

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

JUAN OLIVA

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 14-MCA-3719
Ticket No. 33409921**

OPINION

Appellant appeals his conviction in Municipal Court for not having his animal confined. A fine of \$2,000.00 was assessed as provided by Sec. 7.04.080, Mun. Code of City of El Paso.

Appellant was cited for the instant infraction on July 7, 2013 and was granted Deferred Disposition pursuant to Article 45.051, Code Crim. Proc., on September 17, 2013, conditioned on, among other things, that court costs be paid within ten (10) days of the order. The order indicates that the deferral period would be from September 17, 2013 until March 17, 2014. However, that order was conditioned indicating that the Appellant must return to the courtroom on October 23, 2013 to show cause why he should not be found guilty for animal not confined. Evidently, there was a need to reset that hearing and there are additional notices dated October 7, 2013 indicating that the Show Cause Hearing had been reset for November 7, 2013 at 4:00 p.m. Although that date was less than sixty (60) days from the date of the order granting deferred disposition, and more than 120 days from the expiration of the period of deferral, the Court has discretion to set a show cause hearing at any time during the deferral period in order to determine compliance. On November 8, 2013, the Court made a notation on the Show Cause Order finding Appellant guilty, evidently for not paying the court costs.

Under Article 45.051, Section (c-1), if a defendant fails to present within the deferral period satisfactory evidence of compliance with the requirements imposed by the judge, the court shall:

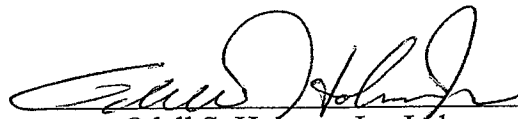
- (1) "Notify the defendant in writing, mailed to the address on file with the Court or appearing on the Notice to Appear of that failure; and
- (2) Require the defendant to appear at the time and place stated in the Notice to Show Cause why the Order of Deferral should not be revoked."

Appellant in his brief asserts that he never received the notices of the Show Cause, but clearly the notices were mailed to his last known address that was indicated as exactly the same as the address on the citation, so legally it is presumed that he received them.

Although it is unusual for the show cause hearing to be set before the deferral period expires, this Court has found no authority to suggest that doing so is error.

Therefore, the judgment of the Trial Court is affirmed.

SIGNED this 20th day of August, 2014.

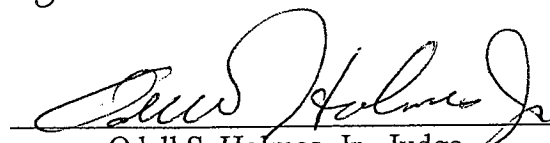


Odell S. Holmes, Jr., Judge
El Paso Municipal Court of Appeals

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 affirmed.

SIGNED this 20th day of August, 2014.



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