

Avni v. State

Decided Dec 6, 2016

NO. 14-16-00446-CRNO. 14-16-00447-CR

12-06-2016

DOV K. AVNI, Appellant v. THE STATE OF TEXAS, Appellee

PER CURIAM

**On Appeal from the County Criminal Court at Law No. 12 Harris County, Texas
Trial Court Cause Nos. 5650 & 5649**

MEMORANDUM OPINION

These appeals lie from appellant's municipal court convictions for failure to comply with an order issued by the building official. Appellant entered pleas of not guilty to each offense, waived his right to a jury trial, and submitted to a consolidated bench trial on both offenses. Appellant was found guilty and assessed fines of \$1,000.00 in each offense. Appellant appealed his convictions to the County Criminal Court at Law No. 12.

- 2 Appellant filed motions for new trial in the *2 county court, but failed to file briefs on appeal. The county court reviewed appellant's convictions on the record and affirmed. Appellant appealed the county court's decision to this court. *See* Tex. Gov't Code Ann. § 30.00027 (West Supp. 2016).

In a municipal appeal filed in the court of appeals, the record and briefs on appeal in the county court constitute the record and briefs on appeal to the court of appeals. Tex. Gov't Code Ann. § 30.00027(b)(1). Contained within the record filed in this court is a reporter's record from appellant's municipal court bench trial. The reporter's record reveals the following events.

At trial in the municipal court, Jerry Howell, a City of Houston building inspector, testified that he was dispatched to an apartment complex due to a complaint from one of the occupants that there was no electrical service in the apartment unit. When Howell arrived he observed two buildings, but did not see a certificate of occupancy posted in a conspicuous place on the premises of either building. Appellant admitted to Howell that he owned the property. The City notified appellant that he was required to obtain a certificate of occupancy within 10 days of the notice. Upon learning that a certificate had not been obtained, Howell issued a citation for failure to comply with notice of a violation. In 2010, appellant had been ordered to obtain an electrical permit, but none was obtained.

Despite admitting ownership, appellant argued that the City failed to "tie [him] down to the properties." Appellant attempted to introduce into evidence prior surveys of the property and the City of Houston charter. The trial court excluded the evidence as irrelevant.

At the conclusion of the bench trial, the trial court found appellant guilty of failure to obtain an electrical permit on a notice posted September 16, 2010, and failure to post in a conspicuous place a certificate of occupancy for a residential *3 building. The trial court assessed a fine of \$1,000.00 in each case.

Appellant filed identical motions for new trial in each case setting out at least eighteen points of error.¹ Attached to his motions for new trial were several pages of exhibits pertaining primarily to civil litigation that purports to relate to the cited property. Appellant subsequently filed notices of appeal to the county court.

¹ The county court noted that appellant's points in his motion for new trial were, "for the most part, either incomprehensible or fail to state a legally recognizable basis for reversal. For instance, in one point he urges: 'INTRODUCTION AND LIST OF RELATED CIVIL PROCEEDINGS JUSTIFYING REVERSAL AND PRE-TRIAL DISCOVERY.'" -----

Appellant did not file briefs in the county court as required by section 30.00021 of the Texas Government Code. The county court determined that section 30.0014(b) of the Government Code, providing for an appeal to the county court, does not dispense with the need for an appellant to prepare and file a formal appellate brief in the county criminal court. Rather than dismiss the appeals for want of prosecution, the county court followed the procedure utilized in the courts of appeals, and reviewed the record for fundamental error in the interest of justice. *See Burton v. State*, 267 S.W.3d 101, 103 (Tex. App.—Corpus Christi 2008, no pet.); *Scott v. State*, 167 S.W.3d 62, 66 (Tex. App.—Waco 2005, pet. ref'd).

The county court reviewed the record for fundamental error, taking into account the following potential errors identified in *Scott*, 167 S.W.3d at 66:

- absence of jurisdiction over the person of the defendant;
- absence of subject-matter jurisdiction;
- prosecution under an ex post facto law;
- denial of the right to counsel;
- denial of the right to a jury trial;
- denial of 10 days' preparation before trial for appointed counsel;

4 *4

- holding trials at a location other than the county seat;
- comments by a trial judge that taint the presumption of innocence; and
- jury charge errors resulting in egregious harm.

In reviewing the record, the county court determined:

A criminal prosecution in municipal court is initiated by the filing of a complaint. Tex. Code Crim. Proc. Ann. art. 45.018 (West 2006). The complaints filed against Appellant tracked the elements of the offenses of failure to post a certificate of occupancy and failure to comply with an order issued by the Building Official. Houston, Tex., Building Code §§ 110.5, 113.4, 114.2. The complaints were sufficient to vest the municipal court with jurisdiction over Appellant. *Bird v. State*, 927 S.W.2d 136, 141 (Tex. App.—Houston [1st Dist.] 1996, no pet.). The criminal cases arise out of municipal ordinances which govern fire safety and public health, and were punishable by a fine not to exceed \$2,000. Houston, Tex., Building Code § 113.1. Consequently, the municipal court had subject matter jurisdiction. Tex. Code Crim. Proc. Ann. art. 4.14(a)(1), 4.14(a)(2)(A) (West Supp. 2015). The record shows Appellant was warned in writing of his right to counsel, and chose to proceed pro se. The record also shows that Appellant waived his right to trial by jury both orally and in writing. Appellant did not ask for appointed counsel, or more time to prepare for trial. None of the other matters listed in *Scott* are supported by the record.

The Government Code requires that the briefs used in the county criminal court shall be the briefs used in this court. *See* Tex. Gov't Code Ann. § 30.00027(b). The court of appeals will not consider briefs in a municipal appeal other than those filed in the county court. *See Brooks v. State*, 226 S.W.3d 607, 609 n. 3 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (court would not consider briefs filed in appellate court because the briefs in the county criminal court constitute the briefs in the court of appeals); *see also Montpas v. State*, Nos. 05-99-00463-CR, 05-99-00464-CR, 05-99-00465-CR; 2000 WL 140545 (Tex. App.—*5 Dallas Feb. 8, 2000, no pet.) (not designated for publication) (striking briefs filed in court of appeals in municipal appeal).

On the basis of the trial court's findings, this court has considered these appeals without briefs. *See Lott v. State*, 874 S.W.2d 687, 688 (Tex. Crim. App. 1994) (affirming conviction on record alone where appellant failed to file a pro se brief after being properly admonished); *Coleman v. State*, 774 S.W.2d 736, 738-39 (Tex. App.—Houston [14th Dist.] 1989, no pet.) (holding that appeal may be considered without briefs "as justice may require" when a pro se appellant has not complied with the rules of appellate procedure). We find no fundamental error.

Accordingly, the judgments of the county criminal court are affirmed.

PER CURIAM Panel consists of Justices Boyce, Busby, and Wise.

Do Not Publish — Tex. R. App. P. 47.2(b).