

DISMISS and Opinion Filed June 24, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-01007-CR

**QUINTUS JEROME RICHARDSON, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 195th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F19-13785-N**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Myers, and Justice Nowell
Opinion by Chief Justice Burns

Quintas Jerome Richardson appeals his conviction for evading arrest or detention with a motor vehicle. After appellant pleaded guilty to the charged offense and pleaded true to two enhancement paragraphs, the trial court found him guilty and assessed punishment at twenty-five years in prison. The trial court certified appellant had a right to appeal, stating this was not a plea bargain case.

Appointed counsel Valencia Bush filed an *Anders* brief. After we notified appellant of his right to file a pro se response to the *Anders* brief and upon further review of the appellate record, we sent appellant, appointed counsel, and the State letters inquiring about the Court's jurisdiction to hear the appeal. Specifically, we

noted that the appellate record shows appellant had two cases: F19-13784-N and F19-13785-N. In F19-13785-N, the subject of this appeal, appellant agreed to plead guilty to evading arrest and detention with two prior felony conviction enhancements in exchange for the State's agreement to (1) cap punishment at thirty years in F19-13785-N, and (2) reduce F19-13784-N from an assault with two prior felony conviction enhancement paragraphs to a "lesser-included offense of assault, Class A misdemeanor." At the conclusion of the hearing, the trial court found appellant guilty of both offenses and sentenced him to one year in county jail for the misdemeanor assault (F19-13784-N, not appealed) and twenty-five years evading arrest, twice enhanced (F19-13785-N, the issue of this appeal). We noted that despite the trial court's certification, it appeared appellant waived his right to appeal when he entered into a plea bargain agreement with the State and the trial court followed the plea bargain agreement. We requested the parties file letter briefs regarding the jurisdictional issue.

Appointed counsel did not respond. Appellant responded, arguing that there was no agreement on punishment nor was there anything in the record to show a "valid waiver of appeal was discussed or signed" by appellant. The State filed its jurisdictional brief, agreeing that the Court lacks jurisdiction for the reasons stated in the Court's letter.

There are two basic kinds of plea bargains that affect punishment: (1) sentence bargaining and (2) charge bargaining. *Shankle v. State*, 119 S.W.3d 808, 813 (Tex.

Crim. App. 2003). Sentence bargaining may be for binding or nonbinding recommendations to the court on sentences, including a recommended “cap” on sentences or recommendation for deferred adjudication community supervision. *Id.* Charge bargaining involves questions of whether the defendant will plead guilty to the offense that has been alleged or to a lesser or related offense and whether the prosecutor will dismiss or refrain from bringing other charges. *Id.* Both sentence bargaining and charge bargaining affect punishment and constitute plea bargain agreements under appellate rule 25.2. *Id.*

Rule 25.2 governs the perfection of appeals in criminal cases and requires that the trial court certify an appellant’s right to appeal. TEX. R. APP. P. 25.2(a)(2). Under rule 25.2, an appellant in plea bargain cases is limited to appealing pretrial rulings on written motion unless the trial court grants permission to appeal. *Id.* Although the trial court in this case certified that “the appeal is not a plea-bargain case, and the defendant has the right of appeal,” rule 25.2 requires the recitations in a certification to be true and supported by the record. *See Dears v. State*, 154 S.W.3d 610, 613 (Tex. Crim. App. 2005) (certification not supported by record is defective); *Carender v. State*, 155 S.W.3d 929, 930–31 (Tex. App.—Dallas 2005, no pet.); *Waters v. State*, 124 S.W.3d 825, 826 (Tex. App.—Houston [14th Dist.] 2003, pet. ref’d).

In this case, appellant signed a plea bargain agreement in which the State agreed to a cap on punishment and to reduce the charged offense in the companion

case to a misdemeanor. In return, appellant agreed, among other things, to waive his right to appeal. And contrary to appellant’s argument, the written plea bargain agreement states he waived his right to appeal and is signed by appellant, his appointed counsel, the representative for the State, and the trial court. Although the trial court referred to this as an “open plea” because there was no set agreement on the amount of time to appellant would serve, it is a plea bargain because the State agreed to a cap on punishment and reduced the companion case to a misdemeanor. *See Shankle*, 119 S.W.3d at 813 (charge-bargains occur where defendant pleads guilty to offense that has been alleged or to lesser or related offense, and when prosecutor agrees to dismiss, or refrain from bringing, other charges; sentence-bargains may be for either binding or non-binding recommendations to the trial court on sentences, including recommended “cap” on sentencing. Either type of plea bargain may affect defendant’s right to appeal.). Thus, the trial court’s certification in this case is defective. *See Dears*, 154 S.W.3d at 613.

Under these circumstances, we dismiss this appeal.

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

QUINTUS JEROME
RICHARDSON, Appellant

No. 05-20-01007-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 195th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F19-13785-N.
Opinion delivered by Chief Justice
Burns. Justices Myers and Nowell
participating.

Based on the Court's opinion of this date, we **DISMISS** the appeal.

Judgment entered June 24, 2021