

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

JEFF DUKATT,)	
)	
Appellant,)	
vs.)	Nos. 93-MCA-2242,
)	93-MCA-2243,
STATE OF TEXAS,)	93-MCA-2244
)	
Appellee.)	

OPINION

Appellant appeals his conviction in Municipal Court for unlawfully storing a junked vehicle, contrary to Title 9, Chapter 9.08, Section 9.08.010 of the Code of the City of El Paso.

Both in his brief, and at oral argument, Appellant contends that he only received one notice concerning the violation, and that before he could properly dispose of the vehicles in question, he was cited and required to appear in Court, which resulted in the instant convictions.

However, there is no Statement of Facts in the record before this Court, so an attack on the sufficiency of the evidence cannot be reviewed by this Court. *Paoli v. State*, 83 MCA 98 (Mun.Ct.App.). However, the information presented to this Court at Oral Argument, although not in the record before the Trial Court, clearly indicated that the Appellant had in fact received notice, and his actions to remove the vehicle were not taken in a timely manner. In fact, as it related to one vehicle, it appears that the vehicle was moved to

various locations in the City, and placed on other's property, sometimes evidently without their permission. The inspector investigating this matter cited Appellant for placing the junk vehicle at those various locations without reissuing further notices. This Court rejects Appellant's argument that he should have been given notice of the violation at each of the locations where the vehicle was moved by him under these circumstances, and therefore finds no error in the Trial Judgment' finding of guilt on these violations.

However, the Trial Court assessed a fine of \$500.00 in each of the cases, which is clearly in excess of the maximum possible punishment for this particular offense. Both under Section 9.08.070 of the City Code of El Paso, as well as Article 4477-9A, Section 5.08(C), the maximum permissible punishment is a \$200.00 fine. Therefore, the Trial Court was clearly in error in assessing the fine which it did, and which is not authorized by law.

When a sentence has been imposed by the court, rather than a jury, the remedy is to abate the appeal and remand the cause to the trial court, in order that it may conduct another hearing on punishment and assess a term within the limits provided by statute. Busselman v. State, 713 SW2d 711, (Tex.App.-Houston [1st Dist.] - (1986)); Hudgens v. State, 709 SW2d 648, (Tex.Cr.App. 1986); Miller v. State, 472 SW2d 269, (Tex.Cr.App. 1971).

Therefore, this case is remanded to the Trial Court in order to conduct a hearing on punishment alone and to assess punishment within the statutory limits.


SIGNED this 23 day of June, 1993.


J U D G E

J U D G M E N T

The Judgment of the Trial Court is hereby reversed and the case is remanded for a new trial on punishment only.

SIGNED this 23 day of June, 1993.


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