



## McKinney v. State

2001 | Cited 0 times | Court of Appeals of Texas | June 28, 2001

### MEMORANDUM OPINION

On October 2, 2000, appellant pled guilty to felony driving while intoxicated. Appellant signed under oath a written waiver of constitutional rights, agreement to stipulate, and judicial confession. That document provided, among other things, that appellant understood that the prosecutor would recommend his punishment be assessed at 15 years confinement. Appellant agreed to that recommendation, and waived his right to appeal if the trial court accepted the plea bargain agreement.

The trial court proceeded to find appellant guilty of driving while intoxicated and, following the plea agreement, assessed punishment at 15 years confinement. Despite having waived the right to appeal, appellant filed a timely pro se notice of appeal. The trial court did not grant permission to appeal. We find that the appeal must be dismissed.

In *Buck v. State*, 01-00-01013-CR, slip op. at 7 (Tex. App.--Houston [1st Dist.] Apr. 19, 2001) (designated for publication), this Court held that, in a plea-bargained case in which the trial court followed 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 was valid and enforceable. See also *Blanco v. State*, 18 S.W.3d 218, 219-20 (Tex. Crim. App. 2000); *Bushnell v. State*, 975 S.W.2d 641, 642-44 (Tex. App.--Houston [14th Dist.] 1998, pet. ref'd); *Littleton v. State*, 33 S.W.3d 41 (Tex. App.--Texarkana 2000, pet. ref'd).

Moreover, in a plea-bargained felony case, the voluntariness of the guilty plea may not be considered on appeal. *Cooper v. State*, No. 1100-99, slip op. at 8 (Tex. Crim. App. Apr. 4, 2001).

Accordingly, we order the appeal dismissed.

Do not publish. TEX. R. APP. P. 47.

