

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

**LUIS TORRE**

**Appellant,**

**v.**

**STATE OF TEXAS**

**Appellee.**

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**No. 12-MCA-3546  
Ticket No. 33-392-703**

**OPINION**

Appellant appeals his conviction in Municipal Court for failing to obtain a building permit. Appellant was fined \$2,000.00 but placed on deferred disposition pursuant to Article 45.051, Tx.Code of Criminal Procedure.

The deferred disposition was conditioned on Appellant returning to the Court on January 20, 2011 at 4:00 p.m. with a valid building permit. Appellant did not appear at that time, and admits so in his brief. The Court then proceeded to enter the conviction and assess the fine indicated above.

As to the permit, Appellant contends that he was building an open deck to his home and did not know he needed a building permit. He states that the improvement was only for looks and that no electricity, water or other utilities would be used. The record reflects that a permit was issued on November 14, 2011, two days before his trial date on November 16, 2011, but contends he was unaware that the permit had, in fact, been issued.

The order deferring further proceedings required Appellant to return to the courtroom on January 20, 2011 at 4:00 p.m., a date that was eleven months before his trial, and does not specify what he was supposed to submit to the Court specifically. That is, the order of deferment which is stamped as having been the original filed with the Municipal Court Clerk, does not choose which

of the four alternatives that Appellant would be required to do. If a court is going to require a person to comply with the conditions of the deferment, the court must clearly identify what those obligations would be. The incorrect date and the failure to identify what Appellant would be required to produce makes the order of deferment invalid (See attached copy of order).

The order also advises the Appellant that if he failed to comply with the terms of deferment a conviction would result, but this Court questions whether that procedure is authorized by law. Clearly Article 45.051(c-1) provides if the person fails to present within the deferral period satisfactory evidence of compliance with the requirement imposed by the judge, that the Court shall:

- (1) notify the Defendant in writing, mailed to the address on file with the Court or appearing 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.

No Notice to Show Cause appears to have been sent to the Appellant and none appears in the record before this Court.

Section (c-2) of that same Article provides that if a person shows good cause for failing to present satisfactory evidence of compliance, the Court may allow an additional period of time in which the person may present evidence of compliance. In this case, Appellant contends that he had good cause for not appearing before the Trial Court because he is taking heavy medications for post-traumatic syndrome disorder from his service in Vietnam, and the influence of those drugs blurred his memory. This Court does not decide if those facts establish good cause, but the record before this Court clearly indicates that the Trial Court's failure to issue a Notice to Show Cause Order denied Appellant the opportunity to attempt to show good cause.

Therefore, because of the irregularities addressed above and the failure to send a Show Cause Order, this case is hereby reversed and remanded to the Trial for further consideration.

SIGNED this 30<sup>th</sup> day of May, 2012.

  
JUDGE

**JUDGEMENT**

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, if 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<sup>th</sup> day of May, 2012.

  
JUDGE

CAUSE NUMBER: 33392703

STATE OF TEXAS  
CITY OF EL PASO  
VS.

IN THE MUNICIPAL COURT # 1  
OF THE CITY OF EL PASO, TEXAS

LUIS TORRES

**ORDER DEFERRING FURTHER PROCEEDINGS**

The Court finds that the Defendant is Guilty for the offense of -BLDG PERMIT and that the punishment has been set at a fine of \$2000.00 and court costs in the amount of 59.<sup>00</sup>. Further, under the authority of Article 45.051 Code of Criminal Procedure, the court ORDERS that the final disposition of the case and the imposition of the fine is suspended for 180 days from this date, on condition that the Defendant pay the court costs in the amount of \$ 59.<sup>00</sup> within ten (10) days of this ORDER, and that during the term for which imposition of the fine has been suspended said Defendant shall comply with the following conditions:

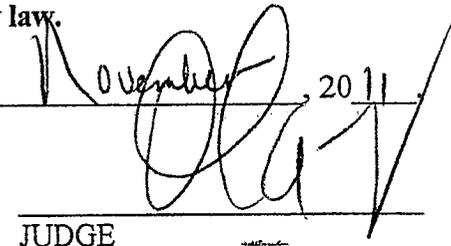
DEFERRAL PERIOD: NOV. 16, 2011 until April 25, 20 12.

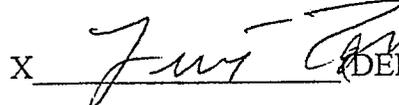
**DEFENDANT SHALL:**

1. Pay a special expense fee in the amount of \$25.00;
2. Not violate any El Paso city ordinances or laws of Texas;
3. ~~Must return to this courtroom on JANUARY 20, 2011 AT 4:00 p.m. with~~
  - a. Permit for \_\_\_\_\_ on \_\_\_\_\_;
  - b. Final Inspection no later than January 20, 2012 at 4:00 p.m.;
  - c. Pictures of \_\_\_\_\_ area on \_\_\_\_\_;
  - d. Other \_\_\_\_\_
4. Final hearing on \_\_\_\_\_.

If Defendant successfully complies with the conditions of the agreement, then this case shall be **DISMISSED** by the Court.

Failure to comply shall cause this case to result in a **CONVICTION** and the conviction will be reported as required by law.

Received and signed this the 16 day of November, 2011.  
  
JUDGE

X  (DEFENDANT)

**ORIGINAL**  
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MUNICIPAL COURT CLERK  
FEB 29 2012  
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