

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

ARTURO RODRIGUEZ

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 14-MCA-3761
Ticket No. 18441565.2**

OPINION

Appellant appeals his conviction in Municipal Court after his Cash Bond was forfeited pursuant to the provisions of Article 45.044, Tx. Code Crim. Pro. A copy of that article is attached hereto and incorporated herein for purposes of this Opinion.

The document which Appellant signed entitled CASH BOND FORFEITURE indicates that if Appellant failed to appear at the date and time stated in the cash bond or at any time the Court required his personal appearance, that he waived his right to a jury, entered a plea of *nolo contendere* and understood that the bond would be forfeited to satisfy the fine and court costs that the Judge assesses. Further, his plea may result in a conviction appearing on a criminal or driver's license record. The form goes on to allow the person signing it to either request or not request a court hearing. In this case, Appellant did not request a court hearing. Whether Defendant requested a hearing or not is not determinative of the issue nor does it excuse the Court's mandatory duty to comply with the provisions of Article 45.044.

This Court considers whether a person asks for a court hearing to be surplusage, because nothing in Article 45.044 addresses whether requesting a hearing has any effect on the other significant provisions of that article. It certainly cannot be considered a waiver of other portions of that article discussed below.

Of significance, what the Cash Bond Forfeiture form which Appellant signed does not address are the requirements of Subsection (b) which require the Judge to immediately notify the defendant in writing by regular mail addressed to the defendant at the defendant's last known address that: (1) a judgment of conviction and forfeiture of bond was entered against the defendant on a date certain and the forfeiture satisfies the defendant's fine and court costs in the case; and (2) the defendant has a right to a new trial in the case if the defendant applies for the new trial not later than the 10th day after the date of judgment and forfeiture.

Additionally, Subsection (c) further provides that the defendant may file a Motion for New Trial not later than ten (10) days after the date of judgment and forfeiture and if he does so, the Court shall grant the motion and upon the new trial, the Court shall permit the defendant to withdraw the previously entered plea of *nolo contendere* and waiver of jury trial.

Those requirements are statutorily mandated requirements that clearly provide that the notice to the defendant is a condition precedent before the Court can finalize the judgment of conviction and forfeiture. Of course, if the notice is not sent, the defendant has no way of knowing when his ten days commences in order to file a Motion for New Trial, which must be granted to protect his rights and to exercise his ability to obtain a new trial and withdraw his previously entered plea and waiver of jury trial.

In this case, the parties have stipulated that there was no compliance with Article 45.044(b) (See attached).

The provisions of Article 45.044, Tx. Code Crim. Pro., clearly provide a continuing duty on the part of the Court to notify the defendant that a judgment of conviction and forfeiture of bond was entered and a continuing right on the part of the defendant to seek a new trial if he

does so timely. The Court retains jurisdiction of the matter until it fulfills its ministerial duty to notify the defendant, and the period for filing the Motion for New Trial expires.

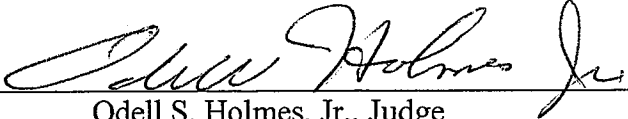
The State argues that the disposition of this case is controlled by Article 27.14(c), Tx. Code Crim. Pro., but their argument is unpersuasive even though creative. First of all, Article 27.14(c) is directed to providing a person the opportunity to dispose of any charge for which the maximum possible punishment is by fine only through the mail and thus avoid a court appearance by the defendant. More importantly, this case was handled specifically under Article 45.044 and not Article 27.14 or any of its provisions.

The State's other contention is that since the motion for new trial was not filed timely pursuant to other provisions of the Code of Criminal Procedure, the Trial Court lost jurisdiction of the matter, and the Appellant's conviction became final. The State was able to convince the Trial Court accordingly when the Court granted the State's "plea to the jurisdiction" finding that it no longer had jurisdiction to hear the matter. Clearly, had the Trial Court performed its statutory duty in notifying the Defendant, and he had failed to file his Motion for New Trial timely, this Court would have affirmed its decision without hesitation. But to hold that the Trial Court's failure to perform its ministerial duty is excused because the time for filing a Motion for New Trial has expired before the Appellant even knew of his right to do so, is not legally justified and this Court declines to so hold.

In summary, the Trial Court is without authority to fail to perform a statutorily mandated duty, and then deny relief provided by that very statute on the basis that it no longer has jurisdiction. Particularly, even if it attempted to enter judgment, that judgment could not have been final until it complied with the requirements of Article 45.044, Tx. Code Crim. Pro.

Therefore, this Court holds that Appellant is entitled to relief provided for by Article 45.044 and remands this case to the Trial Court to proceed accordingly, either by notifying Appellant as required by that Article of his rights or granting him a new trial.

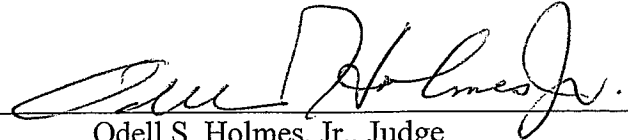
SIGNED this 1st day of July, 2015.


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 1st day of July, 2015.


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

Art. 45.044. FORFEITURE OF CASHBOND IN SATISFACTION OF FINE.

(a) A justice or judge may enter a judgment of conviction and forfeit a cash bond posted by the defendant in satisfaction of the defendant's fine and cost if the defendant:

(1) has entered a written and signed plea of nolo contendere and a waiver of jury trial; and

(2) fails to appear according to the terms of the defendant's release.

(b) A justice or judge who enters a judgment of conviction and forfeiture under Subsection (a) of this article shall immediately notify the defendant in writing, by regular mail addressed to the defendant at the defendant's last known address, that:

(1) a judgment of conviction and forfeiture of bond was entered against the defendant on a date certain and the forfeiture satisfies the defendant's fine and costs in the case; and

(2) the defendant has a right to a new trial in the case if the defendant applies for the new trial not later than the 10th day after the date of judgment and forfeiture.

(c) Notwithstanding Article 45.037 of this code, the defendant may file a motion for a new trial within the period provided by Subsection (b) of this article, and the court shall grant the motion if the motion is made within that period. On the new trial, the court shall permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

Added by Acts 1993, 73rd Leg., ch. 109, Sec. 1, eff. May 9, 1993.

Renumbered from Vernon's Ann.C.C.P. art. 45.231 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 44, eff. Sept. 1, 1999.

IN THE MUNICIPAL COURT OF APPEALS
EL PASO, TEXAS

CITY OF EL PASO/STATE OF TEXAS

VS

ARTURO RODRIQUEZ

DEFENDANT.

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CAUSE NO. 18441565.2
MUNICIPAL APPEAL-14MCA-3761

STIPULATIONS OF FACT AT LAW

The CITY OF EL PASO/STATE OF TEXAS and the defendant, ARTURO RODRIQUEZ stipulate to the following law and facts regarding the above matter:


1. Neither the El Paso Municipal Court nor any of the El Paso Municipal Judges have complied with article 45.044(b) by notifying the defendant in writing of the items/defendants' rights set out in 45.044 (b) (1 and 2).
2. Exhibit "A", attached constitutes the entire file (electronic, hardcopy or otherwise) kept by the municipal court in this case and there are no other documents of any nature relative/relevant to the above matter.
3. All of the attached documents are legally admissible evidence.
4. That neither the municipal court nor the clerk mailed or otherwise notified appellant of the items set forth in 45.044(b) (1) and (2).


SO STIPULATED AND AGREED:


JOHN BATOON, ATTORNEY FOR CITY/STATE

MICHAEL KARONSON, ATTORNEY FOR RODRIQUEZ

SIGNED THIS 2nd DAY OF Dec, 2014.

ML MK
FILE CLERK
JUL 02 2014
DEPUTY 

COPY
FILED IN THE OFFICE
MUNICIPAL COURT CLERK
DEC 02 2014

DEPUTY