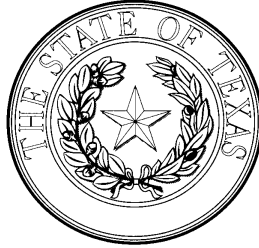


**Opinion issued June 4, 2020**



**In The  
Court of Appeals  
For The  
First District of Texas**

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**NO. 01-20-00243-CR**

**NO. 01-20-00244-CR**

**NO. 01-20-00245-CR**

**NO. 01-20-00246-CR**

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**RICHARD LOUIS FLORES, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 177th District Court  
Harris County, Texas  
Trial Court Case Nos. 1555478, 1555479, 1555480, 1555481**

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**MEMORANDUM OPINION**

In appellate cause number 01-20-00244-CR, appellant, Richard Louis Flores, pleaded guilty to the felony offense of aggravated sexual assault of a child under

fourteen years of age.<sup>1</sup> The trial court then found appellant guilty and assessed his punishment at confinement for forty years.

In appellate cause number 01-20-00243-CR, the Harris County Grand Jury issued a true bill of indictment, alleging that appellant committed the felony offense of sexual assault of a child.<sup>2</sup> The State subsequently filed a motion to dismiss because appellant had already been “convicted in another case[:] Cause No. 1555478.” On September 10, 2019, the trial court granted the State’s motion and dismissed the underlying case, trial court number 1555479.

In appellate cause number 01-20-00245-CR, the Harris County Grand Jury issued a true bill of indictment, alleging that appellant committed the felony offense of continuous sexual abuse of a child.<sup>3</sup> The State subsequently filed a motion to dismiss because appellant had already been “convicted in another case[:] Cause No. 1555478.” On September 10, 2019, the trial court granted the State’s motion and dismissed the underlying case, trial court number 1555480.

In appellate cause number 01-20-00246-CR, the Harris County Grand Jury issued a true bill of indictment, alleging that appellant committed the felony offense

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<sup>1</sup> See TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(iii), (a)(2)(B), (e); *see also id.* §§ 22.021(b)(1), 22.011(c); trial court cause no. 1555478.

<sup>2</sup> See *id.* § 22.011(a)(2), (c)(1), (f); trial court cause no. 1555479.

<sup>3</sup> See *id.* § 21.02(b), (h); *see also id.* §§ 21.02(a), 22.011(c); trial court cause no. 1555480.

sexual assault of a child.<sup>4</sup> The State subsequently filed a motion to dismiss because appellant had already been “convicted in another case[:] Cause No. 1555478.” On September 10, 2019, the trial court granted the State’s motion and dismissed the underlying case, trial court number 1555481.

Appellant filed a pro se notice of appeal in each appellate cause number.<sup>5</sup>

We dismiss the appeals for lack of jurisdiction.

In appellate cause number 01-20-00244-CR, the trial court’s certification of appellant’s right of appeal shows that appellant “waived the right to appeal.” *See* TEX. R. APP. P. 25.2(a)(2), (d). The record supports the trial court’s certification. *See Dears v. State*, 154 S.W.3d 610, 615 (Tex. Crim. App. 2005).

An appeal must be dismissed if a certification showing that the defendant has the right of appeal is not made part of the record. TEX. R. APP. P. 25.2(d). In this case, the trial court certified that appellant waived his right to appeal. Appellant signed the trial court’s certification. The trial court’s judgment also states: “APPEAL WAIVED. NO PERMISSION TO APPEAL GRANTED.”

A valid waiver of appeal—one made voluntarily, knowingly, and intelligently—prevents a defendant from appealing without the trial court’s consent.

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<sup>4</sup> *See id.* § 22.011(a)(2), (c)(1), (f); trial court cause no. 1555481.

<sup>5</sup> The trial court later appointed counsel to represent appellant on appeal in appellate cause number 01-20-00244-CR.

*See Carson v. State*, 559 S.W.3d 489, 492–93 (Tex. Crim. App. 2018); *Ex parte Broadway*, 301 S.W.3d 694, 697–99 (Tex. Crim. App. 2009). “[A] defendant may knowingly and intelligently waive his appeal as part of a plea when consideration is given by the State, even when sentencing is not agreed upon.” *Carson*, 559 S.W.3d at 494; *see Jones v. State*, 488 S.W.3d 801, 804–08 (Tex. Crim. App. 2016) (explaining presentence waivers of right of appeal have been upheld when record showed defendant received consideration for waiver); *see also* TEX. CODE CRIM. PROC. art. 1.14(a) (“The defendant in a criminal prosecution for any offense may waive any rights secured him by law . . .”).

In appellate cause number 01-20-00244-CR, appellant signed a “Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial Confession,” stating:

I understand that I have not reached an agreement with the prosecutor as to punishment. However, in exchange for the State waiving their right to a jury trial, I intend to enter a plea of guilty without an agreed recommendation of punishment from the prosecutor and request that my punishment should be set by the Judge after a pre-sentence investigation report and hearing. I understand the [S]tate reserves the right to argue for full punishment at my sentencing hearing. I waive any further time to prepare for trial to which I or my attorney may be entitled. *Further, in exchange for the [S]tate giving up their right to trial, I agree to waive any right of appeal which I may have.*<sup>[6]</sup>

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<sup>6</sup> Appellant also signed a document titled, “Advice of Defendant’s Right to Appeal,” which advised appellant that if he “waived or gave up [his] right to appeal, [he] c[ould not] appeal [his] conviction.” In signing that document, appellant affirmed that he “read and wr[o]te English” and he had read and understood the document.

(Emphasis added.) Here, in exchange for appellant’s waiver of his right to appeal the State agreed to waive its right to a jury trial or, more precisely, the State consented to appellant’s waiver of his right to jury trial. *See* TEX. CODE CRIM. PROC. art. 1.13(a) (“The defendant in a criminal prosecution for any offense other than a capital felony case in which the [S]tate notifies the court and the defendant that it will seek the death penalty shall have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that, except as provided by [a]rticle 27.19, the waiver must be made in person by the defendant in writing in open court *with the consent and approval of the court, and the attorney representing the [S]tate.*” (emphasis added)). By agreeing to waive its right to a jury trial, or by providing the required consent for appellant to waive his right to a jury trial, the State gave consideration for appellant’s waiver of his right to appeal.<sup>7</sup> *See Carson*, 559 S.W.3d at 492–96; *Ex parte Broadway*, 301 S.W.3d at 696–99. Because the record demonstrates that appellant waived his right of appeal, we lack jurisdiction, and appellant may not appeal his conviction for the felony offense of aggravated sexual assault of a child under fourteen years of age. *See Jones*, 488 S.W.3d at 804–08; *Ex*

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<sup>7</sup> The record also indicates that in exchange for appellant’s plea of guilty, the State dismissed its other pending cases against appellant in trial court cause numbers 1555479, 1555480, 1555481. *See Shankle v. State*, 119 S.W.3d 808, 813 (Tex. Crim. App. 2003) (“Charge-bargaining involves questions of whether a defendant will plead guilty to the offense that has been alleged or to a lesser or related offense, and of whether the prosecutor will dismiss, or refrain from bringing, other charges.”).

*parte Broadway*, 301 S.W.3d at 696–99; *Blanco v. State*, 18 S.W.3d 218, 219–20 (Tex. Crim. App. 2000); *see, e.g., Carter v. State*, No. 01-18-00838-CR, 2019 WL 6482405, at \*1–2 (Tex. App.—Houston [1st Dist.] Dec. 3, 2019, no pet.) (mem. op., not designated for publication) (dismissing appeal when appellant’s plea documents showed appellant waived right to appeal in exchange for State’s agreeing to waiver of jury trial); *Miles v. State*, No. 01-19-00047-CR, 2019 WL 3293695, at \*1–2 (Tex. App.—Houston [1st Dist.] July 23, 2019, pet. ref’d) (mem. op., not designated for publication) (same). Thus, we dismiss appellant’s appeal in appellate cause number 01-20-00244-CR.

In appellate cause numbers 01-20-00243-CR, 01-20-00245-CR, and 01-20-00246-CR, appellant attempts to appeal from the trial court’s orders granting the State’s motions to dismiss the underlying cases against appellant in trial court cause numbers 1555479, 1555480, 1555481.

The right to appeal in a criminal case is conferred by statute. *See Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014); *State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 915 (Tex. Crim. App. 2011). Subject to certain exceptions, which are inapplicable here, generally, a party may appeal only from a judgment of conviction. *See* TEX. CODE CRIM. PROC. art. 44.02 (providing criminal defendant may appeal conviction); TEX. R. APP. P. 25.2(a)(2); *State v. Sellers*, 790 S.W.2d 316, 321 n.4 (Tex. Crim. App. 1990); *see also Bustemante v. State*, Nos. 01-12-00556-CR,

01-12-00557-CR, 01-12-00558-CR, 2012 WL 5458442, at \*1 (Tex. App.—Houston [1st Dist.] Nov. 8, 2012, no pet.) (mem. op., not designated for publication).

Here, there are no judgments of conviction, and the orders granting the State’s motions to dismiss are not separately appealable orders. *See Haley v. State*, Nos. 01-19-00823-CR, 01-19-00824-CR, 01-19-00862-CR, 2020 WL 1467009, at \*1–2 (Tex. App.—Houston [1st Dist.] Mar. 26, 2020, no pet.) (mem. op., not designated for publication); *Harrison v. State*, No. 14-16-00082-CR, 2016 WL 519628, at \*1 (Tex. App.—Houston [14th Dist.] Feb. 9, 2016, no pet.) (mem. op., not designated for publication); *see also Petty v. State*, 800 S.W.2d 582, 583–84 (Tex. App.—Tyler 1990, no writ) (defendant could not appeal trial court dismissal of indictment—defendant not aggrieved by order). Thus, this Court lacks jurisdiction over appellant’s remaining appeals, and we must dismiss them. *See, e.g., Haley*, 2020 WL 1467990, at \*1–2; *Harrison*, 2016 WL 519628, at \*1; *Bustemante*, 2012 WL 5458442, at \*1; *Ballard v. State*, Nos. 01-08-00947-CR, 01-08-00948-CR, 2009 WL 3248197, at \*1 (Tex. App.—Houston [1st Dist.] October 8, 2009, no pet.) (mem. op., not designated for publication).

Based on the foregoing, we dismiss the appeals in appellate cause numbers 01-20-00243-CR, 01-20-00244-CR, 01-20-00245-CR, and 01-20-00246-CR for lack of jurisdiction. *See* TEX. R. APP. P. 43.2(f). We dismiss any pending motions as moot.

**PER CURIAM**

Panel consists of Chief Justice Radack and Justices Lloyd and Countiss.

Do not publish. TEX. R. APP. P. 47.2(b).