

44 and # 45

IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

JOHN FOX, Appellant

vs.

NO. 84-MCA-1191

STATE OF TEXAS, Appellee

O P I N I O N

Appellant was convicted in Municipal Court, after a jury trial, of violating Section 13.49 of Chapter 13 of the Code of the City of El Paso, in a complaint alleging that he failed to provide certain dwelling units with the "minimum required sanitary facilities" as required by Section 302.1 of the Standard Housing Code.

Prior to trial, the Appellant filed a Motion to Quash his Complaint alleging a violation of the Texas Speedy Trial Act and attacking the complaint as being vague and not providing the Appellant with adequate notice of the charge against him. The Trial Court overruled the Motion to Quash.

As to the Application of the Texas Speedy Trial Act, the file reflects that the date of the alleged offense was November 7, 1983, and trial was commenced on July 26, 1984 on a complaint which was signed and sworn to on March 23, 1984.

The record does not reflect whether Appellant was arrested on the date of the offense or at any other time before trial. For purposes of the Speedy Trial Act, a criminal action commences when an indictment, information or complaint against the defendant is filed in Court, unless prior to the filing the Defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested. Since it appears that no

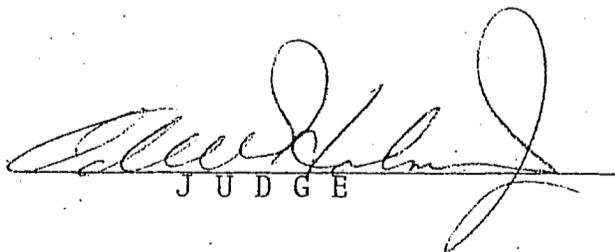
arrest in this case was made, the time limits applicable to the prosecution under the Speedy Trial Act never began to run. Lozano v. State, 680 SW2d 903 (Tex.App. - Houston (First District) - 1984). Lyles v. State, 653 SW2d 775 (Tex.Crim.App. - 1983).

However, the 60 day time limit applicable to Class C misdemeanors under the Speedy Trial Act was still violated since the complaint was filed on March 23, 1984 and the trial was not held until July 6, 1984, and nothing in the record indicates that the State was ready for trial during that period of time, and this Court holds that it is incumbent on the State to have the record reflect their readiness within the applicable time limits, Velez v. State, 83-MCA-288 - 289, Smith v. State, 659 SW2d 828 (Tex.Crim.App. - 1983).

Although not necessary to the ultimate disposition of this case, the second point raised by Appellant relating to the complaint being defective appears to be well taken, and in the face of a Motion to Quash, the complaint should be more specific in alleging the particular violation involved. Hamrah v. State, 83-MCA-279 (Mun.Ct.App. - 1984).

For the reasons stated, the Judgment of the Trial Court is reversed and rendered in Appellant's favor.

Signed this 15 day of March, 1985.


J U D G E

J U D G M E N T

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things

reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

Signed this 15 day of March, 1985.


J U D G E