

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

SERGIO RESENDEZ

Appellant,

v.

STATE OF TEXAS

Appellee.

§
§
§
§
§
§
§
§
§

**No. 14-MCA-3725
Ticket No. 44011836**

OPINION

Appellant appeals his conviction in Municipal Court for permitting a pole with a basketball hoop and backboard in the area between the property located at 6208 Oryx and the curb line of the street abutting that lot contrary to Sections 12.68.030(C). That section prohibits a basketball hoop from obstructing the free passage by the public and use of an area where it is located. The complaint also charged an offense under Section 13.20.100 of the Municipal Code which prohibits a basketball hoop from encroaching on a public right-of-way. Thus, the complaint charged two separate offenses in one complaint. Appellant was found guilty and assessed a fine of \$2,000.00.

This Court requested the City Prosecutor to answer this Court's inquiry to that office whether such a fine was permissible because at that time, this Court had found no authority authorizing a fine for that amount for either one of the alleged offenses which Appellant was convicted of in this case. The response was that the maximum fine for either one of those offenses was \$500.00 and not \$2,000.00. As the City Prosecutor advised this Court, that offense is not a zoning violation but a street violation, the punishment for which is controlled by Section 1.08.010 of the Municipal Code of El Paso which provides that any person deemed guilty of a misdemeanor shall be punished by a fine not exceeding \$500.00, and not a zoning violation for which the fine could have been higher.

A court does not have authority to assess a fine in excess of that authorized by law, and exceeded its authority in this case to that extent. Since proceedings before Municipal Court constitute a unitary trial where the court addresses both guilt and innocence and the amount of the fine in a single proceeding, this Court must reverse and remand the entire proceedings to the Trial Court for retrial.

SIGNED this 29th day of October, 2014.

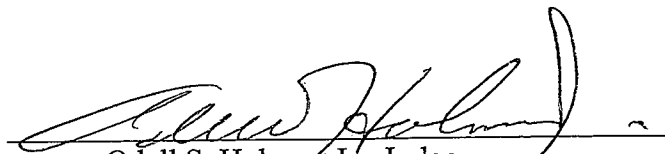


Odell S. Holmes, Jr., Judge
El Paso Municipal Court of Appeals

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 29th day of October, 2014.



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