

**Dismissed for Want of Jurisdiction and Opinion filed May 10, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00551-CR**  
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**WINFRED JEROME JOHNSON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 339th District Court  
Harris County, Texas  
Trial Court Cause No. 660,046**

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**MEMORANDUM OPINION**

Appellant was indicted for the felony offense of engaging in organized criminal activity. Appellant entered a plea of guilty with a recommendation from the State as to punishment. The court followed the plea bargain agreement, deferred adjudication of guilt, and placed appellant on probation for ten years. A motion to adjudicate guilt was subsequently filed alleging that appellant committed a new offense, murder, in cause number 801,224.<sup>1</sup> Appellant entered a plea of true to the allegations in the State's motion to adjudicate without an agreed

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<sup>1</sup> Our opinion in appellant's companion case, trial cause number 801,224, *State v. Johnson*, 14-00-00552-CR, is filed today.

recommendation from the State on punishment. Following the return of a pre-sentence investigation report, the court adjudicated appellant's guilt and assessed punishment at forty years imprisonment in the Texas Department of Criminal Justice.

Appellant's appointed counsel filed a motion to withdraw from representation of appellant along with a supporting brief in which he concludes that the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. Appellant has filed a response alleging numerous points of error.

Appellant's general notice of appeal fails to confer jurisdiction upon this court to consider his appeal. The restrictions placed upon appeals by Rule 25.2(b)(3) of the Texas Rules of Appellate Procedure are applicable when a defendant is placed on deferred adjudication pursuant to a plea bargain, even if the defendant is subsequently adjudicated guilty and sentenced without a second plea agreement. *See* TEX. R. APP. P. 25.2(b)(3); *Watson v. State*, 924 S.W.2d 711, 715 (Tex. Crim. App. 1996). Rule 25.2(b)(3) requires:

- (3) But if the appeal is from a judgment rendered on the defendant's plea of guilty . . . and the punishment assessed did not exceed the punishment recommended by the prosecutor and agreed to by the defendant, the notice must:
  - (A) specify that the appeal is for a jurisdictional defect;
  - (B) specify that the substance of the appeal was raised by written motion and ruled on before trial; or
  - (C) state that the trial court granted permission to appeal.

TEX. R. APP. P. 25.2(b)(3).

In the present case, appellant negotiated a plea of guilty in exchange for deferred adjudication community supervision. When his community supervision was revoked, the trial

court sentenced him within the agreed punishment range.<sup>2</sup> Therefore, in order to invoke this court's jurisdiction, appellant's notice of appeal was required to comply with the mandatory provisions of Rule 25.2(b)(3). *Cf. Watson*, 924 S.W.2d at 714 (applying former Rule 40(b)(1) to complaint arising from revocation of deferred adjudication); *Manuel v. State*, 994 S.W.2d 658, 662 (Tex. Crim. App. 1999) (same). Appellant filed only a general notice of appeal with no indication that permission to appeal was obtained from the trial court. There were no pretrial motions, and there are no jurisdictional defects.

Thus, appellant's general notice of appeal deprives this court of jurisdiction to consider his appeal, including a challenge to the voluntariness of his plea. *See Cooper v. State*, No. 1100-99, 2001 WL 321579 (Tex. Crim. App. April 4, 2001).

Accordingly, we dismiss the appeal for want of jurisdiction.

PER CURIAM

Judgment rendered and Opinion filed May 10, 2001  
Panel consists of Justices Fowler, Yates and Wittig.  
Do Not Publish — TEX. R. APP. P. 47.3(b).

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<sup>2</sup> A defendant given deferred adjudication who violates the conditions of his probation can be sentenced to the maximum term provided for the offense for which he pled guilty. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 8(a) (Vernon Supp. 2000). Appellant was sentenced under the law as it existed at the time of the offense. Prior to September of 1994, the crime of engaging in organized criminal activity with an underlying offense of theft of a value over twenty thousand dollars was punishable as a first degree felony, with a range of punishment from five to ninety-nine years or life in prison. *See* Acts 1987, 70<sup>th</sup> Leg., ch. 167 § 5.01(a)(45) (amended 1993) (current version at TEX. PENAL CODE ANN. § 31.03(e)(5) (Vernon 1994 & Supp. 2000)); Act of 1977, 65<sup>th</sup> Leg. P. 922, ch. 346 § 1 (amended 1993) (current version at TEX. PENAL CODE ANN. § 71.02 (Vernon 1994 & Supp. 2000)).