

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

NICOLAS A. BUSTILLOS

Appellant,  
v.

STATE OF TEXAS

Appellee.

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No. 10-MCA-3390  
Ticket #: 18233458.2

**OPINION**

Appellant appeals his conviction in Municipal Court for not wearing protective headgear while operating a motorcycle. A fine of \$50.00 was assessed.

Appellant was represented by an Attorney, and the judgment reflects that a plea of nolo contendere was entered by his Attorney before the Trial Court. The Record before this Court reflects a plea of nolo contendere which is the equivalent of a "guilty" plea was entered.

Additionally, Appellant admitted, that although he owns two helmets, he was not wearing either one at the time he was cited. However, pursuant to Section 661.003 (c), Tex. Trans. Code, it is an "exception" to require a person to wear a motorcycle helmet if he has successfully completed a Motorcycle Operator Training and Safety Course or was covered by a health insurance plan providing the person with at least \$10,000.00 in medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle, and was at least 21 years old at the time.

Appellant has not shown to this Court, and evidently not to the Trial Court through his Attorney, that he successfully completed a Motorcycle Operator Training and Safety Course even though he contends he, in fact, had done so, nor has he provided this

Court proof of having health insurance providing the person with at least \$10,000.00 in medical benefit protection. However, it was not his burden to do so, but the State's. (See Section 661.003 (c), Tex. Trans. Code.)

The procedural and evidentiary consequences of identifying an "exception to the application of an offense" requires the Prosecuting Attorney to negate the existence of the exception in the accusation charging commission of the offense and prove beyond a reasonable doubt that the Defendant or Defendant's conduct does not fall within the exception. Clearly, the requirements of Section 2.02 of the Texas Penal Code must be met, but the absence of a Record before this Court, does not allow the Court to determine if the State met its burden of proof, even though it did negate the exception in the complaint. This Court, therefore, must assume the Trial Judge heard sufficient evidence to support its decision, particularly in view of the plea entered by Appellant herein by his Attorney.

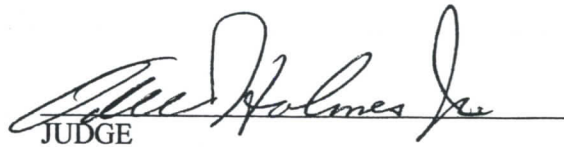
SIGNED this 17<sup>th</sup> day of June, 2010.

  
JUDGE

**JUDGMENT**

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case be affirmed.

SIGNED this 17<sup>th</sup> day of June, 2010.

  
JUDGE