IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

ROBERTO QUEZADA, Appellant

vs. No. 88-MCA-1940

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for changing lanes unsafely.

In a pro se brief, Appellant attacks the sufficiency of the evidence, but no statement of facts is included in the record. This Court has held on numerous occasions, that questions relating to the sufficiency of the evidence cannot be addressed in the absence of a statement of facts. Paoli vs. State 83 MCA 98 (Mun. Ct. App.).

Appellant further contests the credibility of the witnesses who testified, however, the Trial Judge as the trier of fact is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony, and this Court cannot substitute its judgment for that of the Trial Court.

This is not to suggest that had a statement of facts been included in the record, that the results would have been any different, but only, that this Court is not in a

position to address the point of error raised by Appellant without a statement of facts. Since this Court must review the evidence presented in the light most favorable to the Judge's verdict, therefore the result may well have been the same. Thomas vs. State 605 SW2d 290 (Tex. Cr. App.). That is particularly so in this case, where Appellant primarily attacks the relative credibility of the witnesses who testified rather than whether there was sufficient evidence introduced on any essential element of the offense.

Appellant has also filed a supplemental brief indicating that he was unaware that obtaining a statement of facts might help his case, and requests an extension of time in order to obtain such a statement. Obviously, it is too late to obtain a statement of facts now. The El Paso Court's of Records Act requires that the Defendant request a court reporter to transcribe the evidence presented at this trial at such time, and this court is unable to afford Appellant the opportunity to obtain a statement of facts without remanding this case for retrial. Since Appellant was obligated to request a court reporter to transcribe the evidence, it is now too late to obtain a statement of facts to be included in this record. This Court cannot grant Appellant relief which is now impossible to achieve.

Pro se litigants are subject to the applicable rules of procedure, and it is well established that the burden is on an Appellant to establish that he had been deprived of this

statement of facts. When a statement of facts is not filed, Appellant must show due diligence in requesting it and that failure to file or to have the statement of facts timely filed is in no way due to negligence, latches, or other fault on the part of Appellant and his counsel. Minjares vs. State 577 SW2d 222, (Tex. Crim. App. - 1978), Baldwin vs. State 756 SW2d 91 (Tex.App. - San Antonio 1988).

There are obviously inherent risks in self-representation, and certainly ignorance of the applicable rules of procedure is one of them as shown in this particular case. Regrettably, the law provides no relief to Appellant in a situation such as this.

Having found no reversible error, the judgment of the trial court is affirmed.

Signed this 27 day of Feb, 1989.

JUDGE

JUDGMENT

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 Judgment be in all things affirmed, and that the Appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

Signed this 27 day of Feb, 1989.

JUDGE