



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-1047-18

THE STATE OF TEXAS

v.

JOSE MUSA-VALLE, Appellee

**ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH COURT OF APPEALS
BEXAR COUNTY**

Per curiam.

O P I N I O N

Appellee was charged with the Class A misdemeanor offense of recklessly discharging a firearm in a municipality with a population of 100,000 or more people. TEX. PENAL CODE § 42.12. He filed a pretrial motion to set aside the information, arguing that the State could not prosecute him under this provision in the Penal Code because a local ordinance barring essentially the same conduct made this a Class C misdemeanor, and he was thus entitled to be charged under the less severe provision. *See* San Antonio Municipal Ordinance § 21-152. The trial court granted Appellee's motion, but the court of appeals

reversed, concluding that the State was entitled to enforce the Penal Code provision notwithstanding the existence of the local ordinance. *State v. Musa-Valle*, No. 04-17-00278-CR, 2018 WL 3264831, at *4 (Tex. App.—San Antonio July 5, 2018) (mem. op., not designated for publication). This Court initially granted Appellee’s petition for discretionary review to examine this holding by the court of appeals. Having reviewed the parties’ briefs, and having heard oral argument, we now conclude that our decision to grant review was improvident. We therefore dismiss Appellee’s petition for discretionary review as improvidently granted.

Delivered: June 19, 2019

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