

APPENDIX

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¹ The paperwork is the same in both cases.

Appeals Reinstated, Motions Disposed, Appeals Dismissed, and Majority and Concurring Opinions filed January 28, 2020.



In The

Fourteenth Court of Appeals

NO. 14-19-00380-CR

NO. 14-19-00381-CR

CARLOS MICHAEL LOPEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause Nos. 1564443 and 1564444**

OPINION

Carlos Michael Lopez pleaded guilty to and was convicted of aggravated assault against a public servant and aggravated assault with a deadly weapon. The trial court sentenced him to 15 years' imprisonment for each conviction. Despite the trial court's certification that appellant waived his right to appeal, appellant filed a notice of appeal in each case. We conclude appellant validly waived his right to appeal and dismiss these appeals for lack of jurisdiction.

BACKGROUND

Appellant pleaded guilty to aggravated assault against a public servant and aggravated assault with a deadly weapon. No agreement regarding sentencing was reached between appellant and the State; instead, a presentence investigation report was prepared. Following a sentencing hearing, the trial court found appellant guilty and sentenced him to 15 years' imprisonment on each conviction, the sentences to run concurrently. The trial court signed a certification of appellant's right to appeal in which it indicated appellant had waived his right of appeal. Appellant filed a pro se notice of appeal. A few days later, the trial court appointed counsel to represent appellant on appeal.

The State filed a motion to dismiss for lack of jurisdiction. The motion states appellant agreed to waive his right of appeal in exchange for the State's waiver of its right to a jury trial. Only by pleading guilty to the judge would appellant have been eligible for deferred adjudication community supervision. Because appellant wanted to preserve the possibility of deferred adjudication community supervision, the motion contends, he bargained for that possibility by getting the State to waive its right to a jury trial. In exchange, the State obtained appellant's waiver of his right to appeal.

In response to the State's motion to dismiss, appellant filed a "Motion to Strike or Deny Appellee's Non-Conforming Document." Appellant asserts the only basis on which the State may seek involuntary dismissal of a criminal case is the appellant's escape. *See* Tex. R. App. P. 42.4. Because the Texas Rules of Appellate Procedure do not expressly permit the State to move for dismissal based on lack of jurisdiction, appellant contends, we should strike the State's motion to dismiss. Alternatively, appellant argues the motion to dismiss should be denied because (1) the trial court has now signed amended certifications indicating appellant has the

right of appeal; and (2) the record does not support the existence of a negotiated waiver.

The State responded to the motion to strike at our request. It contends that rule 42.4 applies only to a “valid” appeal, and these appeals are not valid because they fail to invoke our appellate jurisdiction. In any event, the State says, this court lacks jurisdiction, and it does not matter whether we dismiss the appeals on the State’s motion or our own motion.

ABATEMENT AND FINDINGS OF FACT

The trial court originally certified that appellant had waived his right to appeal either of his convictions. We sent a letter to the trial court stating (we now realize mistakenly) that the records suggest appellant did not waive his right to appeal. In response, the trial court filed amended certifications indicating that appellant both had the right to appeal and waived his right to appeal. Due to the conflicting certifications, we abated these appeals and directed the trial court to conduct a hearing to make findings of fact as to whether appellant’s waivers of his right to appeal were valid.¹

The trial court conducted the hearing and made findings of fact applicable to both appeals. The findings include:

1. Appellant waived his right to appeal in return for the State’s waiving its right to a jury trial.
2. The original appellate records unambiguously showed that appellant waived his right to appeal.

¹ We abated these appeals for findings of fact due to the unique circumstances of these appeals—namely, the conflicting certifications. We do not suggest that such a procedure would be necessary or appropriate in every case in which jurisdiction is challenged, nor do we suggest a party would be entitled to such a procedure in every case in which jurisdiction is challenged.

3. Nothing in the records conflict with the statement in the plea paperwork that appellant's waiver of his right to appeal was part of a negotiated bargain with the State.
4. "The State waived its right to a jury trial and [appellant] was put in a position where he was able to request deferred adjudication community supervision, which he did."

Following receipt of the trial court's findings, we notified the parties we would consider dismissal of these appeals on our own motion for lack of jurisdiction due to appellant's waiver of his right to appeal. We invited the parties to file further briefing on the jurisdictional issue. No such briefing has been received.

WAIVER OF RIGHT TO APPEAL

The right to appeal may be waived, and such a waiver is valid if made voluntarily, knowingly, and intelligently. *Carson v. State*, 559 S.W.3d 489, 492–93 (Tex. Crim. App. 2018); *Ex parte Delaney*, 207 S.W.3d 794, 796-97 (Tex. Crim. App. 2006); *Simon v. State*, 554 S.W.3d 257, 261 (Tex. App.—Houston [14th Dist.] 2018, no pet.); *Jenkins v. State*, 495 S.W.3d 347, 350 (Tex. App.—Houston [14th Dist.] 2016, no pet.). A court of appeals lacks jurisdiction over and must dismiss an appeal when the defendant has validly waived his right of appeal. *See Jones v. State*, 488 S.W.3d 801, 808 (Tex. Crim. App. 2016).

A waiver of appeal prior to sentencing may be valid if it is bargained for—that is, if the State gives some consideration for the waiver, even if a sentence is not agreed upon. *Ex parte Broadway*, 301 S.W.3d 694, 699 (Tex. Crim. App. 2009); *Simon*, 554 S.W.3d at 261; *Jenkins*, 495 S.W.3d at 350. On the other hand, a non-negotiated waiver of the right to appeal is valid only if the defendant with certainty knows the punishment that will be assessed. *Washington v. State*, 363 S.W.3d 589, 589-90 (Tex. Crim. App. 2012) (per curiam); *Delaney*, 207 S.W.3d at 798-99; *Simon*, 554 S.W.3d at 261; *Jenkins*, 495 S.W.3d at 350.

To determine the validity of a waiver of a right to appeal and the terms of any agreement between appellant and the State, we consider the written plea documents and the formal record in light of general contract law principles. *Jones*, 488 S.W.3d at 805; *Ex parte De Leon*, 400 S.W.3d 83, 89 (Tex. Crim. App. 2013); *Simon*, 554 S.W.3d at 261; *Jenkins*, 495 S.W.3d at 350.

Like this case, *Delaney* and *Broadway* both involved the State's waiver of its right to a jury trial and appellant's waiver of the right to appeal. In *Delaney*, the State merely consented to a bench trial; there was no evidence in the record of a bargain between the parties regarding a bench trial rather than a jury trial. *See Delaney*, 207 S.W.3d at 798. In *Broadway*, by contrast, the record did contain evidence of an agreement between the parties. The defendant's trial lawyer had submitted an affidavit stating Broadway "waived his right to appeal to induce the State to consent to the waiver of a jury trial." *Broadway*, 301 S.W.3d at 695. The Court of Criminal Appeals said the bargain was not a traditional plea-bargain agreement, in which the guilty plea is made in exchange for a certain sentence, but rather "a bargain of a different sort." *Id.* at 697.

We applied *Delaney* and *Broadway* as we considered whether the defendant's waiver of the right to appeal was valid in *Jenkins* and *Simon*. In each case, we held that, just as in *Delaney*, there was no evidence that the State's waiver of a jury trial was made in exchange for the defendant's waiver of his right to appeal. *Jenkins*, 495 S.W.3d at 352; *Simon*, 554 S.W.3d at 263.

The facts of these appeals are more like *Broadway* than *Delaney*, *Jenkins*, and *Simon*. A document entitled "WAIVER OF CONSTITUTIONAL RIGHTS, AGREEMENT TO STIPULATE, AND JUDICIAL CONFESSION" is included in each record. Each is dated January 15, 2019 and is signed by appellant. Each contains the following paragraph:

I understand that I have not reached an agreement with the prosecutor as to punishment. However, in exchange for the State waiving their [sic] right to a jury trial, I intend to enter a plea of guilty without an agreed recommendation of punishment from the prosecutor and request that my punishment should be set by the Judge after a pre-sentence investigation report and hearing. I understand the state reserves the right to argue for full punishment at my sentencing hearing. I waive any further time to prepare for trial to which I or my attorney may be entitled. **Further, in exchange for the state giving up their [sic] right to a jury trial, I agree to waive any right of appeal which I may have.**

(Boldface added)

That paragraph, particularly the bolded language, constitutes record evidence that appellant's waiver of his right to appeal was bargained for. The State gave consideration for the waiver in the form of waiving its own right to a jury trial. *Broadway* compels us to conclude appellant's waiver of his right to appeal is valid.

Accordingly, we dismiss these appeals for lack of jurisdiction. We deny as moot the State's motion to dismiss, appellant's motion to strike the motion to dismiss, and the State's motion to extend time to file its brief.

/s/ Margaret 'Meg' Poissant
Justice

Panel consists of Justices Christopher, Spain, and Poissant. Spain, J., concurring.

Publish — TEX. R. APP. P. 47.2(b).

Appeals Reinstated, Motions Disposed, Appeals Dismissed, and Majority and Concurring Opinions filed January 28, 2020.



In the

Fourteenth Court of Appeals

NO. 14-19-00380-CR

NO. 14-19-00381-CR

CARLOS MICHAEL LOPEZ, Appellant

v.

THE STATE OF TEXAS, Appellee

**On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause Nos. 1564443 and 1564444**

CONCURRING OPINION

Is there any general rule similar to Texas Rule of Appellate Procedure 42.3 that authorizes an involuntary dismissal in a criminal case? *See* Tex. R. App. P. 42.3 (involuntary dismissal in civil case either on party's motion or appellate court's own initiative after giving ten days' notice to all parties). No, there is no such counterpart in a criminal case. Texas Rule of Appellate Procedure 42.4 only authorizes an involuntary dismissal in a criminal case on the State's motion when the appellant

has escaped from custody.¹ *See Sutherland v. State*, 132 S.W.3d 510, 511–12 (Tex. App.—Houston [1st Dist.] 2004, no pet.). Because the Texas Rules of Appellate Procedure do not set forth a procedure to dismiss a criminal case before submission of briefs, *e.g.*, a case in which the appellate court lacks jurisdiction, the question that arises is how should the parties and the court proceed?

In these appeals, the State preemptively moved for involuntary dismissals, arguing that appellant waived his right to appeal in return for the State waiving its right to jury trials. The State cites no statute or rule allowing it to file such motions. On behalf of appellant, the Harris County Public Defender moved to strike the involuntary dismissals, stating in relevant part:

Rule 10 also states that a party may move for relief “unless these rules prescribe another form.” TEX. R. APP. PRO. 10(a). It turns out that

¹ The criminal rule allowing involuntary dismissal if appellant escapes from custody dates back to an 1876 statute. Act approved Aug. 21, 1876, 15th Leg., R.S., ch. 131, § 1, art. 721, 1876 Tex. Gen. Laws 217, 217, *recodified and repealed* by 1879 Penal Code and Code of Criminal Procedure, 16th Leg., R.S., § 2, art. 845, § 3, 1879 Tex. Crim. Stat. n.p. (Penal Code pagination), n.p. (Code of Criminal Procedure pagination), 101, 157 (repealer), *amended* by Act approved Apr. 13, 1892, 22d Leg., 1st C.S., ch. 16, § 31, 1892 Tex. Gen. Laws 34, 38, *recodified and repealed* by 1895 Penal Code and Code of Criminal Procedure, 24th Leg., R.S., § 2, art. 880, § 3, 1895 Tex. Crim. Stat. 2 (Penal Code), 2 (Code of Criminal Procedure), 121, 182 (repealer), *recodified* by 1911 Penal Code and Code of Criminal Procedure, 24th Leg., R.S., § 2, art. 912, § 3, 1911 Tex. Crim. Stat. n.p. (Penal Code), n.p. (Code of Criminal Procedure), 262 (no repealer of 1895 Code of Criminal Procedure; *see Berry v. State*, 156 S.W. 626, 635 (Tex. Crim. App. 1913)), *recodified and repealed* by 1925 Penal Code and Code of Criminal Procedure, 39th Leg., R.S., § 2, art. 824, § 3, art. 1, 1925 Tex. Crim. Stat. 2 (Penal Code), 2 (Code of Criminal Procedure), 131, 181 (repealer for both 1895 and 1911), *amended* by Act approved Mar. 10, 1933, 43d Leg., R.S., ch. 34, § 1, 1933 Tex. Gen. Laws 64, 64, *recodified and repealed* by 1965 Code of Criminal Procedure of the State of Texas, 59th Leg., R.S., ch. 722, § 1, arts. 44.09, secs.1(a), 2, [2] 1965 Tex. Gen. Laws 317, 513, 563 (repealer), *amended* by Act of June 1, 1981, 67th Leg., R.S., ch. 291, § 128, 1981 Tex. Gen. Laws 761, 815, *repealed* authorized by Act of May 27, 1985, 69th Leg., ch. 685, § 4, 1985 Tex. Gen. Laws. 2472, 2472 *and repealed* Tex. R. App. P. 60(b), 11 Tex. Reg. 1939, 2001, 49 Tex. B.J. 558, 576 (Tex. Crim. App. Apr. 10, 1986, eff. Sept. 1, 1986), *amended* by Tex. R. App. P. 42.4, 60 Tex. B.J. 878, 923 (Tex. Crim. App. Aug. 15, 1997, eff. Sept. 1, 1997) (apparently no publication in *Texas Register*; *see* Tex. Gov’t Code Ann. § 22.108(c)). The rule is discussed in 43B George E. Dix & John M. Schmolesky, *Texas Practice: Criminal Practice and Procedure* §§ 55:119–55:127 (3d ed. 2011).

the Appellate Rules address—and very narrowly limit—the State’s ability to move for the dismissal of an appeal in criminal cases. Rule 42 prescribes that the State may move for “involuntary dismissal in criminal cases,” precisely what the State seeks in its motion here, only on a sworn motion that alleges the appellant has escaped custody and not returned within ten days. TEX. R. APP. PRO. 42.4. [Appellant] has not escaped custody, nor does the State allege so. “The Rule does not authorize involuntary dismissal of an appeal in a criminal case in any other circumstance.” *Sutherland v. State*, 132 S.W.3d 510, 511–12 (Tex. App.—Houston [1st Dist.] 2004) (explaining Rule 42.4 permits court to dismiss appeal on State’s motion in single circumstance of escape). *See also Cuellar v. State*, 13 S.W.3d 449, 452 (Tex. App.—Corpus Christi 2000) (applying Rule 42 strictly to hold it could not dismiss appeal) and *Cockrum v. State*, No. 04-99-00005-CR, 2000 Tex. App. LEXIS 4107, at *1–3 (Tex. App.—San Antonio June 21, 2000 – not designated for publication) (same). The State may not move to dismiss his appeal.²

. . . .

A narrow rule in criminal cases makes sense. The dismissal of a criminal appeal is a severe remedy that denies to a defendant an important right. Moreover, waiver claims are complex issues. The validity of an alleged waiver is often hotly contested, the outcome of which depends on a long body of cases and a thorough review of the record. *See, e.g., Carson v. State*, 559 S.W. 3d 489 (Tex. Crim. App.

² The Public Defender added this footnote:

The Amarillo Court of Appeals many years ago invoked Appellate Rule 2 to suspend Rule 42.4 and apply 42.3 to a criminal case to dismiss an appeal where the Clerk’s Record had not been filed. *See Rodriguez v. State*, 970 S.W.2d 133, 135 (Tex. App.—Amarillo 1998) and *Calderon v. State*, No. 07-97-0417-CR, 1998 Tex. App. LEXIS 2898, at *3–7 (Tex. App.—Amarillo May 15, 1998 – not designated for publication). Other courts of appeals expressly declined to follow the Amarillo Court’s practice. *See Sutherland*, 132 S.W.3d at 511–12; *Tippett v. State*, 2 S.W.3d 462, 463 (Tex. App.—San Antonio 1999). Perhaps having determined that suspending the appellate rules was unwise, or just realizing that the Appellate Rules permit the court to dismiss for want of prosecution in that situation, the Amarillo Court appears to have abandoned applying Rule 42.3 to criminal cases. *See, e.g., Coronado v. State*, No. 07-11-00302-CR, 2012 Tex. App. LEXIS 334, at *2 (Tex. App.—Amarillo Jan. 13, 2012– not designated for publication) (relying on 37.3 to dismiss) and *Herrera v. State*, No. 07-07-0299-CR, 2008 Tex. App. LEXIS 171, at *3–5 (Tex. App.—Amarillo Jan. 10, 2008– not designated for publication) (same).

2018) (reviewing line of pre-sentence waiver cases before carefully examining record below to find waiver). To decide a waiver claim, the court of appeals must not only review the written agreement between the parties but also the formal record; it must apply general contract principles; and it must determine whether the defendant entered the agreement knowingly, voluntarily, and intelligently. *Jones v. State*, 488 S.W.3d 801, 805 (Tex. Crim. App. 2016), citing *Ex parte De Leon*, 400 S.W.3d 83, 89 (Tex. Crim. App. 2013) and *Monreal v. State*, 99 S.W.3d 615, 617 (Tex. Crim. App. 2003). And the appellant may raise an argument on appeal that would render the waiver itself invalid, such as voluntariness or a jurisdictional challenge. *See, e.g., Melton v. State*, 987 S.W.2d 72, 75 n.2 (Tex. App.—Dallas 1998) (explaining court could review merits of appeal because waiver may have been involuntary). In short, motions by the State for involuntary dismissal are not only restricted by the Rules, but those based on waiver claims are by their nature ill-suited to resolution via motions. After all, a person charged by the State with having waived the important right to appeal surely deserves more time to respond than the Rules provide for decisions on motions. TEX. R. APP. PRO. 10.3.

At bottom, the Rules do not allow for, and this Court should not entertain, the State's attempt to turn an appeal into a battle of motions. If the State believes this Court should dismiss these appeals, then it should put the argument in its brief.

The Public Defender's position is not only not unreasonable, but it also makes a credible argument that procedural due process requires the orderly handling of these appeals, one in which the State does not have the exclusive right to frame the issues.

We asked for a response from the State. That reply states in relevant part:

In his motion to strike, the appellant claims that the Rules of Appellate Procedure authorize involuntary dismissal of a criminal appeal only if the appellant escapes from prison during the pendency of the appeal. Therefore, the appellant claims, the State cannot file a motion to dismiss an appeal in any other circumstance.

The appellant's argument is an example of begging the question. Even if the Rules of Appellate Procedure state that an appeal can be involuntarily dismissed in only one circumstance, that would apply only if this was a valid appeal. It is not.

There are numerous situations where criminal defendants attempt, but fail, to invoke the jurisdiction of an appellate court: Filing an untimely notice of appeal, *Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998); filing a notice of appeal after entering a plea bargain, *Theus v. State*, 524 S.W.3d 765, 766 (Tex. App.—Houston [14th Dist.] 2017, no pet.); filing a notice of appeal where there is no appealable order, *Ex parte Lewis*, [No.] 14-16-00629-CR, 2017 WL 6559647, at *2 (Tex. App.—Houston [14th Dist.] Dec. 21, 2017, pet. ref’d). In each of these situations the only action an appellate court can take is to dismiss the purported appeal; without jurisdiction there is nothing else to do.

The appellant filed notices of appeal after waiving his right to appeal. That fails to invoke this Court’s jurisdiction. Whether on motion from the State or on its own, the only thing this Court may lawfully do with this purported appeal is dismiss it. *See Marsh v. State*, 444 S.W.3d 654, 660 (Tex. Crim. App. 2014) (ordering court of appeals “to withdraw its opinion and dismiss the appeal” where defendant had waived right to appeal but court of appeals issued opinion addressing merits of claims).

(Footnote omitted). The State does not respond to the statement in *Sutherland* that Texas Rule of Appellate Procedure 42.4 “does not authorize involuntary dismissal of an appeal in a criminal case in any other circumstance [than defendant’s escape from custody].” *Sutherland*, 132 S.W.3d at 511.

Both the plain meaning and judicial interpretations of the Texas Rules of Appellate Procedure preclude the State from moving to dismiss. If the State feels strongly that, in appeals like these, it should be able to file motions for involuntary dismissal before submission on briefs, then the State should encourage the Court of Criminal Appeals of Texas to amend Texas Rule of Appellate Procedure 42 and provide for a process similar to involuntary dismissal in a civil case.

In the absence of such a rule allowing involuntary dismissal in a criminal case, either on the State’s motion, or on the appellate court’s own initiative, after giving adequate notice to all parties, the courts of appeals have no uniform practice. In these

appeals the court on its own initiative gave notice of involuntary dismissals, rather than grant the State's motions to dismiss.

Still, there remains the argument that such notice is inefficient. I find this wholly unpersuasive because what is at issue is procedural due process:

The central aim of due process is to assure fair process when the government imposes a burden on the individual. The doctrine seeks to prevent arbitrary government, avoid mistaken deprivations, allow persons to know about and respond to charges against them, and promote a sense of legitimacy of official behavior.

Procedural due process does not prevent the government from making a deprivation.

The Oxford Companion to the Supreme Court of the United States 236 (Kermit L. Hall ed., 1992). Efficiency does not supersede the judiciary's responsibility to afford constitutional due process.

In these appeals the court has given appellant the procedural due process and due course of law to which he is entitled, and it is now appropriate to involuntarily dismiss them. And going forward this court should give procedural due process and due course of law in the absence of a rule similar to Texas Rule of Appellate Procedure 42.3.³ I do, however, disagree with the suggestion in footnote one of the court's opinion that an appellant is not entitled to notice of an involuntary dismissal. We are required to give notice of involuntary dismissal based on want of jurisdiction in civil cases. Tex. R. App. P. 42.3(a). Presumably there are greater constitutional interests at stake in criminal cases—life and liberty—not merely property. *See* U.S. Const. amends. V, XIV, § 1 (due process); Tex. Const. art. I, § 19 (due course of

³ The Court of Criminal Appeals of Texas has the power to amend the Texas Rules of Appellate Procedure and resolve this due-process and due-course issue. *See* Tex. Gov't Code Ann. § 22.108 (granting rulemaking power to court of criminal appeals in posttrial, appellate, and review procedure in criminal cases).

law). I see no reason that a party in a criminal case should have less of a right to procedural due process and due course of law than a party in a civil case. To the extent that constitutional due-process and due-course protections are perceived to be inefficient, it is a choice that we the people made some time ago in ratifying the state constitution and ratifying amendments to the federal constitution.

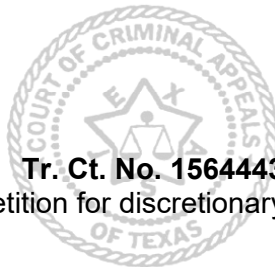
As long as the court gives appropriate notice of a necessary involuntary dismissal in a criminal case, I will join a future judgment of dismissal as I do in these appeals. In the meantime, I urge the Court of Criminal Appeals of Texas to amend Texas Rule of Appellate Procedure 42 and give a party in a criminal case the same due-process and due-course rights that are afforded to a party in a civil case.

/s/ Charles A. Spain
Justice

Panel consists of Justices Christopher, Spain, and Poissant. (Spain, J., concurring).

Publish — TEX. R. APP. P. 47.2(b).

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS **FILE COPY**
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



4/29/2020

LOPEZ, CARLOS MICHAEL Tr. Ct. No. 1564443

**COA No. 14-19-00380-CR
PD-0132-20**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

NICHOLAS VITOLO
EL PASO COUNTY PUBLIC DEFENDER OFFICE
500 E SAN ANTONIO, STE 501
EL PASO, TX 79901
* DELIVERED VIA E-MAIL *

P.112

CAUSE NO. 156444401010

THE STATE OF TEXAS

§

IN THE 262ND DISTRICT COURT

VS.

§

OF

§

LOPEZ, CARLOS MICHAEL

§

HARRIS COUNTY, TEXAS

2nd

OFFENSE: AGG ASSAULT W/DEADLY WEAPON (130119)

WAIVER OF CONSTITUTIONAL RIGHTS, AGREEMENT TO STIPULATE, AND JUDICIAL CONFESSION

In open court and prior to entering my plea, I waive the right of trial by jury. I also waive the appearance, confrontation, and cross-examination of witnesses, and my right against self-incrimination. The charges against me allege that in Harris County, Texas, LOPEZ, CARLOS MICHAEL, hereafter styled the Defendant, heretofore on or about 9/5/2017, did then and there unlawfully,

AGAINST THE PEACE AND DIGNITY OF THE STATE.

I understand the above allegations and I confess that they are true and that the acts alleged above were committed on 9/5/2017.

In open court I consent to the oral and written stipulation of evidence in this case and to the introduction of affidavits, written statements, of witnesses, and other documentary evidence. I am satisfied that the attorney representing me today in court has properly represented me and I have fully discussed this case with him.

I understand that I have not reached an agreement with the prosecutor as to punishment. However, in exchange for the State waiving their right to a jury trial, I intend to enter a plea of guilty without an agreed recommendation of punishment from the prosecutor and request that my punishment should be set by the Judge after a pre-sentence investigation report and hearing. I understand the state reserves the right to argue for full punishment at my sentencing hearing. I waive any further time to prepare for trial to which I or my attorney may be entitled. Further, in exchange for the state giving up their right to trial, I agree to waive any right of appeal which I may have.

X Carlos Lopez
LOPEZ, CARLOS MICHAEL

SUBSCRIBED AND SWORN TO before me on 1/15/2019.

[Signature]
Harris County Deputy District Clerk

I represent the defendant in this case and I believe that this document was executed by him knowingly and voluntarily and after I fully discussed it and its consequences with him. I believe that he is competent to stand trial. I waive any further time to prepare for trial to which I or the defendant may be entitled.

[Signature]
Defense Attorney
CHERNOFF, EDWARD M.

FILED
Marilyn Burgess
District Clerk
JAN 15 2019

Time: _____
Harris County, Texas
By: _____
Deputy

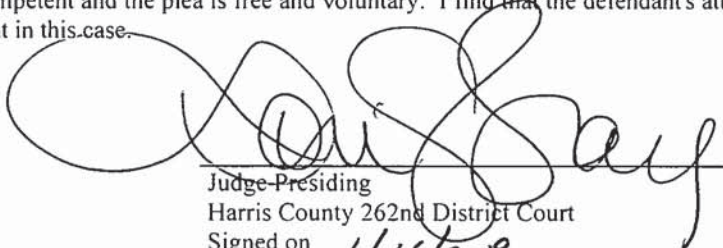
RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

I consent to and approve the above waiver of trial by jury and stipulation of evidence



SHANNON M. DREHNER
Assistant District Attorney
Harris County, Texas
TBC No. 24074155
DREHNER_SHANNON@dao.hctx.net

This document was executed by the defendant, his attorney, and the attorney representing the State, and then filed with the papers of the case. The defendant then came before me and I approved the above and the defendant entered a plea of guilty. After I admonished the defendant of the consequences of his plea, I ascertained that he entered it knowingly and voluntarily after discussing the case with his attorney. It appears that the defendant is mentally competent and the plea is free and voluntary. I find that the defendant's attorney is competent and has effectively represented the defendant in this case.



Judge Presiding
Harris County 262nd District Court
Signed on 1/15/2019

STATE OF TEXAS

§ IN THE 262ND DISTRICT COURT

VS.

§ OF

LOPEZ, CARLOS MICHAEL

§ HARRIS COUNTY, TEXAS

ADMONISHMENTS

Pursuant to article 26.13(d), Code of Criminal Procedure, the court admonishes you, the defendant, as follows and instructs you to place your initials by each item if you fully understand it.

CL

You are charged with the felony offense of:
AGG ASSAULT W/DEADLY WEAPON (130119)

If convicted, you face the following range of punishment:

CL

Second Degree Felony: A term of not more than 20 years or less than 2 years in the Correctional Institutions Division of the Texas Department of Criminal Justice and, in addition, a fine not to exceed \$10,000.00 may be assessed.

CL

PLEA BARGAINS: If no plea bargain agreement exists, the recommendation of the prosecuting attorney is not binding on the Court. If a plea bargain agreement does exist, the Court will inform you whether or not it will follow that plea bargain agreement before making any finding on your plea. Should the Court reject the plea bargain agreement, you will be permitted to withdraw your plea, if you so desire.

CL

PERMISSION TO APPEAL: If the punishment assessed by the court does not exceed the punishment recommended by the prosecutor and agreed to by you and your attorney, the court must give its permission to you before you may prosecute an appeal on any matter in this case except for those matters raised by you by written motion filed prior to trial.

CL

CITIZENSHIP: If you are not a citizen of the United State of America, a plea of guilty or nolo contendere for the offense with which you are charged in this case may result In your deportation, your exclusion from admission to this country, or your denial of naturalization under federal law; **My attorney has advised me that this plea will result in the following immigration consequences for me:**

CL

DEFERRED ADJUDICATION: I understand that if the court defers entering a finding of guilt and places me on deferred adjudication community supervision:

- Upon a violation of a condition of community supervision, I may be arrested and detained.
- I will be entitled to a hearing limited to the determination by the Court of whether to proceed with an adjudication of guilt on the original charge. If the Court determines that I violated a condition of probation, the Court may assess my punishment within the full range of punishment for this offense.
- After an adjudication, all proceedings, including the assessment of punishment, pronouncement of sentence, and granting of community supervision, continue as if the adjudication of guilt had not been deferred.
- If I successfully complete this deferred adjudication, I may be eligible to petition the Court for non-disclosure of the criminal history record information related to this case in accordance with Texas Government Code Sec. 411.081. Otherwise it will remain a public record.

STATEMENTS AND WAIVERS OF DEFENDANT

CL I am mentally competent, that I understand the nature of the charges against me;

CL I understand the admonishments of the trial court set out herein;

CL I hereby WAIVE the right to have the trial court orally admonish me;

CL I WAIVE the right to have a court reporter record my plea;

CL I represent to the trial court that the State will make the plea bargain agreement or recommendation, if any, set forth in the Waiver of Constitutional Rights, Agreement to Stipulate, and Judicial confession herein and I understand the consequences, as set out above, should the trial court accept or refuse to accept the plea bargain or plea without an agreed recommendation;

CL I further state my plea is freely, knowingly and voluntarily made;

CL If my counsel was appointed, I waive and give up any time provided me by law to prepare for trial;

CL I am totally satisfied with the representation provided by my counsel and I received effective and competent representation;

CL I waive and give up my right to a jury in this case and my right to require the appearance, confrontation, and cross-examination of the witnesses;

CL I understand that before sentence may be imposed, the Court must order preparation of a Presentence Investigation Report by the probation officer pursuant to Article 42A.252 TEX CODE CRIM. P. I have thoroughly discussed this matter with my attorney and believe that for the Court to compel me to participate in the preparation of such a report would abridge the protection provided me by the

Constitution of the United States and the Constitution and laws of the State of Texas and could result in further prejudice to me. Therefore, I hereby in writing respectfully decline to participate in the preparation of a Presentence Investigation Report and request that said report not be made prior to the imposition of sentence herein. I further knowingly, voluntarily, and intelligently waive any right which I may have to the preparation of said report either under Article 42A.252, TEX CODE CRIM. P., or under Article 42.09, Sec 8. TEX CODE CRIM. P.;

CL I fully understand the consequences of my plea herein, and after having fully consulted with my attorney, and I hereby request that the trial court accept said plea;

CL I waive and give up under Article 1.14 of the Texas Code of Criminal Procedure any and all rights given to me by law whether of form, substance, or procedure;

CL I have freely, knowingly, and voluntarily executed this statement in open court with the consent of and approval of my attorney;

CL I read and write English. I have read and I understand this document, the Waiver of Constitutional Rights, Agreement to Stipulate, Judicial Confession and Plea of Guilty filed In this case;

CL I speak English, this document, the Waiver of Constitutional Rights, Agreement to Stipulate, Judicial Confession and Plea of Guilty filed in this case were read to me by _____ I understand their content;

_____ I speak _____. And this document, the Waiver of Constitutional Rights, Agreement to Stipulate, Judicial Confession and Plea of Guilty filed in this case were translated for me by _____. I understand their Content;

CL I understand that if the trial court accepts my plea of Guilty to the above-listed offense, and I have elected to have a jury assess punishment that the trial court will instruct the jury to return a verdict of guilty and will then instruct the jury to assess punishment in my case following the presentation of any evidence relevant to the issue of punishment, unless I have waived my right to trial by jury pursuant to Articles 1.13 and 37.07 of the Texas Code of Criminal Procedure;


CL I hereby swear to all the foregoing, and I further swear that all testimony that I give in this case will be the truth, the whole truth and nothing but the truth, so help me God. I hereby state that I have read or have been read the indictment or information filed in this case, and

CL I confess and admit that I committed each and every allegation contained therein. I state that I am guilty of the offense alleged, as well as any and all lesser included offenses.

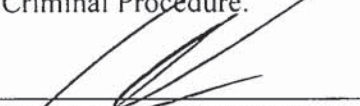
I hereby swear to all the foregoing, and I further swear that all testimony that I give in this case will be the truth, the whole truth, and nothing but the truth, so help me God.


X Carlos Lopez
Defendant

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS DATE: 1/15/2019


Deputy District Clerk
Harris County, Texas

We join and approve the waiver of jury trial pursuant to Article 1.13 of the Texas Code of Criminal Procedure and the stipulations of evidence pursuant to Article 1.15 of the Texas Code of Criminal Procedure.


CHERNOFF, EDWARD M.
Attorney for Defendant
(signature)


SHANNON M. DREHNER
Assistant District Attorney
Harris County District Attorney's Office
TBC No. 24074155
DREHNER_SHANNON@dao.hctx.net

FILED

Marilyn Burgess
District Clerk

JAN 15 2019

Time: _____
Harris County, Texas
By _____
Deputy

In addition, the Court hereby finds that the defendant is fully mentally competent, and that his or her plea is freely, knowingly and voluntarily entered.


JUDGE PRESIDING

Signed on Jan 15 2019
262nd
Harris County, Texas

CAUSE NO. 156444401010

THE STATE OF TEXAS

VS.

LOPEZ, CARLOS MICHAEL

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IN THE 262ND DISTRICT COURT

OF

HARRIS COUNTY, TEXAS

ACKNOWLEDGMENT OF COMPLIANCE WITH
TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 39.14 (a)

Comes now the defendant and hereby withdraws any requests made in the above numbered cause for further discovery pursuant to Texas Code of Criminal Procedure Article 39.14 (a). My attorney has fully and completely explained to me my right to request discovery under Texas Code of Criminal Procedure Article 39.14 (a) and I understand that right. I am satisfied with the State's compliance and I affirmatively and voluntarily declare that I have no additional requests for discovery of items pursuant to Texas Code of Criminal Procedure Article 39.14 (a).

X Carlos Lopez
LOPEZ, CARLOS MICHAEL

SUBSCRIBED AND SWORN TO before me on 1/15/2019.

[Signature]
Harris County Deputy District Clerk

I represent the defendant in this case, and I believe that this document was executed by him freely, knowingly, and voluntarily. My client and I have fully discussed his right to discovery under Texas Code of Criminal Procedure Article 39.14 (a), and I believe that he understands this right and the consequences of executing this document. It is my opinion that he is competent to make this acknowledgment, and along with him and at his instruction I also withdraw any pending or additional discovery requests made pursuant to Texas Code of Criminal Procedure Article 39.14(a).

[Signature]
Defense Attorney
CHERNOFF, EDWARD M.

This document was executed by the defendant, his attorney, and then filed with the papers of the case. The defendant came before me and I approved the above acknowledgment along with the defendant's plea of guilty. It appears that the defendant is mentally competent to withdraw any request he may have made for further discovery pursuant to Texas Code of Criminal Procedure Article 39.14 (a), and is doing so freely and voluntarily. I find that the defendant's attorney adequately informed him of his right to discovery under Texas Code of Criminal Procedure Article 39.14 (a) and the effects of this acknowledgment.

NOTHING HEREIN SHALL ABRIDGE THE STATE'S ONGOING DUTY TO DISCLOSE TO THE DEFENDANT ANY EXCULPATORY, IMPEACHMENT OR MITIGATING INFORMATION IN THE POSSESSION, CUSTODY OR CONTROL OF THE STATE THAT TENDS TO NEGATE THE GUILT OF THE DEFENDANT OR WOULD TEND TO REDUCE THE PUNISHMENT FOR THE OFFENSE CHARGED.

The Court hereby **ORDERS** the District Clerk of Harris County, Texas to file this document in the Court's record in this cause.

FILED
Marilyn Burgess
District Clerk
JAN 15 2019

[Signature]
Judge Presiding

Time: _____
Harris County, Texas
By _____
Deputy

CAUSE NO. 156444401010

THE STATE OF TEXAS

VS.

LOPEZ, CARLOS MICHAEL

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IN THE 262ND DISTRICT COURT

OF

HARRIS COUNTY, TEXAS

TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 39.14
JOINT LIST OF RELEASED DISCOVERY

COMES NOW, the State of Texas by and through the undersigned assistant district attorney and the undersigned attorney for the above named defendant and would jointly show the Court the following:

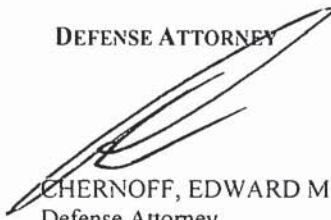
Pursuant to Texas Code of Criminal Procedure Article 39.14(j) this document and the attached pages encompass the discoverable documents and evidence requested by the defendant and released by the State. Additionally, the below signed Assistant District Attorney declares that he/she permitted inspection of the entire Harris County District Attorney's Office file for this cause with the exception of items privileged by law or designated as work product of the District Attorney or her investigators. The signatures included on this document represent a declaration of release and receipt on the dates and in the forms therein related. The parties also incorporate by reference all notices on file in the Clerk's Record under this cause number provided in compliance with the requirements of the Texas Code of Criminal Procedure and the Texas Penal Code. Based on the signatures provided in this document and the documents incorporated by reference, the below signed Assistant District Attorney and defense counsel do hereby acknowledge that all the designated items thereby referenced were released pursuant to Texas Code of Criminal Procedure Article 39.14, and that the State has produced all the discoverable items requested by the defense as of the entry of the plea or commencement of trial. This document and the attached log are the acknowledgment required by article 39.14(j), and act as a written record of the documents, items, and information requested by and provided to the defendant in relation to this cause number, as is hereby witnessed to by our signatures as counsel for the parties.

ASSISTANT DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS



SHANNON M. DREHNER
Assistant District Attorney
TBC No. 24074155
DREHNER_SHANNON@dao.hctx.net

DEFENSE ATTORNEY



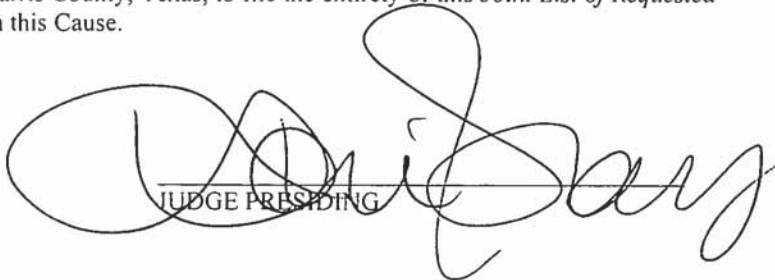
CHERNOFF, EDWARD M.
Defense Attorney
TBC No. 04175730

LIST OF RELEASED DISCOVERY ORDER

On this date the Harris County District Attorney and the attorney for the Defendant in the above Cause presented to the Court this *Texas Code of Criminal Procedure Article 39.14 Joint List of Requested and Released Discovery*. The Court hereby **ORDERS** the District Clerk of Harris County, Texas, to file the entirety of this *Joint List of Requested and Released Discovery* in the Court's record in this Cause.

Signed and Ordered this

1/15/2019



JUDGE PRESIDING

JOINT LIST OF RELEASED DISCOVERY (Cont'd)

DATE RELEASED	ITEM DESCRIPTION
05/30/2018	17-141097
05/30/2018	reset-1564443
05/30/2018	17-141097 HTCU Forensic Request form supp #32
05/30/2018	2002 Ford F-150 signed consent form supp #42
05/30/2018	2002 Ford Registration Return supp #29
05/30/2018	8280 CO-29 Single unit_coderange list supp #51
05/30/2018	8283 CO-29 single unit_coderange list supp #51
05/30/2018	Agg Assault deadly weapon TO BE warrant supp #43
05/30/2018	Agg Assault on PO TO BE warrant supp #43
05/30/2018	Autopsy supp #65
05/30/2018	Brett Jackson GJS Return supp #57
05/30/2018	Capture 1 supp #55
05/30/2018	Capture 2 supp #55
05/30/2018	Capture 3 supp #55
05/30/2018	Capture 4 supp #55
05/30/2018	Capture 5 supp #55
05/30/2018	Capture 6 supp #55
05/30/2018	Capture 7 supp #55
05/30/2018	Capture 8 supp #55
05/30/2018	Carlos Lopez saliva consent form supp #68
05/30/2018	Carlos Lopez saliva search warrant (not executed) supp #68
05/30/2018	Carlos M. Lopez mugshot supp #29
05/30/2018	Christopher Martinez GJ Return supp #57
05/30/2018	Christopher Martinez GJ Subpoena supp #54
05/30/2018	Consent cell Ericka supp #30
05/30/2018	Consentimiento a un registro supp #19
05/30/2018	Notarized Affidavit (DPS) supp #51
05/30/2018	Outcry of Sexual Assault- Westfield HS supp #63
05/30/2018	Placed into the back of unit supp #41
05/30/2018	Property receipt supp #35
05/30/2018	Rear pass officer kick supp #41
05/30/2018	Receipt of evidence submission form supp #45
05/30/2018	Rub chest to try and wake up supp #41
05/30/2018	Signed GJS Erika Medical Records supp #59
05/30/2018	Snapchat preservation letter (abigail) supp #42
05/30/2018	Steven Romero salival buccal consent supp #60
05/30/2018	Stolen vehicle supp #35
05/30/2018	Tackle supp #41
05/30/2018	Temp Tag supp #35
05/30/2018	Typed Logs (DPS) supp #51
05/30/2018	William Weier GJS Return supp #57
05/30/2018	Dep Brett Jackson GJS Medical Records supp #54
05/30/2018	Dep Douglas Mullens GJS Medical Records supp #54
05/30/2018	Dep G. Lowry evidence release form supp #29
05/30/2018	Dep Gonzalez evidence release form supp #29
05/30/2018	Dep William Weier GJS Medical Records supp #54
05/30/2018	Douglas Mullens GJS return supp #57
05/30/2018	DPS radio log request letter supp #51
05/30/2018	Driver and rear pass exit vehicle supp #41
05/30/2018	Erica Gutierrez GJS Medical Records supp #53
05/30/2018	Erica Gutierrez GJS Medical Records supp #54
05/30/2018	Erica's cellphone consent supp #23
05/30/2018	Erika detained supp #41
05/30/2018	Erika Gutierrez medical records supp #59
05/30/2018	Escobar Consent to search electronic media supp #42
05/30/2018	Evidence submission form returns from scene supp #40
05/30/2018	Evidence submission form returns from vehicle supp #44

05/30/2018 Evidence submission form supp #46
 05/30/2018 Female falls to ground supp #41
 05/30/2018 Female lying on ground supp #41
 05/30/2018 Firearms Lab Report supp #56
 05/30/2018 Flying J Surveillance video request letter supp #42
 05/30/2018 Flying J Surveillance video return supp #51
 05/30/2018 Ford F-150 vehicle release form supp #51
 05/30/2018 Ford temporary tag return supp #29
 05/30/2018 Forensic Request and consent to search forms (iphone 5S) supp #31
 05/30/2018 Gonzalez gun release supp #34
 05/30/2018 Gonzalez handcuffs release supp #34
 05/30/2018 GSR info Licona supp #52
 05/30/2018 GSR info Lopez supp #52
 05/30/2018 GSR info Toscano supp #52
 05/30/2018 HCIFS Evidence Form (Steven Romero saliva) supp #60
 05/30/2018 HCIFS Evidence form Carlos Lopez supp #68
 05/30/2018 HCIFS GSR IFS17-11091-0003 supp #57
 05/30/2018 HCIFS GSR IFS17-11091-0003 supp #61
 05/30/2018 HCIFS Property form supp #30
 05/30/2018 HCSO Property Release form (handcuffs) supp #29
 05/30/2018 HTCUC Erika Gutierrez forms supp #29
 05/30/2018 IFS17-11091 SUPP #64
 05/30/2018 ifs17-11091 to IFS14-13730 (HCSO) supp #63
 05/30/2018 IFS17-11091-0002 supp #61
 05/30/2018 IFS17-11091-0004 supp #61
 05/30/2018 IFS17-11091sl supp #68
 05/30/2018 Interoffice Memo supp #51
 05/30/2018 iphon 5S extraction summary pp 1-5 supp #31
 05/30/2018 iphone extraction notes (jwn) 9-6-17 supp #31
 05/30/2018 Lowry gun release supp #34
 05/30/2018 Male approaches 1801 supp #41
 05/30/2018 Male walks into 1801 supp #41
 05/30/2018 Males go to stairwell supp #41
 05/30/2018 Carlos Lopez #2 supp #23
 05/30/2018 Carlos Lopez custodial statement supp #68
 05/30/2018 Christopher Martinez supp #35
 05/30/2018 Christopher Martinez supp #49
 05/30/2018 Dep Ron Keener statement 9-7-17 supp #37
 05/30/2018 Dep Ruben Gonzalez statement supp #29
 05/30/2018 Dep US Marshal Brett Jackson supp #29
 05/30/2018 Dep US Marshal Clayton Brown written statement supp #29
 05/30/2018 Dep US Marshal Douglas Mullens supp #29
 05/30/2018 Dep US Marshal Haseam Brock statement supp #29
 05/30/2018 Dep US Marshal Justin Moreau statement supp #29
 05/30/2018 Dep US Marshal Raymond D Bayane statement supp #29
 05/30/2018 Dep US Marshal Robert Sawitz statement supp #29
 05/30/2018 Dep US Marshal Scott Morris supp #29
 05/30/2018 Dep US Marshal William Weier supp #29
 05/30/2018 Dep US Marshall Ken Groenveld supp #29
 05/30/2018 Dep. Lowry statement supp #50
 05/30/2018 Douglas Mullens GJS Return supp #57
 05/30/2018 DPS Agent Jose Rodriguez statement supp #29
 05/30/2018 DPS Agent Joseph Dreaden Statement supp #29
 05/30/2018 DPS Special Agent Joseph Dreaden written statement
 05/30/2018 Eddy Gutierrez statement 9-5-17
 05/30/2018 Erica Andino phone conversation 2 supp #57
 05/30/2018 Erica Andino phone conversation supp #57
 05/30/2018 Erica Gutierrez Statement supp #23
 05/30/2018 Helen Martinez supp #49
 05/30/2018 Kevin Toscano supp #35
 05/30/2018 Mario Licona interview supp #49
 05/30/2018 Carlos Garza-Cantu statement 9-5-17
 05/30/2018 Carlos Lopez #1 supp #23

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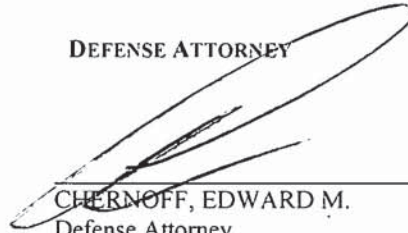
The below signatures of the State and defendant hereby acknowledge the disclosure and receipt of all reports, documents, and items listed herein and provided to the defendant pursuant to Article 39.14 of the Texas Code of Criminal Procedure.

ASSISTANT DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS



SHANNON M. DREHNER
Assistant District Attorney
TBC No. 24074155
DREHNER_SHANNON@dao.hctx.net

DEFENSE ATTORNEY



CHERNOFF, EDWARD M.
Defense Attorney
TBC No. 04175730

THE STATE OF TEXAS

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IN THE 262ND DISTRICT COURT

VS.

OF

LOPEZ, CARLOS MICHAEL

HARRIS COUNTY, TEXAS

ADVICE OF DEFENDANT'S RIGHT OF APPEAL

The Court, pursuant to TEX. R. APP. P. 25.2, advises the Defendant as follows:

1. Texas law gives a defendant convicted of a crime the right to appeal his conviction.
2. If you **pled guilty** or **no contest** and accepted the punishment recommended by the prosecutor, you cannot appeal your conviction unless this Court gives you permission. If you **waived** or gave up your right to appeal, you **cannot** appeal your conviction.
3. If you did not plead guilty, you may have the right to appeal. If you want to appeal, you must give notice of appeal **in writing** to this Court's clerk within **30 days**.
4. If an attorney represents you in the court of appeals, your attorney must mail a copy of the court of appeals judgment and opinion to your last known address. You must tell your attorney, in writing, of any **change in your address**.
5. If you are not satisfied with your appeal's result, you can ask the Court of Criminal Appeals to review your case by filing a petition for discretionary review within **30 days** of the opinion's issuance in the court of appeals. If you fail to inform your attorney of any change in your address, you may lose the opportunity to seek discretionary review.

The Defendant declares the following to the Court (choose one)

☒ CL I read and write English. I have read and I understand this document. or☐ I speak English. _____ read this document to me. I understand its contents. or☐ I do not speak English. _____ translated this document for me. I understand its contents.

X Carlos Lopez
Defendant

Sworn and subscribed to me before on 1/15/2019

[Signature]
Harris County Deputy District Clerk

FILEDMarilyn Burgess
District Clerk

JAN 15 2019

Time: _____
Harris County, TexasBy _____
Deputy