

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

TOD OSBORNE, )  
 )  
 Appellant, )  
 )  
 vs. ) No. 98-MCA-2462  
 )  
 STATE OF TEXAS, )  
 )  
 Appellee. )

**OPINION**

Appellant appeals his conviction in Municipal Court for changing lanes unsafely.

Appellant's brief indicated that he elected to take a Driving Safety Course in lieu of prosecution after the Judge advised him of that opportunity. The Court's docket sheet supports that contention indicating that he was referred to a Driving Safety Course, but does not reflect that any fine was assessed at time of trial nor that a plea of guilty or nolo contendere was entered. Pursuant to the provisions of Section 543.103 of the Texas Transportation Code, the Court is required to defer proceedings and allow a person ninety days to take a Driving Safety Course if the following requirements are met:

1. The person enters a plea in person or in writing of no contest or guilty before the answer date on the Notice to Appear and presents in person or by certified mail an Oral or written request to take the course.
2. The Court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for ninety days.
3. The person has a Texas driver's license or permit.
4. The person has not successfully completed a Driving Safety Course within one

year before the date of the alleged violation.

5. The person files an Affidavit with the Court stating that the person is not presently taking a Driving Safety Course nor has he completed a course under this Section which is not shown on the person's driving record.
6. The person has not been charged with exceeding the posted speed limit by 25 miles per hour or more.
7. The person provides evidence of financial responsibility.

If a person complies with all of the above requirements, the Court is required to defer prosecution and give the person an opportunity to take the Driving Safety Course.

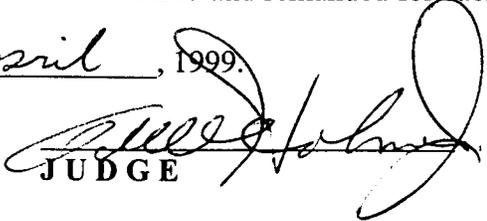
Under Permissive Deferral pursuant to Section 543.104 of the Texas Transportation Code, the Court is authorized to defer proceedings and allow a person to take a Driving Safety Course without meeting the above requirements. The record before this Court does not indicate whether there was mandatory or permissive deferral in this particular case.

Appellant maintains his innocence of this charge and indicates that the Court may have been inclined to accept his version of the facts. However, it is not clear, since no Statement of Facts has been provided to this Court, whether the evidence was actually heard by the Court in support of appellant's contention.

Therefore, in view of the record before this Court, this Court has chosen to remand this case for the sole purpose of allowing appellant the opportunity to attend the Driving Safety Course in lieu of prosecution.

Therefore, the judgment of Trial Court is reversed and remanded for such purposes only.

SIGNED this 14 day of April, 1999.

  
JUDGE