

Abatement Order filed June 12, 2020.



In The

Fourteenth Court of Appeals

NO. 14-18-00685-CR

MIRNA SALAS ABBOTT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 207th District Court
Comal County, Texas
Trial Court Cause No. CR2017-585(1)**

ABATEMENT ORDER

Appellant Mirna Salas Abbott was convicted of the felony offense of possession of a controlled substance (more than four grams but less than 200 grams). In challenging the trial court's judgment as to her guilt, appellant raises due-process-of-law and ineffective-assistance-of-counsel issues related to events that took place before she entered a plea of guilty to the charged offense. The State has argued in its appellate brief that appellant has waived her right to raise these issues on appeal.

A review of the record reveals that appellant signed a document entitled “Admonishments, Voluntary Statements, Waivers, Stipulations, Judicial Confession & Plea Bargain,” which contains statements in which appellant purported to plead “guilty” to the charges and “true” to enhancements, waive her right to a jury trial, and waive her right to appeal from the judgment and sentence as to guilt or innocence. The record shows appellant’s limited waiver of appeal lacks adequate consideration. *See Simon v. State*, 554 S.W.3d 257, 262–63 (Tex. App.—Houston [14th Dist.] 2018, no pet.); *Jenkins v. State*, 495 S.W.3d 347, 352 (Tex. App.—Houston [14th Dist.] 2016, no pet.). The record does not indicate that the State bargained for or otherwise attributed negotiating value to the purported consideration—the State’s consent to appellant’s waiver of a jury trial. *Simon v. State*, 554 S.W.3d at 262–63; *Jenkins v. State*, 495 S.W.3d at 352. The lack of consideration calls into question the validity of the limited waiver of appeal.

The trial court’s certification, under Texas Rule of Appellate Procedure 25.2(a)(2), of appellant’s right to appeal provides that this “is not a plea-bargain case, and the defendant has the right to appeal[] except as to guilt/innocence.” Because the record does not show that appellant received adequate consideration for her waiver of appeal as to guilt/innocence, the certification may be defective in that it precludes appellant from appealing issues of guilt/innocence. Under these circumstances, abatement of the case is warranted to allow the trial court the opportunity to review the record and submit a certification that comports with the record.

Accordingly, we **ORDER** the appeal **ABATED** and direct the trial court to review the record and file an amended Rule 25.2(a)(2) certification of the defendant’s right of appeal. The trial court’s amended certification is to be included in a supplemental clerk’s record and transmitted to this court no later than **June 26**,

2020. The appeal will be reinstated when the supplemental clerk's record has been filed. This court may reinstate the appeal on the motion of any party or on its own motion.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Wise and Hassan.