

NO. 12-20-00056-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***GENE WILMETH,
APPELLANT***

§ *APPEAL FROM THE 3RD*

V.

§ *JUDICIAL DISTRICT COURT*

***THE STATE OF TEXAS,
APPELLEE***

§ *ANDERSON COUNTY, TEXAS*

***MEMORANDUM OPINION
PER CURIAM***

Gene Edward Wilmeth pleaded guilty to driving while intoxicated third or more, enhanced habitual. Pursuant to the plea agreement between Appellant and the State, the trial court assessed punishment at thirty years in prison. Appellant filed a notice of appeal.

The clerk's record has been filed. The trial court's certification states that this is a plea bargain case and Appellant has no right of appeal. The certification is signed by Appellant and his counsel. *See* TEX. R. APP. P. 25.2(d). The judgment likewise states that appeal is waived and no permission to appeal has been granted. The admonishments, voluntary statements, waivers, stipulations, judicial confession, and plea agreement-felony, also signed by Appellant and his counsel, expressly states that Appellant has no right of appeal.

When the defendant is the appellant, the record must include the trial court's certification of the defendant's right of appeal. *Id.* This Court must dismiss an appeal "if a certification that shows the defendant has the right of appeal has not been made part of the record." *Id.* Based on our review of the record, the trial court's certification appears to accurately state that Appellant does not have the right to appeal. *See Dears v. State*, 154 S.W.3d 610 (Tex. Crim. App. 2005) (holding that court of appeals should review clerk's record to determine whether trial court's certification is accurate). Because the trial court did not grant Appellant the right to appeal his conviction, we *dismiss* the appeal.

Opinion delivered March 18, 2020.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 18, 2020

NO. 12-20-00056-CR

GENE WILMETH,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 3CR-19-34344)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this Court that this appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this Court that this appeal be, and the same is, hereby **dismissed**; and that this decision be certified to the court below for observance.

By *per curiam* opinion.
Panel consisted of Worthen, C.J., Hoyle, J. and Neeley, J.