

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

CHELSEA E. CORY

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 10-MCA-3421
Ticket #: 18227029.3**

OPINION

Appellant appeals her conviction in Municipal Court for failing to maintain financial responsibility. Appellant was granted deferred disposition pursuant to Art. 45.051, Code Crim. Proc.

However, the way this case was disposed of at the Trial Court level was highly unusual and did not comport with the provisions of that Article. That Article provides that on a plea of guilty or nolo contendere by a defendant or upon a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the Judge may defer further proceedings without an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. It further provides then that the Court can require the defendant to comply with a number of conditions, including, presenting to the Court satisfactory evidence that the defendant has complied with such requirements imposed by the Judge under that Article. In this case, the deferral was conditioned on Appellant maintaining insurance coverage and not receiving any citations for insurance violations during the deferral period. Once the Court determines that the defendant has complied with the conditions imposed, it

shall dismiss the complaint, note on the docket that the complaint is dismissed, and there is no final conviction.

What is so unusual about the way this matter was handled is that a plea agreement was entered between the City Prosecutor and the Attorney for the Defendant, dated November 13, 2009, which was memorialized in hand-written fashion on a computer printout form. Then evidently on January 4, 2010, that form was presented to a Judge who initialed it. But there is nothing in the Record to show that Appellant or her Attorney were ever notified of its entry. This clearly was not done in a format which this Court has seen before with such cases, that is, where a formal Order Granting Deferred Disposition is actually entered by the Judge and signed by the parties or their attorneys.

Although this hand-written arrangement provided that failure to complete the conditions would result in the finding of guilt and a fine of \$211.00 plus court costs, it did not set nor require that the Defendant present satisfactory evidence of compliance with the requirements imposed by the Order under the above cited Article. Art. 45.051 (c-1) also requires that if the defendant fails to present satisfactory evidence of compliance within the deferral period, the court shall:

1. Notify the defendant in writing, mailed to the address on the Notice to Appear of that failure; and
2. Require the defendant to appear at the time and place stated in the Notice to Show Cause why the Order of Deferral should not be revoked.

Appellant contends that had she been notified to appear at a show cause hearing she could have established that she had complied with the Court's conditions of deferred disposition and was prepared to offer evidence of such fact.

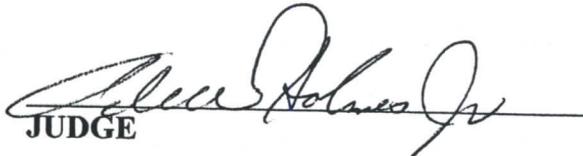
The Record fails to show that the Court complied with Article 45.051 (c-1) notifying Appellant or her Attorney to show cause why the Order of Deferral should not be revoked. Such Notice is mandatory. The failure to provide Appellant that Notice and to give her an opportunity to show cause why the Order of Deferral should not be revoked was error.

Appellant next contends that her right against being placed in jeopardy twice has been violated. Both the Texas Constitution, Article 1 Section 14, and The Code of Criminal Procedure, Article 1.10 declare that no person is to be put twice in jeopardy of life or liberty for the same offense, the so called "Double Jeopardy Clause".

Appellant has successfully argued to this Court that the proceedings were so irregular that they amounted to a nullification of his client's conviction. Neither the plea agreement nor the docket sheet even reflect that there was any plea of guilty or nolo contendere or that Appellant was found guilty. It appears no plea was ever entered, and the fact the judgment reflects a finding of guilt, is inaccurate. Such facts do not support Appellant's Double Jeopardy decision.

Having found error in this proceedings, the judgment is hereby reversed and remanded to the Trial Court for further proceedings consistent with this Opinion.

SIGNED this 1st day of March, 2011.


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 1st day of March, 2011.


JUDGE