

IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

JEFFREY WIN CHRISTENSEN, Appellant

vs.

No. 88-MCA-1882

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction in Municipal Court for causing an accident.

Appellant is a juvenile, and appeals his decision on the basis that he was not allowed to take a driving safety course. In his pro se brief, he contends that the officer advised him that he would be allowed to take a driving safety course when he was cited, but evidently the judge failed to advise him of that right at trial. He did not learn of the procedures applicable to making a timely request to take the driving safety course until after his case was heard and he was found guilty. This court has previously held that a failure to timely request a driving safety course waives such right. Ray v. State, 86-MCA-1661 (Mun. Ct. App.), Gardon v. State, 83-MCA-791 (Mun. Ct. App.), Starr v. State, 85-MCA-1202 (Mun. Ct. App.), Allen v. State, 85-MCA-1841 (Mun. Ct. App.). However, significant amendments to Article 6701d V.A.T.C.S, Section 143A became effective September 1, 1987. Before such amendments, it was

incumbent on the defendant to timely request taking a driving safety course, but now such amendments impose an obligation on the court to advise a person charged with a misdemeanor committed while operating a motor vehicle of his right to successfully complete a driving safety course in lieu of proceeding to trial if he is eligible.

It is now incumbent on the Trial Judge to properly advise persons of their right to take the driving safety course, and if done, it is then necessary for the defendant to timely request such course in lieu of trial proceedings.

The City contends that the amendments were not effective until September 1, 1987, and that the citation was issued prior to that time. However, the record reflects that the trial of this case was held after the effective date of those amendments, and because of the new obligations imposed on the court, this court holds that the date of trial controls the disposition of this case.

Although not involved in the present case, other significant changes in the law have been effected by the amendments to Section 143A of the above Article which the Trial Court should be aware of for future reference in applying this Section. Besides imposing an obligation on the court to advise the defendant of his right to successfully complete a driving safety course when charged with a misdemeanor offense under Article 6701d, other than a violation of Section 51, additional provisions involve the following:

1. The court retains discretion to allow the taking of a driving safety course in any case covered by the act;

2. There is a mandatory obligation to defer proceedings and allow a person to take a driving safety course if;

A. On or before the answer date, the person enters a plea in person or in writing of no contest or guilty or guilty and presents to the court an oral request or a written request in person or by mail, to take such a course;

B. Has a valid Texas driver's license or permit;

C. Has not successfully completed a driving safety course within the two years immediately preceding the date of the alleged offense;

D. The person files an affidavit with the court that he is not presently taking such a course;

E. That the offense charged is not one involving speeding 25 mph or more over the posted speed limit at the place where the alleged offense occurred.

Further, the court may dismiss only one charge for completion of each course. Such change overrules this court's rulings in Kong v. State, 83-MCA-1148 (Mun. Ct. App.) and Starr v. State, 85-MCA-1202 (Mun. Ct. App.), both of which held that multiple offenses arising out of the same episode could be discharged by taking a driving safety course.

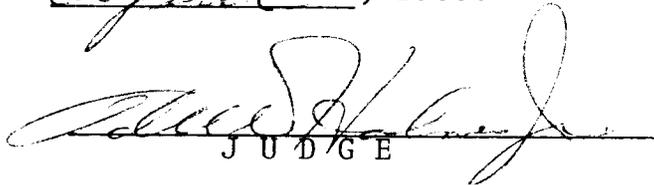
course.

Also, each traffic citation or promise to appear is required to notify the person of their rights to have a charged dismissed by taking a driving safety course, and the failure to have such language on the ticket, preserves the the defendant's right to make such request until informed of his right in this respect or until the case is otherwise disposed of.

Although the amended statute is ambiguous in certain other aspects, which this court need not address at this time, Trial Judges would be well advised to insure their compliance with the act by advising persons appearing in their courts of their right to successfully complete a driving safety course in lieu of trial.

In the instant case, the record before this court is unclear whether such requirments were met in this case, and therefore, in the interest of justice, the case is remanded in trial court for further proceedings consistent with this opinion.

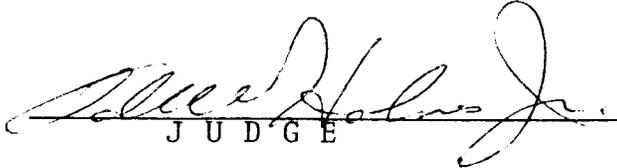
Signed this 15 day of April, 1988.


J U D G E

J U D G M E N T

The Judgment of The Trial Court is hereby reversed and the case is remanded for new trial.

Signed this 15 day of April, 1987.


J U D G E