

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00292-CR

In re Luke Masood Arabzadegan

**FROM THE 403RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-DC-02-500454, THE HONORABLE BRENDA KENNEDY, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

Appellant Luke Masood Arabzadegan seeks to appeal the trial court's order denying his motion for post-conviction DNA testing under Chapter 64 of the Texas Code of Criminal procedure. *See* Tex. Code Crim. Proc. arts. 64.01–.05.

The appellate rules require the trial court to certify 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). An appellate court is required "to examine a certification for defectiveness, and to use Rules 37.1 and 34.5(c) to obtain another certification, whenever appropriate." *Dears v. State*, 154 S.W.3d 610, 614 (Tex. Crim. App. 2005) (citing Tex. R. App. P. 37.1, 34.5(c)). 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.*

In this case, the trial-court certification includes a stamped notation under the certification's heading that states "Regarding Order Denying Motions for DNA Testing and

Appointment of Counsel signed on 5/18/20.” The certification form has marked the option that states that this “is a plea-bargain case and the defendant has NO right of appeal.” This certification as a whole does not appear to accurately reflect appellant’s right of appeal as it indicates that appellant has no right of appeal. However, an order denying a motion for post-conviction DNA testing is an appealable order. *See* Tex. Code Crim. Proc. art. 64.05 (authorizing individual seeking DNA testing to appeal trial court’s ruling “in the same manner as an appeal of any other criminal matter”). Because the certification does not accurately reflect appellant’s right of appeal, it is defective. *See Dears*, 154 S.W.3d at 614.

Accordingly, we abate this appeal and remand the cause to the trial court for entry of an amended certification that accurately reflects appellant’s right of appeal in this Chapter 64 proceeding. *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 under Rules of Appellate Procedure “to obtain another certification, whenever appropriate”). Once entered, the amended certification shall be included in a supplemental clerk’s record and filed with this Court no later than July 17, 2020. *See* Tex. R. App. P. 34.5(c) (requiring clerk of trial court to prepare, certify, and file supplemental record).

It is so ordered on July 3, 2020.

Before Justices Goodwin, Triana, and Smith

Abated and Remanded

Filed: July 3, 2020

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