

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

EULOGIO ORTIZ, JR.

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 13-MCA-3689
Ticket No. T0319802.2**

OPINION

Appellant appeals his conviction in Municipal Court for failing to maintain financial responsibility. A fine of \$211.00 was assessed.

Appellant was cited on August 22, 2011 and this conviction was entered as a judgment of bond forfeiture on May 13, 2013. The bond forfeiture was pursuant to Article 45.044, Tex. Crim. Proc. which provides that a judgment of conviction in forfeiture of a cash bond posted by the Defendant can be entered if the Defendant has entered a written and signed plea of *nolo contendere* and a waiver of a jury trial and then fails to appear according to the terms of the Defendant's release.

In this case Appellant signed a document entitled "Cash Bond Forfeiture" that incorporated the provisions of Article 45.044, cited above. However, at the bottom of that form, Appellant was given a choice as to whether he wanted a court hearing or not. He indicated that he wanted a court hearing. The clerk has provided a certificate to this Court that indicates notice of the hearing was sent to Appellant on April 26, 2013 at the Defendant's address indicated on the bond form and his request for a court hearing. The clerk has further advised this court that it is presumed that the Defendant received that notice if it is not returned, and if it is returned, a

code notation is made that it was not delivered. In this case no such memo is reflected that the notice of hearing was not delivered. A copy of that notice is evidently unavailable from the clerk's office because of the volume of such notices that are issued. Appellant has not disputed whether he received that notice or not, but has provided this Court with an insurance certificate reflecting that his vehicle was insured in compliance with the Financial Responsibility Law on the date he was cited.

As this Court has done in the past, when proof of insurance is submitted to this Court even though it was not timely submitted to the Trial Court, this Court has reversed the Trial Court's judgment in order to remand it to that court for further consideration. Those circumstances are present in this case, but moreover, Article 45.044, cited above, further provides that if the bond is forfeited as indicated above, the Court must immediately notify the Defendant in writing by regular mailed addressed to the Defendant at the Defendant's last known address, that (1) a judgment of conviction and forfeiture has been entered to satisfy the Defendant's fine and costs, and more importantly, that the Defendant has a right to a new trial in the case if the Defendant applies for the new trial not later than the tenth (10th) day after the date of the judgment and forfeiture. The article then goes on to provide that a defendant may file a motion for a new trial within those ten (10) days, and the Court must grant the motion for new trial and allow the defendant to withdraw the previously entered plea of *nolo contendere* and waiver of jury trial. Nothing in the record before this Court indicates that the subsequent notice was ever given to Appellant, which would trigger his right to a new trial.

Therefore, not only because of the reasons stated above, but the additional reason just enunciated, this Court hereby reverses and remands this case to the Trial Court for further consideration.

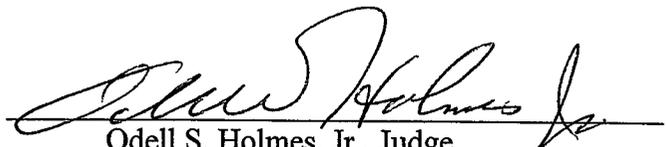
SIGNED this 23rd day of January, 2014.


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 reversed and remanded.

SIGNED this 23rd day of January, 2014.


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