

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Juan Martin Pedroza v. State

No. 05-19-01570-CR (Tex. App.—Dallas Oct. 30, 2020) · No. No. 05-19-01570-CR · Decided October 30, 2020

SUMMARY

The Fifth District Court of Appeals at Dallas abated the appeal to resolve conflicting records concerning the appellant’s waiver of appeal rights and the trial court’s certification. The court ordered the trial court to issue an amended certification addressing whether the appellant was granted permission to appeal after pleading guilty pursuant to an agreement involving a punishment cap.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Lana Myers
JURISDICTION	Texas
DECIDED	October 30, 2020
DOCKET	No. 05-19-01570-CR
DISPOSITION	abated
PROCEDURAL POSTURE	Pedroza appealed his first-degree murder conviction after entering a guilty plea under a plea bargain that capped punishment at twenty-five years. The appellate court abated the appeal because the record contained conflicting certifications and statements concerning whether he had a right to appeal or had been granted permission to appeal.
PRECEDENTIAL VALUE	Published Texas Court of Appeals opinion
PARTIES	Juan Martin Pedroza v. The State of Texas

TOPICS

- appellate jurisdiction
- appellate procedure
- plea bargaining
- criminal procedure

PRACTICE AREAS

- Texas criminal procedure
- appellate jurisdiction
- plea bargaining

QUESTIONS PRESENTED

1. Whether the appellate court could determine its jurisdiction when the record conflicted as to whether appellant waived his right to appeal under a plea bargain and whether the trial court granted permission to appeal.
2. Whether the appeal should be abated for the trial court to clarify the proceedings and issue an accurate certification of appellant's right to appeal.

HOLDINGS

1. A defendant waives the right to appeal when he agrees to plead guilty in exchange for the State's recommendation of a cap on punishment and the trial court follows that agreement; under those circumstances, Texas Rule of Appellate Procedure 25.2(a)(2) applies.
2. When the record conflicts regarding whether a defendant waived the right to appeal or received permission to appeal, the appellate court may abate the appeal and direct the trial court to clarify the proceedings and issue an accurate certification of the right to appeal.

KEY QUOTATIONS

"A defendant waives his right to appeal when he agrees to plead guilty in exchange for the State's recommendation of a cap on punishment, and the trial court follows the agreement."

"Because we are faced with a conflicting record concerning our jurisdiction, we will abate this appeal for the trial court to clarify whether appellant, who otherwise waived his right of appeal by entering into a plea bargain agreement with the State, was granted permission to appeal by the trial court."

FACTUAL BACKGROUND

Pedroza pleaded guilty to first-degree murder pursuant to a written plea bargain that stated the plea was open but included an agreement reflected in the reporter's record to cap punishment at twenty-five years in prison. The written agreement included a waiver of his right to appeal and was signed by Pedroza, his counsel, the State, and the trial judge. The clerk's record later included a certification stating that the case was not a plea-bargain case and that Pedroza had the right to appeal, and the trial court referred to the case as open after sentencing.

PROCEDURAL HISTORY

Appellant was charged with and convicted of first-degree murder in the Criminal District Court No. 1 of Dallas County. He entered a written plea agreement waiving his right to appeal, while the reporter's record reflected an agreement to cap punishment at twenty-five years. After sentencing, the trial court issued or approved a certification stating that the case was not a plea-bargain case and that appellant had a right of appeal. Because the record conflicted concerning appellate jurisdiction, the Court of Appeals ordered the trial court to issue an amended certification and abated the appeal pending supplementation of the clerk's record.

DISPOSITION

abated

REMAND INSTRUCTIONS

The presiding judge of Criminal District Court No. 1 was ordered to issue, on or before November 13, 2020, an amended certification accurately reflecting the trial court proceedings. Dallas County Clerk Felicia Pitre was ordered to file a supplemental clerk's record containing the amended certification by November 20, 2020. The appeal was to be reinstated when the supplemental clerk's record was filed or when the Court deemed reinstatement appropriate.

CASES CITED

- Shankle v. State, 119 S.W.3d 808, 813-14 (Tex. Crim. App. 2003)
- Carender v. State, 155 S.W.3d 929, 931 (Tex. App.—Dallas 2005, no pet.)
- Taylor v. State, 247 S.W.3d 223, 224 (Tex. Crim. App. 2008)
- Wicker v. State, 740 S.W.2d 779, 784 (Tex. Crim. App. 1987)

OPINION

PER CURIAM.

Order entered October 30, 2020 In The Court of Appeals Fifth District of Texas at Dallas No. 05-19-01570-CR JUAN MARTIN PEDROZA, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the Criminal District Court No. 1 Dallas County, Texas Trial Court Cause No. F18-75239-H ORDER Appellant was charged with and convicted of the first-degree offense of murder.

After reviewing the record in this appeal, the Court has questions concerning its jurisdiction over this appeal. The clerk's record shows that, on October 9, 2019, appellant entered into a written plea bargain agreement with the State in which he agreed to plead guilty and waive his right to appeal.

The agreement is signed by appellant, appellant's counsel, the State, and the trial judge. Although the written agreement states it is an "open" plea, the reporter's record reflects that the State and appellant agreed to "cap" punishment at twenty-five years in prison in exchange for appellant's guilty plea.

However, the clerk's record contains a December 6, 2019 certification of appellant's right to appeal, stating this "is a not a plea-bargain case, and the defendant has the right of appeal." Furthermore, after sentencing, the trial court stated, "There will be a trial certification because this was an open case." A defendant waives his right to appeal when he agrees to plead guilty in exchange for the State's recommendation of a cap on punishment, and the trial court follows the agreement.

See Shankle v. State, 119 S.W.3d 808, 813–14 (Tex. Crim. App. 2003); Carender v. State, 155 S.W.3d 929, 931 (Tex. App.—Dallas 2005, no pet.). Under these circumstances, the requirements of rule 25.2(a)(2) apply. Shankle, 119 S.W.3d at 813–14.

Because we are faced with a conflicting record concerning our jurisdiction, we will abate this appeal for the trial court to clarify whether appellant, who otherwise waived his right of appeal by entering into a plea bargain agreement with the State, was granted permission to appeal by the trial court. Cf. *Taylor v. State*, 247 S.W.3d 223, 224 (Tex. Crim. App.

2008) (the appellate court should abate for the trial court to clarify whether it intended to grant a motion for new trial or an appeal). We ORDER the Honorable Tina Yoo Clinton, Presiding Judge, Criminal District Court No. 1, to issue, on or before November 13, 2020, an amended certification of appellant's right of appeal that accurately reflects the trial court proceedings.

If necessary, the judge may review the reporter's record or clerk's record to refresh her recollection of the proceedings. See *Wicker v. State*, 740 S.W.2d 779, 784 (Tex. Crim. App. 1987). We ORDER Dallas County Clerk Felicia Pitre to file a supplemental clerk's record containing the trial court's amended certification of appellant's right to appeal on or before November 20, 2020.

We DIRECT the Clerk of this Court to send a copy of this order to the Honorable Tina Yoo Clinton, Presiding Judge, Criminal District Court No. 1; Dallas County Clerk Felicia Pitre; and counsel for the parties. We ABATE the appeal to allow the trial court an opportunity to comply with this order. It shall be reinstated when the supplemental clerk's record is filed or the Court deems it appropriate to do so. /s/ LANA MYERS JUSTICE