



One Fabulous Skyline

TIBA TEXAS INDEPENDENT BAR ASSOCIATION

1801 East 51st Street, Suite 365-474
Austin, Texas 78723
Tel. 512-354-7823
Fax: 512-532-6282


Web Site: www.texindbar.org



 Vol. 27, No. 35 --- September 16, 2019

Case Name: *Ex parte Ruben Rios*

- **NATURE OF CASE:** Expunction Proceedings
 - **COUNTY:** Bexar
 - **C/A CASE No.** 04-19-00149-CV
 - **DATE OF OPINION:** September 11, 2019
 - **DISPOSITION:** Trial Court Reversed
 - **TRIAL COURT:** 437th D/C; Hon. Lori Valenzuela
 - **LAWYERS:** [Angela Moore](#) (Defense); [Amanda Morrison](#) & [Jeanine Hudson](#) (DPS)
- OPINION:** [Justice Rios](#)

 **602 Expunction Proceedings / Entitlement to Relief:** In March of 2014, Appellant was placed on probation for a May 2012 Driving While Intoxicated. In June of 2017, the term of probation was revoked and Appellant was sentenced to 10 years in prison. Two days later, Appellant was acquitted of a September 2013 Driving While Intoxicated. Three weeks later, he filed a petition seeking expunction of the records pertaining to the 2013 arrest. One week later, the trial court signed an "Order of Expunction Following Acquittal," ordering the expunction of all records and files related to the arrest and/or alleged 2013 offense. A month later, the trial court granted DPS's motion for new trial and set aside its prior expunction. Appellant's attempted appeal of the trial court's denial of his expunction petition was dismissed for lack of jurisdiction. Appellant then requested the trial court set a hearing on Appellants's motion for rehearing on the Department's motion for new trial. On March 4, 2019, the trial court denied the petition for expunction. On appeal, Appellant contends the trial court erred by denying his petition for expunction because the offense for which he was acquitted did not arise out of the same criminal episode as the offense for which he was convicted.

Holding: Article 55.01(a)(1)(A), C.Cr.P., permits a person to have all records and files relating to his arrest expunged if the person is tried and acquitted of the offense. *** Article 55.01(c), however, contains an exception to the foregoing provision, which prohibits a trial court from ordering an expunction of records, even if the person was acquitted, if the offense arose out of a criminal episode, as defined by section 3.01 of the Texas Penal Code, and the person was

convicted of at least one other offense occurring during the criminal episode. *** Because article 55.01(c) incorporates the Texas Penal Code's definition of "criminal episode," we must construe both article 55.01(c) of the Texas Code of Criminal Procedure and section 3.01 of the Texas Penal Code in determining whether the trial court erred by denying the expunction petition. *** Section 3.01 of the Texas Penal Code defines "criminal episode" as "the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances: (1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or (2) the offenses are the repeated commission of the same or similar offenses." *** Here, applying the plain language of section 3.01(2), the 2012 driving while intoxicated offense is the same offense as the 2013 driving while intoxicated offense. Accordingly, because the two offenses are the repeated commission of the same offense, the trial court did not err by denying [Appellant]'s expunction petition as [Appellant] was convicted of an offense that occurred during the same criminal episode as the offense for which he was acquitted.

([David A. Schulman](#)) So, of you're charged with an offense which is the same offense as one for which you were convicted 40 years earlier, you're not entitled to an expunction of the newer offense? I think this interpretation is both a little too loose and potentially dangerous.