

Ex parte Avila

An attorney failed to appear in court on the day of trial. The trial court entered an order for contempt and an arrest warrant was issued. The attorney appeared in court but, instead of being asked to show cause why he should not be held in contempt, the attorney was only given an opportunity to make a statement before imposition of sentence. The attorney objected to the proceeding, but the judge overruled his objections and sentenced him to jail and a fine. The attorney appealed the contempt order, arguing that he was denied due process.

The Court of Criminal Appeals determined that if the attorney had committed contempt, then only constructive contempt could have been committed, and therefore the attorney was entitled to notice and a hearing. The attorney was not provided advance notice of the charges nor an opportunity to present a defense. The contempt order was therefore void. The court stated that when an officer of the court is cited for contempt, that person has the right to have the charges heard in a trial before a different judge than the one entering the contempt complaint.