’s amenable sentencing recommendation, and the trial court sentenced appellant within the recommended parameters).

On April 15, 2020, this Court ordered appellant’s counsel to advise this Court as to the existence of any amended certification, or alternatively, “file a motion with this Court within thirty days of this notice, identifying and explaining substantive reasons why appellant has a right to appeal.” In response, appellant filed a “Motion for Certification of Appeal,” in part, challenging the existence of a plea bargain under Rule 25.2.² See TEX. R. APP. P. 25.2; *Jones*, 488 S.W.3d at 807–08; *but see Buck v. State*, 601 S.W.3d 365 (Tex. Crim. App. 2020) (Keller, J., concurring) (“[A] defendant can challenge the existence of a plea bargain but not the voluntariness of a bargain.”). In *Jones*, the Texas Court of Criminal Appeals held that although there was no “plea bargain” arising under Rule 25.2, the signed waiver of the right of appeal in the record was nonetheless valid because there had been consideration made in exchange for the waiver. *Jones*, 488 S.W.3d at 808; see TEX. R. APP. P. 25.2. We conclude similarly.

In this case, the trial court’s certification shows, correctly, that appellant “had waived the right to appeal” in exchange for a sentencing recommendation of thirty-five

² The State, in its response to appellant’s motion, urges this Court to dismiss the appeal.

years' imprisonment where appellant otherwise faced up to life imprisonment. See TEX. PENAL CODE ANN. §§ 12.32(a), 22.021(e). Because the record supports the trial court's certification and further shows appellant waived the right to appeal, we are required to dismiss the appeal without further action.³ See *Jones*, 488 S.W.3d at 808; see also *Bull v. State*, No. 05-20-00448-CR, 2020 WL 1933800, at *1 (Tex. App.—Dallas Apr. 22, 2020, no pet.) (mem. op., not designated for publication); *Saldana v. State*, No. 14-19-00826-CR, 2019 WL 6875752, at *1 (Tex. App.—Houston [14th Dist.] Dec. 17, 2019, no pet.) (per curiam) (mem. op., not designated for publication); *Brundage*, 2019 WL 2194077, at *1.

III. CONCLUSION

We deny appellant's "Motion for Certification of Appeal," and we dismiss the appeal for want of jurisdiction.

GREGORY T. PERKES
Justice

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

Delivered and filed the
30th day of July, 2020.

³ Appellant may be entitled to an out-of-time appeal by filing a post-conviction writ of habeas corpus returnable to the Texas Court of Criminal Appeals; however, the availability of that remedy is beyond the jurisdiction of this Court. See TEX. CODE CRIM. PROC. ANN. art. 11.07 § 3(a); see also *Ex Parte Palmberg*, 491 S.W.3d 804, 813 (Tex. Crim. App. 2016) (analyzing applicant's challenge to the voluntariness of his plea and whether the plea-bargain process was fair).