

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Mark Steven Virovatz v. the State of Texas

Virovatz · No. 01-24-00334-CR · Decided February 12, 2026

SUMMARY

The Texas Court of Appeals for the First District affirmed the conviction of Mark Steven Virovatz for misdemeanor driving while intoxicated and upheld the mandatory \$3,000 fine imposed under Texas Transportation Code section 709.001. The court held that the statute does not violate separation of powers and is not unconstitutionally vague regarding the timing of payment, noting that Texas law permits courts to order installment payments.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Amparo “Amy” Guerra; Caughey; Dokupil
JURISDICTION	Court of Appeals for the First District of Texas
DECIDED	February 12, 2026
DOCKET	01-24-00334-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction for class B misdemeanor driving while intoxicated after a plea of nolo contendere. The appellant challenged the constitutionality of a mandatory \$3,000 fine under Texas Transportation Code section 709.001.
STANDARD OF REVIEW	The constitutionality of a criminal statute is reviewed de novo. The challenger bears the burden of establishing unconstitutionality, and the court presumes that the statute is valid. A facial challenge requires proof that the statute is unconstitutional in all possible circumstances; a non-First-Amendment vagueness challenge is considered as applied to the defendant.
PRECEDENTIAL VALUE	Published and designated for publication under Texas Rule of Appellate Procedure 47.2(b).
PARTIES	Mark Steven Virovatz v. The State of Texas

TOPICS

separation of powers

void for vagueness

constitutional law

appellate procedure

statutory interpretation

PRACTICE AREAS

Texas criminal law

constitutional criminal procedure

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether Texas Transportation Code section 709.001's mandatory \$3,000 fine violates the separation-of-powers clause of the Texas Constitution by limiting judicial sentencing discretion and prosecutorial plea-bargaining discretion.
2. Whether section 709.001 is unconstitutionally vague because it does not specify when the mandatory fine must be paid or when the statute's 36-month period begins.

HOLDINGS

1. Section 709.001 does not violate separation of powers because the Legislature has exclusive authority to define crimes and prescribe criminal penalties, including mandatory fines, and prescribing the fine does not assume or unduly interfere with a power assigned to the judiciary.
2. Section 709.001 is not unconstitutionally vague as applied to Virovatz because its 36-month language establishes a tiered penalty based on prior convictions rather than a deadline for paying the fine, and Texas Code of Criminal Procedure article 42.15 gives trial courts discretion to set the time and manner of payment.
3. The appeal could proceed because, after remand, the trial court orally and in written findings granted Virovatz permission to appeal, satisfying the appellate record's certification requirement.

KEY QUOTATIONS

“We hold that section 709.001 does not violate the separation-of-powers clause of the Texas Constitution.”
(14)

“Accordingly, section 709.001 is not impermissibly vague.” (17)

“We affirm the judgment of the trial court.” (18)

FACTUAL BACKGROUND

Virovatz was charged with operating a motor vehicle in a public place while intoxicated. He voluntarily pleaded nolo contendere to the class B misdemeanor and received the State's recommended three-day jail sentence. Because Texas Transportation Code section 709.001 requires an additional \$3,000 fine for a first qualifying intoxication-related conviction within a 36-month period, the trial court imposed that fine and ordered payment in monthly installments. Virovatz objected that the mandatory fine violated separation of powers and was unconstitutionally vague.

PROCEDURAL HISTORY

Virovatz pleaded nolo contendere in the County Court at Law No. 1 of Galveston County in exchange for the State's recommended sentence of three days in county jail with credit for time served. The trial court convicted him, imposed the jail sentence, suspended his driver's license, and imposed the mandatory \$3,000 fine. After the State moved to dismiss because the original certification indicated that Virovatz lacked a right to appeal, the court of appeals abated and remanded for clarification. The trial court subsequently granted permission to appeal, and the appellate court reinstated the appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Armstrong v. State*, 340 S.W.3d 759, 767 (Tex. Crim. App. 2011)
- *Taylor v. State*, 131 S.W.3d 497, 500 (Tex. Crim. App. 2004)
- *Richardson v. State*, No. 02-15-00271-CR, 2016 WL 6900901, at *7 (Tex. App.—Fort Worth Nov. 23, 2016, pet. ref'd) (mem. op., not designated for publication)
- *Grice v. State*, 162 S.W.3d 641, 645 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd)
- *Ex parte Lo*, 424 S.W.3d 10, 14, 29 (Tex. Crim. App. 2013)
- *Peraza v. State*, 467 S.W.3d 508, 514 (Tex. Crim. App. 2015)
- *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002)
- *Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978)
- *Estes v. State*, 546 S.W.3d 691, 697-98 (Tex. Crim. App. 2018)
- *Ely v. State*, 582 S.W.2d 416, 419 (Tex. Crim. App. [Panel Op.])
- *Allen v. State*, 570 S.W.3d 795, 802 (Tex. App.—Houston [1st Dist.] 2018), aff'd, 614 S.W.3d 736 (Tex. Crim. App. 2019)
- *Maloney v. State*, 294 S.W.3d 613, 626 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd)
- *State v. Rousseau*, 396 S.W.3d 550, 557 (Tex. Crim. App. 2013)
- *Santikos v. State*, 836 S.W.2d 631, 633 (Tex. Crim. App. 1992)
- *Kelley v. State*, 676 S.W.2d 104, 107 (Tex. Crim. App. 1984)
- *Mizell v. State*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003)
- *Ibarra v. State*, 177 S.W.3d 282, 284 (Tex. App.—Houston [1st Dist.] 2005, no pet.)
- *Matchett v. State*, 941 S.W.2d 922, 932 (Tex. Crim. App. 1996)
- *Morano v. State*, 572 S.W.2d 550, 551 (Tex. Crim. App. [Panel Op.])
- *Wilson v. State*, 348 S.W.3d 32, 43-44 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd), vacated on other grounds, 568 U.S. 802 (2012)
- *State ex rel. Smith v. Blackwell*, 500 S.W.2d 97, 104 (Tex. Crim. App. 1973)
- *Moland v. State*, No. 01-10-00869-CR, 2012 WL 403885, at *9 (Tex. App.—Houston [1st Dist.] Feb. 9, 2012, pet. ref'd) (mem. op., not designated for publication)
- *Ex parte Barton*, 662 S.W.3d 876, 880 (Tex. Crim. App. 2022)

- *Wagner v. State*, 539 S.W.3d 298, 314 (Tex. Crim. App. 2018)
- *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982)
- *State v. River Forest Development Co.*, 315 S.W.3d 128, 131 (Tex. App.—Houston [1st Dist.] 2010, no pet.)
- *State v. Gambling Device*, 859 S.W.2d 519, 522 (Tex. App.—Houston [1st Dist.] 1993, writ denied)
- *Floyd v. State*, 575 S.W.2d 21, 23 (Tex. Crim. App. [Panel Op.]
- *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)
- *McMillian v. State*, 388 S.W.3d 866, 871-72 (Tex. App.—Houston [14th Dist.] 2012, no pet.)
- *Gilbert v. State*, No. 13-24-00530-CR, 2025 WL 2355179, at *3 (Tex. App.—Corpus Christi-Edinburg Aug. 14, 2025, no pet.) (mem. op., not designated for publication)

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