

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

JESUS BARRAZA

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 14-MCA-3758
Ticket No. 18408402.2**

OPINION

Appellant appeals his conviction in Municipal Court for not having a valid driver's license. The Court's Docket Sheet and Judgment reflect that on September 4, 2013 Appellant pled guilty but was given ten (10) to provide proof to the Court that he had a valid driver's license, but evidently never did so. The consequence of failing to do so resulted in a fine \$35.00 plus court costs being assessed against him.

Appellant was cited for this particular offense on February 20, 2011. He evidently failed to appear before the Arraignment Court, and a warrant was issued on March 22, 2011. In order to avoid execution of that warrant, Appellant signed a "Cash Bond Forfeiture" form on September 23, 2011. On the "Cash Bond Forfeiture" form Appellant requested a court hearing and on September 4, 2013 the trial of the case was held. The Docket Sheet of the Court indicates that the Defendant was represented by his attorney, Michael Aaronson, who likewise is representing Appellant on this appeal.

The record before this Court contains the judgment signed by the Judge of the Municipal Court of the City of El Paso No. 2, and dated September 4, 2013, although not stamped as to when it was entered. The judgment also indicates that Appellant waived a jury trial, entered a plea of guilty, which the Court accepted, found Appellant guilty, gave him ten (10) days to provide proof to the Court that he had a driver's license, and failing to do so, assessed a fine of

\$35.00 plus court costs as indicated above. It was not, however, until May 23, 2013 that Appellant filed pleadings seeking to obtain a new trial, and alleging that the judgment entered was invalid for failure to comply with the requirements of Article 45.017, Tex. Crim. Proc. The Trial Court granted the State's plea to its jurisdiction because of the time lapse between Appellant's conviction and the expiration of the period for filing a Motion for New Trial. The Court's Criminal Docket Sheet which identifies the Appellant, the case number and the offense and many other items, also contains a portion of the Docket Sheet identified as a judgment and contains all of the relevant information required by Article 45.017. Appellant has attached a copy of a Docket Sheet (Ex. 13) to his brief which does not have that information. However, that exhibit is not part of the Clerk's Record filed with this Court.

Article 45.041, Tex. Crim. Proc. relating to the judgment requires that the defendant pay the fine costs to the state. The judgment signed by the Court referenced above indicates that the fine and costs adjudged by the Court in favor of the State of Texas, for the use and benefit of the City of El Paso, Texas, have and recover the sum of the fine and court costs and an arrest fee assessed. That is sufficient to satisfy the requirement that the fine and cost be due and payable to the State.

Article 45.041 indicates that all judgments, sentences and final orders of the Judge be rendered in open court. The Docket Sheet, as well as the Judgment, clearly reflects that trial proceedings were had in open court and the Court's decision was rendered therein.

Additionally, the City has cited this Court to *Rodriguez v. State*, 01-00-00760-CR, 2002 WL 1932515 (Tex. app.—Houston [First District]) which holds that a failure to adhere to the thumbprint instruction of Article 42.01, and Article 38.33, Tex. Crim. Proc. did not render a conviction void. The Court held that such errors in the form of the judgment are subject to

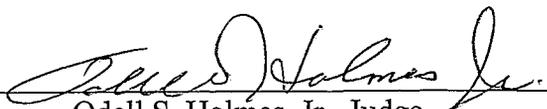
reformation on direct appeal, but are not subject to collateral attack. In *Sparkman v. State*, 55 S.W.3d, 625 (Tex. app.–Tyler 2000, no pet.), the Court there held that defects in the form of judgments did not render the judgment void. That court further held that the failure of the lower court to make required recitals did not render the underlying conviction void nor deprive the Appellate Court of jurisdiction. It further stated that the Appellate Court had the power to correct and reform the judgment of the court below when it has the necessary data and information to do so. Appellant has not requested this Court to correct or reform the judgment, and therefore the Court declines to do so. Nor has Appellant suggested that this case is controlled by Article 42.01, Tx.Crim.Proc.

This Court therefore holds that even if the judgment entered by the Court was deficient, that the judgment entered by the Trial Court was valid and the applicable timetable for its continued jurisdiction expired once the time for filing the Motion for New Trial ran, and Appellant's motion were filed beyond that period. Therefore, the Trial Court had no jurisdiction to grant him relief. In this respect, this Court holds that the Trial Court did not err.

Appellant also argues that because Appellant had signed a "Cash Bond Forfeiture" form, that he may have some rights pursuant to Article 45.044, Tex. Crim. Proc., requiring notice to Appellant of the entry of the forfeiture and giving him an opportunity to file a Motion for New Trial. In this case, Appellant was given a court setting, and obviously appeared for the trial of these proceedings either in person or through his attorney, and therefore those provisions are inapplicable to the present situation.

Therefore, the judgment of the Trial Court is hereby affirmed.

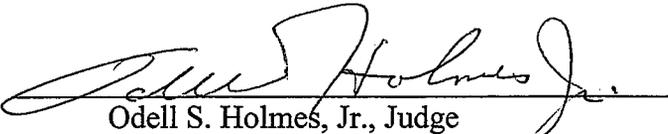
SIGNED this 16th day of SEPTEMBER, 2015.


Odell S. Holmes, Jr., Judge
El Paso Municipal Court of Appeals

JUDGEMENT

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case is affirmed.

SIGNED this 16th day of SEPTEMBER, 2015.

A handwritten signature in cursive script, appearing to read "Odell S. Holmes, Jr.", written over a horizontal line.

Odell S. Holmes, Jr., Judge
El Paso Municipal Court of Appeals