

DEFENDANT'S PLEA TO THE JURISDICTION AND MOTION TO DISMISS

Cause No(s). _____

The State of Texas § IN THE _____ COURT

§

VS.

§ _____

§

_____ § _____ COUNTY, TEXAS

DEFENDANT'S PLEA TO THE JURISDICTION AND MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW _____, here after Accused and respectfully requests the Court to dismiss the above entitled and numbered cause for the following reasons:

1. FACTS

On or about _____, the Accused was arrested by _____, a Texas peace officer employed by _____. The Accused signed a written promise to appear and was subsequently released from custody.

2. LACK OF JURISDICTION

The court lacks jurisdiction because no information or indictment has been presented to the court pursuant to the Texas Constitution, Article 5, Section 12(b), and Texas Code Crim, Proc. Art. 27.01 to wit:

Art. V Sec. 12(b) An indictment is a written instrument presented to a court by a grand jury charging a person with the commission of an offense. An information is a written instrument presented to a court by an attorney for the State charging a person with the commission of an offense. The practice and procedures relating to the use of indictments and informations, including their contents, amendment, sufficiency, and requisites, are as provided by law. The presentment of an indictment or information to a court invests the court with jurisdiction of the cause.

TCCP Art. 27.01. INDICTMENT OR INFORMATION. The primary pleading in a criminal action on the part of the State is the indictment or information.

The plain language of the Texas Constitution and the Code of Criminal Procedure make it very clear that the only instrument that gives a court jurisdiction is an information or an indictment. Furthermore, appellate courts have held;

"The State's pleading, which it is obliged to prove, is the information, rather than the complaint which accompanies it." *Nam Hoai Le v. State*, 963 S.W.2d 838, 843 (Tex. App.--Corpus Christi 1998, pet. ref'd); TEXAS CODE CRIMINAL PROCEDURE Article 27.01.

"We note an instrument which is not an 'information' under Article V, Section 12 of the Texas Constitution fails to vest the trial court with jurisdiction and can be raised for the first time on appeal." See *Tollett v. State* 219 S.W.3d 593; 2007

3. VIOLATIONS OF DUE PROCESS

Because the arresting officer did not take the Accused immediately before a magistrate, he issued a written notice to appear in court showing the time and place

_____ was to appear. Texas Trans. Code §543.003. The place specified in the notice to appear must be before a magistrate having jurisdiction of the offense. Texas Trans. Code §543.006(b). On _____, the Accused appeared at the time and place specified in compliance with the "promise to appear". When the Accused appeared the magistrate was required to perform specific duties under Texas Code of Criminal Procedure §15.17 as if he had been brought before the magistrate on _____, to wit:

TCCP Art. 15.17(g) If a person charged with an offense punishable as a misdemeanor appears before a magistrate in compliance with a citation issued under Article 14.06(b) or (c), the magistrate shall perform the duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. After the magistrate performs the duties imposed by this article, the magistrate except for good cause shown may release the person on personal bond. If a person who was issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before which the person is required to appear shall issue a warrant for the arrest of the accused.

On _____ the Accused made a request of the court clerk and the magistrate for the state to provide a copy of the complaint and that request was denied. Because a proceeding in the prosecution of the Accused has occurred and he has yet to receive proper notice of the complaint against him and he has not waived his right to notice, the Accused's right to due process has been violated. See TCCP Art. 45.018(b) to wit:

(b) A defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint. The defendant may waive the right to notice granted by this subsection.

Wherefore premises considered, the Accused prays that the above entitled and numbered cause be dismissed with prejudice and that any warrant or capias be quashed.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing has been delivered to the following party or counsel of record via certified mail, return receipt requested, hand delivery or fax on this

_____ day of _____, 201__.

Prosecutor for _____

Cause No(s). _____

The State of Texas § IN THE _____ COURT

§

VS. § _____

§

_____ § _____ COUNTY, TEXAS

ORDER TO DISMISS

On _____, 201__ after hearing, this Court finds, pursuant to DEFENDANT'S MOTION TO DISMISS, that it is in the interest of justice to dismiss the instant cause and so orders that the instant cause be dismissed with prejudice, and further orders any warrant or capias related to the instant cause be quashed.

Signed on: _____, 201__

[S E A L]

Presiding Judge

Cause No(s). _____

The State of Texas § IN THE _____ COURT

§

VS. § _____

§

_____ § _____ COUNTY, TEXAS

DENIAL OF DEFENDANT'S MOTION TO DISMISS PROCEEDINGS

On _____, 201____ after hearing, this Court denies the DEFENDANT'S MOTION TO DISMISS for the following reasons:

Signed on: _____, 201____

[SEAL]

Presiding Judge

INSTRUCTIONS

This document is filed with the Notice for Information as soon as you can find a Cause Number for your case. It is really a Motion to Dismiss but in an another form. You do not want to plea at an arraignment when you do not know the nature and cause of the accusation. The information filed by the State is suppose to give you that information. That is why the prosecution seldom file one. Just another document to help on your appeal.

Do not have a page number on the ORDER – you may need to cut and paste to a new document.

Original is filed with the court clerk, copy served on the prosecutor, a copy for you.

Line 1: Where you put the cause numbers of the case.

Line 2: Put either 'Municipal', 'Justice of the Peace' or County.

Line 3: Put either 'In the City of (whatever City)', "Precinct (whatever number)" or "(whatever county Court it is – like – At Law #11)

Line 4: Put your name in Upper and Lower Caps.

Line 5: Put whatever county the court is in – like – "Galveston".

Line 6: Put your name in Upper and Lower Caps.

Line 7: Put the date you got your ticket.

Line 8: Put the name of the police officer that gave you the ticket.

Line 9: Put in the name of the corporation that employs the police office that gave you the ticket.

Line 10: Put in your name.

Line 11: Put the date you appeared.

Line 12: Put the date you got your ticket.

Line 13: Put the date of the day before your promise to appear.

Line 14: Put your Signature on the line and print you name below the line.

Line 15: Put the numbered day of the month you serve the prosecutor of the document.

Line 16: Put the month you serve the prosecutor of the document.

Line 17: Put the year you serve the prosecutor of the document.

Line 18: Put the Court assigned to the case

Line 19: Put the address where the prosecutor is located.

Line 20: Put the city, state and zipcode where the prosecutor is located.

Line 21: Sign Your name and Print your Name below the line.

Next Document - ORDER

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Line 6: Leave the rest of the page to be filled out by the judge.

No Page number on bottom of ORDER

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No Page number on bottom of ORDER

Make sure that there is no Page number on the ORDERS. You may need to cut and paste to a new document. Or scratch it out.

Don't file the instruction Sheet