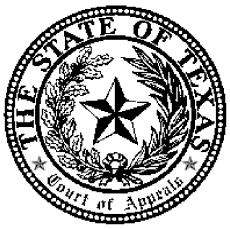
Dismissed and Opinion filed December 6, 2001.



In The

Fourteenth Court of Appeals

NO. 14-01-00425-CR

BRANDON LAYNE BRYANT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 11
Harris County, Texas
Trial Court Cause No. 1037010

O P I N I O N

Appellant was charged by misdemeanor information with the offense of driving while intoxicated. After the trial court denied his motion to suppress, appellant pled guilty pursuant to a plea bargain agreement. In accordance with the agreement, the trial court assessed punishment at 180 days in jail, probated for eighteen months, and a fine of $500. Thereafter, appellant filed a notice of appeal, raising three points of error: two points challenging the trial court's decision to deny the motion to suppress, and one point challenging the sufficiency of the evidence of reasonable suspicion to justify his initial detention. We dismiss.

At the time of his plea, appellant signed a document that provided, in part, as follows:

> I understand that if the judge does not follow the plea bargain, I will be allowed to withdraw my plea. I further understand that even though the judge may follow any plea bargain agreement, I still have a right to appeal. Understanding that I have a right of appeal, however, and as part of my plea bargain agreement, I knowingly and voluntarily waive that right of appeal in exchange for the prosecutor's recommendation, provided that the punishment assessed by the court does not exceed our agreement.

The document also included the following signed statement of appellant's counsel:

> I have consulted with the defendant whom I have found to be competent and to whom I have fully explained all of the matters contained in this instrument.

The trial judge also signed a statement in the same document that provided, in part:

> The Court finds that the defendant is competent and that the plea was entered only after the defendant knowingly, intelligently, and voluntarily waived the right to a trial by jury and all other rights set out above.

Notwithstanding the above provisions of his plea agreement, appellant now argues that he did not waive his right to appeal. We disagree.

A defendant in a noncapital case may waive any rights secured him by law, including the right to appeal. TEX. CODE CRIM. PROC. ANN. art. 1.14(a) (Vernon Supp. 2001); *Blanco v. State*, 18 S.W.3d 218, 219–20 (Tex. Crim. App. 2000); *Littleton v. State*, 33 S.W.3d 41, 43 (Tex. App.—Texarkana 2000, pet. ref'd). In a plea-bargained case in which the trial court follows the plea bargain agreement, a pre-sentencing waiver of the right to appeal conditioned on the trial court's acceptance of the plea bargain agreement is valid and enforceable. *See Alzarka v. State*, No. 14-00-00837-CR, 2001 WL 837602, at *3 (Tex. App.—Houston [14th Dist.] July 26, 2001, no pet. h.); *Lacy v. State*, No. 01-01-00145-CR, 2001 WL 893984, at *2 (Tex. App.—Houston [1st Dist.] Aug. 9, 2001, no pet. h.); *see also Blanco*, 18 S.W.3d at 219–20; *Bushnell v. State*, 975 S.W.2d 641, 642–44 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd); *Littleton*, 33 S.W.3d at 43–44.

In this case, the record reflects appellant's rights and the consequences of the waiver of those rights were explained to and understood by appellant. Appellant was informed of his right to appeal, knew with certainty the punishment he would receive if the court accepted the plea bargain, and that he could withdraw his plea if the trial court did not act in accordance with the plea agreement. Appellant could have declined to waive his right to appeal and sought an agreement with the State that expressly deleted that waiver from the agreement. Yet, appellant chose to enter into an agreement that included a waiver of his right to appeal.[1] "As appellant was fully aware of the consequences when he waived his right to appeal, it is 'not unfair to expect him to live with those consequences now.'" *Alzarka*, 2001 WL 837602, at *3 (quoting *Mabry v. Johnson*, 467 U.S. 504 (1984)).

Accordingly, based on appellant's waiver of his right to appeal, we dismiss the appeal.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed December 6, 2001.
Panel consists of Justices Anderson, Hudson, and Frost.
Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Appellant's counsel asserted during oral argument that appellant indicated his intent to appeal at the time he entered his plea. Counsel also acknowledged, however, that no record was made of the alleged declaration. We cannot review contentions which depend upon factual assertions outside of the record. *Janecka v. State*, 937 S.W.2d 456, 476 (Tex. Crim. App. 1996).