

**Dismissed and Opinion filed June 28, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-00663-CR**

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**HYACINTH CHINOYEREM, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 338<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 816,295**

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**OPINION**

Appellant, Hyacinth Chinoyerem, was charged by indictment with indecency with a child. Appellant entered a plea of guilty as part of a plea bargain agreement which included a waiver of his right to appeal. Pursuant to the agreement, the trial court deferred a finding of guilt and placed appellant under the terms and conditions of probation for five years. Five days after entering his plea, appellant gave a general notice of appeal. In his brief, appellant challenges the constitutionality of the sex offender registration program enacted by the legislature as codified in Chapter 62 of the Texas Code of Criminal

Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 62.01 et seq. (Vernon Pamph. 2001).<sup>1</sup> We dismiss the appeal for want of jurisdiction.

By a cross-issue, the State asks this Court to dismiss the appeal because appellant executed a written waiver of appeal as part of his plea bargain agreement. *See Buck v. State*, No. 01-00-01013-CR, 2001 Tex. App. LEXIS 2522, at \*8 (Tex. App.—Houston [1<sup>st</sup> Dist.] April 19, 2001, no pet. h.). However, a more fundamental issue exists regarding our jurisdiction, i.e., whether appellant gave proper notice of appeal.<sup>2</sup>

When an appeal is from a judgment rendered on a defendant’s plea of guilty or nolo contendere and the punishment assessed does not exceed the punishment recommended by the State and agreed to by the defendant, the notice of appeal must: (1) specify that the appeal is for a jurisdictional defect; (2) specify that the substance of the appeal was raised by written motion and ruled on before trial; or (3) state that the trial court granted permission to appeal. TEX. R. APP. P. 25.2(b)(3). Here, appellant filed a general notice of appeal, but contends the punishment assessed by the trial court exceeded the punishment recommended by the State because appellant was required, as a condition of community supervision, to register as a sex offender with his local law enforcement authority as provided by article 62.02 of the Code of Criminal Procedure.

“Plea bargaining flows from the ‘mutuality of advantage’ to defendants and prosecutors, each with his own reasons for wanting to avoid trial.” *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). A plea bargain is achieved when: (1) an offer is made by an authorized agent of the State; (2) to recommend a particular sentence or make some other concession such as reducing the charge in the case; (3) which is accepted by the defendant; and (4) approved by the trial judge. *Wayne v. State*, 756 S.W.2d 724,

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<sup>1</sup> Appellant alleges the program offends the federal constitution because portions of the legislation constitute ex post facto laws. *See* U.S. CONST. art. I, § 10. He also contends the legislation improperly imposes a punishment of “outlawry” prohibited under the Texas constitution. *See* TEX. CONST. art. I, § 20.

<sup>2</sup> While some courts have held that a proper waiver of appeal will deprive an appellate court of jurisdiction, the parties to a suit can neither confer nor waive jurisdiction by agreement or consent. *See Hill v. State*, 929 S.W.2d 607, 609 (Tex. App.—Waco 1996, no pet.).

728 (Tex. Crim. App. 1988). When a defendant enters a plea pursuant to a plea agreement, the State and defendant become parties to a contract. *Tate v. State*, 834 S.W.2d 566, 572 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1992, pet. ref'd). Although a trial judge should not actively participate in the plea negotiations, the agreement is not enforceable until he approves it in open court. *Ex parte Spicuzza*, 903 S.W.2d 381, 384 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1995, pet. ref'd). If the trial court rejects the agreement, or alters its terms, the defendant is permitted to withdraw his plea. TEX. CODE CRIM. PROC. ANN. art. 26.13(a)(2) (Vernon Supp. 2001). In other words, the defendant is given a choice between accepting any changes the judge makes in the terms of the agreement, or withdrawing his plea and taking his chances in a trial. *Grodus v. State*, 921 S.W.2d 502, 505-06 (Tex. App.—Fort Worth 1996, pet. ref'd). Thus, it is not improper for a trial court to exceed or modify the terms of a plea bargain agreement with the consent of the parties.

Here, appellant was admonished by the trial court, at the time of his plea, that he would be required to register as a sex offender. TEX. CODE CRIM. PROC. ANN. art. 26.13(a)(5) (Vernon Supp. 2001). When the trial court placed appellant on deferred adjudication and imposed the registration requirement, appellant neither sought to withdraw his plea nor objected to the condition. By his silence, we can only assume appellant consented to the registration requirement and ratified the plea agreement. Accordingly, there is nothing in the record to suggest the punishment imposed “exceeded” that agreed to by the parties.

Because appellant entered a negotiated plea, his general notice of appeal is inadequate to confer jurisdiction on this Court to review any errors in the judgment other than jurisdictional defects. *See Cooper v. State*, No. 1100-99, 2001 Tex. Crim. App. LEXIS 25 (Tex. Crim. App. April 4, 2001). Moreover, the time for filing a proper notice of appeal has expired. Further, appellant may not file an amended notice of appeal to correct jurisdictional defects. *State v. Riewe*, 13 S.W.3d 408, 413-14 (Tex. Crim. App. 2000).

Accordingly, we dismiss the appeal for want of jurisdiction.

/s/ J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed June 28, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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