

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

**NO. 03-19-00280-CR
NO. 03-19-00281-CR**

Melvin Vega Menjivar, Appellant

v.

The State of Texas, Appellee

**FROM THE 403RD DISTRICT COURT OF TRAVIS COUNTY
NOS. D-1-DC-18-300708 & D-1-DC-18-300780
THE HONORABLE BRENDA KENNEDY, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

Melvin Vega Menjivar was convicted of indecency with a child by contact and possession with intent to promote child pornography and was sentenced to twenty years' imprisonment for each offense with the sentences running concurrently. *See* Tex. Penal Code §§ 12.33, 21.11, 43.26. Menjivar appeals the trial court's judgments of conviction.

The rules of appellate procedure provide that a "trial court shall enter a certification of the defendant's right of appeal each time it enters a judgment of guilt or other appealable order." Tex. R. App. P. 25.2(a)(2). Appellate courts are required "to examine a certification for defectiveness, and to use" the Rules of Appellate Procedure "to obtain another certification, whenever appropriate." *Dears v. State*, 154 S.W.3d 610, 614 (Tex. Crim. App.

2005)). A defective certification is one “which is correct in form but which, when compared with the record before the court, proves to be inaccurate.” *Id.*

The trial court’s certification in this case contains the trial judge’s initials and a check mark next to the option specifying that this is not a plea-bargain case and that Menjivar has the right to appeal; however, the clerk’s record also contains two documents, one entitled “Jury Waiver and Plea Agreement” and another entitled “Plea of Guilty, Admonishments, Voluntary Statements, Waivers, Stipulations, and Judicial Confession,” that reference a plea bargain and seem to set out the terms of a plea-bargain agreement. The documents were signed by Menjivar, his attorney, the prosecutor, and the trial judge, and the documents state that the trial court approved of the plea agreement. *Cf. Davis v. State*, 130 S.W.3d 519, 522 (Tex. App.—Dallas 2004, no pet.) (explaining that “a defendant is entitled to specific performance of a plea agreement . . . if the trial court accepts and approves the negotiated plea agreement” and that plea agreement is binding when “all necessary parties agree to its terms”).

Based on the record before this Court, it appears that the trial court’s certification may be incorrect. *See Dears*, 154 S.W.3d at 614. Therefore, we abate the appeal and remand the case to the trial court either to issue a new certification regarding Menjivar’s appellate rights or to convene a hearing and to issue findings of fact and conclusions of law explaining why this is not a plea-bargain case. *See Tex. R. App. P. 37.1* (requiring appellate court to notify parties if there appears to be defect in certification); *Dears*, 154 S.W.3d at 614 (stating that appellate courts have authority to obtain another certification when warranted). If the trial court elects to convene a hearing, it should provide findings and conclusions regarding, among other things, if there was an effective plea-bargain agreement and, if so, why the agreement was not followed.

The trial court is instructed to forward to this Court a supplemental clerk's record containing the amended certification or the trial court's findings and conclusions no later than July 13, 2020. *See* Tex. R. App. P. 34.5(c) (stating that if appellate court "orders the trial court to prepare and file findings of fact and conclusions of law as required by law, or certification of the defendant's right of appeal as required by these rules, the trial court clerk must prepare, certify, and file in the appellate court a supplemental clerk's record containing those findings and conclusions").

It is ordered on June 12, 2020.

Before Justices Goodwin, Baker, and Kelly

Abated and Remanded

Filed: June 12, 2020

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