

Dismissed and Opinion filed October 25, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-00874-CR

OJKIN KIM, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 14
Harris County, Texas
Trial Court Cause No. 0988642**

MEMORANDUM OPINION

The appellant, Okjin Kim,¹ was charged with failing to report her husband's abuse of a child, a misdemeanor offense. TEX. FAM. CODE ANN. § 261.109 (Vernon 1996). Kim pleaded guilty and, pursuant to a plea bargain, received one year deferred adjudication probation. For the first time on appeal, the appellant raises the following issues: (1) Family Code Section 261.109 is unconstitutionally vague, (2) her counsel was ineffective, (3) her plea was involuntary, and (4) the trial court erred by refusing to conduct a hearing on her

¹ The appellant was sentenced under the name "Ojkin Kim," but the briefs and her signature indicate her name is spelled "Okjin Kim."

motion for new trial. Finding we have no jurisdiction over this appeal because the appellant expressly waived her right to appeal, we dismiss.

The appellant signed plea papers which contained the following statements: “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 principle part of the plea agreement included a period of one-year deferred adjudication probation, a \$100 fine, and 120 hours of community service. The trial court followed the plea agreement with regard to the one-year deferred adjudication and fine and assessed the appellant’s community service hours at only 100 hours. The appellant bargained for the prosecutor’s recommendation on sentencing and in exchange gave up her right to appeal, conditioned on the trial court assessing punishment at or below that recommendation. We hold her to her bargain. *Blanco v. State*, 18 S.W.2d 218, 219-20 (Tex. Crim. App. 2000); *Alzarka v. State*, No. 14-00-00837-CR, slip op. at 4-5, 2001 WL 837602 at *3, (Houston [14th Dist.] July 26, 2001, pet. filed). The waiver was effective and requires dismissal of the appeal.

We dismiss the appeal for want of jurisdiction.

/s/ Scott Brister
 Chief Justice

Judgment rendered and Opinion filed October 25, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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