



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0921-18

MICHAEL J. BUCK, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY
REVIEW FROM THE EIGHTH COURT OF APPEALS
EL PASO COUNTY**

***Per curiam.* KELLER, P.J., filed a concurring opinion in which KEASLER and YEARY, JJ., joined.**

Appellant appealed his conviction for two counts of aggravated sexual assault. He waived his right to a jury and entered an open plea of guilty. The trial court found Appellant guilty and assessed punishment on each count at imprisonment for twenty-three years in the Texas Department of Criminal Justice-Institutional Division.¹

¹ *Buck v. State*, 2018 WL 3654916 at *1 (Tex. App.—El Paso 2018).

On appeal, the State argued that Appellant waived his right to appeal.² Appellant responded that his waiver was involuntary because his plea was involuntary.³ The court of appeals appeared to agree with the State that Appellant waived his right to appeal. The court of appeals held that Appellant's waiver of his right to appeal was voluntary and enforceable because it was the result of a bargain.⁴ However, rather than dismiss Appellant's appeal pursuant to that waiver, the court of appeals affirmed judgment of the trial court.⁵

The record demonstrates that Appellant was properly admonished about the waivers of his ability to appeal and file a motion for new trial. His attorney indicated on the record that Appellant understood those admonishments, his rights, and the consequences of giving up those rights. Further, the State agreed to waive its right to a jury trial in exchange for Appellant's waivers of a right to appeal and to file a motion for new trial.

Under the facts of this case, Appellant has validly waived his right to appeal.⁶ In *Carson v. State*, we recognized that 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.⁷ The court of appeals correctly held that Appellant had waived his right to

² *Id.* at *4.

³ *Id.*

⁴ *Id.* at *7 (“We further conclude that Appellant’s waiver of his right to appeal is not only voluntary, it is enforceable because the waiver was the result of a bargain.”).

⁵ *Id.*

⁶ See *Carson v. State*, 559 S.W.3d 489, 495–96 (Tex. Crim. App. 2018).

⁷ *Id.* at 496.

appeal. Absent permission to appeal from the trial court, a valid waiver of appeal prevents a defendant from appealing any issue in the case.⁸ Rather than affirm the trial court's judgment, the court of appeals should have dismissed his appeal. Consequently, we vacate the court of appeals' opinion and order it to withdraw its opinion and dismiss the appeal.

Delivered: June 10, 2020

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⁸ *Montreal v. State*, 99 S.W.3d 615, 622 (Tex. Crim. App. 2003).