

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

GREGORY SHEARMAN,

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 06-MCA-3084

OPINION

Appellant appeals his conviction in Municipal Court for a speeding violation. A fine of \$100.00 was assessed.

Appellant contends that he requested a record before the Trial Court proceedings commenced, but no record was made. He also contends that the Court remained silent and did not rule on his request or provide a court reporter to take down the testimony. He further contends that he discussed the matter with the City Prosecutor who suggested he file a Motion for New Trial, and the City Prosecutor signed his request indicating he did not oppose the new trial because Appellant contends that the City Prosecutor recalled his request.

Appellant contends that the Trial Judge denied his Motion for New Trial, but the Order in regard to that is not signed by the Trial Judge, but eventually was overruled by operation of law.

This Court has held in too numerous occasions to cite, that Appellant must request a court reporter, and provide this Court with a Statement of Facts to contest many of the issues that are raised before the Trial Court, most importantly, whether there is sufficient evidence to sustain the Trial Court's finding. Too often, no request for a court reporter is made, and the Appellant on appeal is at a significant procedural disadvantage because of that failure.

This Court, in nearly every case, where an issue is raised as to whether a request was properly or timely made for a court reporter, has given the benefit of the doubt to the citizen, because too often their failure to request a court reporter is a result of their ignorance of the procedural requirements, and the importance of a record on appeal until after this Court renders an opinion to that effect. That belated education of the citizen has always been a source of some concern to this Court, and has taken every opportunity to ensure that a person's request for a court reporter is protected.

It has been, because of that concern, that this Court has encouraged the implementation of a recording system in our Trial Courts in order to facilitate the taking of a record, and fortunately, such a system now exists. Nonetheless, this Court has been advised, that the Trial Judges are still requiring people to request that a record be made, as the law requires, but it seems to this Court, that a recording of the trial proceedings should become commonplace, even without a request for a record. That action would allow this Court to address the merits of people's contentions on appeal, rather than affirming their convictions on procedural technicalities which most pro se defendants know nothing about. The result of the case, in probably most instances, will not be any different, as this Court has repeatedly forewarned in its opinions where a Statement of Facts is not contained in the record, however, but people who do appeal their case will not feel like they have been blindsided by the system.

If a person chooses to appeal a Trial Court's decision, and the proceedings were recorded, then it is incumbent on the person to secure a transcription of that record and to pay for it, and to include it in the record before this Court. They may well decide that that is not worth the time, effort, or expense, but this Court would prefer them making that decision rather than not being afforded the opportunity to have a record made of the proceedings, when that option is easily available and can be implemented.

Therefore, consistent with this Court's previous opinions in this area, this case is remanded to the Trial Court so that a record of the proceedings can be made, and that if another

appeal of this case is effected, Appellant will have the opportunity to present this Court a Statement of Facts as to what evidence was introduced before the Trial Judge.

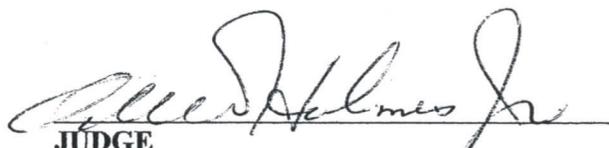
SIGNED this 30 day of June, 2006.


JUDGE

JUDGMENT

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 be reversed and remanded to the Trial Court for re-trial.

SIGNED this 30 day of June, 2006.


JUDGE