

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Lawrence Ray Jackson v. the State of Texas

No. 04-22-00845-CR · No. No. 04-22-00845-CR · Decided January 6, 2023

SUMMARY

The Fourth Court of Appeals of Texas orders appellant Lawrence Ray Jackson to respond regarding whether an amended trial-court certification establishes a right to appeal. The order notes that Jackson pleaded nolo contendere pursuant to a plea bargain, waived certain appellate rights, and received a sentence consistent with the agreement; it warns that the appeal will be dismissed if a satisfactory response is not filed.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Luz Elena D. Chapa
JURISDICTION	Texas
DECIDED	January 6, 2023
DOCKET	No. 04-22-00845-CR
DISPOSITION	other
PROCEDURAL POSTURE	Jackson appealed after pleading nolo contendere pursuant to a plea bargain and receiving the agreed sentence. The court of appeals issued an order requiring him to establish that an amended trial-court certification showing a right to appeal had been made part of the record.
STANDARD OF REVIEW	The court of appeals independently reviewed the clerk's record to determine whether the trial court's certification regarding the right to appeal was accurate.
PRECEDENTIAL VALUE	Published
PARTIES	Lawrence Ray Jackson v. The State of Texas

TOPICS

- appellate procedure
- plea bargaining
- criminal procedure
- final judgment rule

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appellate record supported the trial court's certification that Jackson had no right to appeal from the plea-bargained conviction and agreed sentence.
2. Whether Jackson should be required to establish that an amended certification showing a right to appeal had been included in the appellate record.

HOLDINGS

1. The court of appeals must review the clerk's record to determine whether the trial court's certification regarding the defendant's right to appeal is accurate.
2. The court did not immediately dismiss the appeal; instead, it ordered Jackson to file a response establishing that an amended certification showing a right to appeal had been made part of the appellate record, with dismissal to follow if he failed to respond satisfactorily.

KEY QUOTATIONS

“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.””

“The record establishes the punishment assessed by the court does not exceed the punishment recommended by the prosecutor and agreed to by the defendant.”

“If appellant fails to satisfactorily respond to this order within the time provided, the appeal will be dismissed.”

FACTUAL BACKGROUND

Jackson pleaded nolo contendere under a plea bargain. The trial court imposed a sentence consistent with the prosecutor's recommendation and the parties' agreement. The written plea agreement included a waiver of the right to appeal matters raised by written motion and ruled on before trial, and the trial court certified that Jackson had no right to appeal.

PROCEDURAL HISTORY

Jackson entered a plea bargain and pleaded nolo contendere to the charged offense. On September 14, 2022, the trial court imposed the agreed sentence and certified that the case was a plea-bargain case in which Jackson had no right of appeal. The appellate record appeared to support that certification, so the court ordered Jackson to respond by January 26, 2023, and stated that the appeal would be dismissed if he failed to establish a right to appeal.

DISPOSITION

other

REMAND INSTRUCTIONS

Jackson was ordered to file a response by January 26, 2023, establishing that an amended certification showing he had the right to appeal had been made part of the appellate record. If a supplemental clerk's record was necessary, he was ordered to request it from the trial court clerk and file a copy of that request with the court. All appellate deadlines were suspended until further order.

CASES CITED

- Dears v. State, 154 S.W.3d 610 (Tex. Crim. App. 2005)

OPINION

PER CURIAM.

FILE COPY Fourth Court of Appeals San Antonio, Texas January 6, 2023 No. 04-22-00845-CR Lawrence Ray JACKSON, Appellant v. The STATE of Texas, Appellee From the 227th Judicial District Court, Bexar County, Texas Trial Court No. 2018CR4080B Honorable Kevin M. O'Connell, Judge Presiding ORDER Appellant Lawrence Ray Jackson entered into a plea bargain with the State, pursuant to which he pleaded nolo contendere to the charged offense.

The trial court imposed a sentence on September 14, 2022 in accordance with the agreement and signed a certificate stating this “is a plea-bargain case, and the defendant has NO right of appeal.” See TEX. R. APP. P. 25.2(a)(2). 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. The clerk’s record includes the written plea bargain agreement which includes a waiver of the right to appeal those matter that were raised by written motion filed and ruled on before trial.

See id. 25.2(d). The record establishes the punishment assessed by the court does not exceed the punishment recommended by the prosecutor and agreed to by the defendant. See id. 25.2(a)(2). The record also appears to support the trial court’s certification that Appellant does not have a right to appeal. See Dears v. State, 154 S.W.3d 610 (Tex. Crim. App. 2005) (holding court of appeals should review clerk’s record to determine whether trial court’s certification is accurate).

We therefore order appellant to file a response, by January 26, 2023, establishing an amended certification showing he has the right to appeal has been made part of the appellate record. See TEX. R. APP. P. 25.2(d), 37.1. If a supplemental clerk’s record is required to show appellant has the right to appeal, appellant must request a supplemental record from the trial court clerk and file a copy of the request with this court.

If appellant fails to satisfactorily respond to this order within the time provided, the appeal will be dismissed. FILE COPY We order all appellate deadlines suspended until further order of the court. We further order the clerk of this court to serve copies of this order on the attorneys of record and the court reporter. _____ Luz Elena D. Chapa, Justice IN

WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 6th day of January, 2023. _____ MICHAEL A. CRUZ, Clerk of Court

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