

NO. 07-11-0430-CV
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
MARCH 21, 2012

Ex parte EARL PRESTON CHEEKS

FROM THE 99TH DISTRICT COURT OF LUBBOCK COUNTY;
NO. 2011-556,765; HON. WILLIAM SOWDER, PRESIDING

Memorandum Opinion

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

The Texas Department of Public Safety (the Department) appeals from an order of expunction granted in favor of Earl Preston Cheeks (Cheeks). It contends that there is no evidence to support the order because Cheeks served “probation” for the 1961 offense and reversal is required because the evidentiary hearing upon the motion to expunge was not transcribed. Since Cheeks concedes the accuracy of the second issue and need for a reversal and remand, we reverse the order granting expunction and remand the cause to the trial court.¹

Brian Quinn
Chief Justice

¹We make no comment upon the first issue, that is, whether expunction could be granted, because the applicant had received probation. Again, there is no record of the evidence presented to the trial court, and the Department’s effort to fill the void by alluding to its answer to the motion and the attachments thereto are ineffective. Pleadings are not evidence. *In re Marriage of M.C.*, 65 S.W.3d 188, 193 (Tex. App.—Amarillo 2001, no pet.).