

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

**MIRIAM DENISE CRUZ**

**Appellant,**

**v.**

**STATE OF TEXAS**

**Appellee.**

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**No. 13-MCA-3684  
Ticket No. T0370359**

**OPINION**

Appellant appeals her conviction in Municipal Court for a speeding violation. A fine of \$130.00 was assessed.

Initially, Appellant elected to take a Defensive Driving Course, which if it had been successfully completed within 90 days, would have entitled her to a dismissal of the charge. See Article 45.0511, Tex. Crim. Proc.

Pursuant to Section (i) of Article 45.0511, cited above, if the Defendant fails to present to the Court within the 90 days a Uniform Certificate of Completion of the course, then the Court shall: (1) notify the Defendant in writing, mailed to the address on file with the Court or appearing on the Notice to Appear of that failure; and (2) require the Defendant to appear at the time and place stated in the Notice to Show Cause why the evidence was not timely submitted to the Court.

If the Defendant fails to appear at the time and place stated in the notice under Subsection (i), or does not show good cause for the Defendant's failure to complete the course, the Court shall enter an adjudication of guilt and impose sentence.

In this case, Appellant was represented before the Trial Court by an attorney. This Court has reviewed numerous E-mail exchanges between Appellant and her attorney, and it appears

that Appellant has had a difficult time in communicating with that attorney or his office. But evidently, an associate of the named attorney was handling Appellant's case, but has since left that law office so Appellant and this Court have been unable to determine what the other attorney did in respect to Appellant's case. Suffice it to say, however, the record before this Court reflects that there was a Show Cause Hearing held on April 12, 2013 and reflects that neither Appellant nor her attorney appeared at that hearing. The judgment of the Court entered at the Show Cause Hearing found the Defendant failed to appear and ordered an arrest commitment to be issued. The Court did not enter a judgment to recover the fine and court costs assessed.

This Court, requested the clerk to supplement the clerk's record to provide proof that the Defendant or her attorney was notified in writing of her failure to submit proof that she had completed the driving safety course and requiring her to appear in accordance with the terms of the Show Cause Order. The clerk has provided this Court with a document that reflects that on April 26, 2013 a document called "Defendant Hearing Notice" was printed and mailed to Appellant and her attorney. Neither of the notices were returned to the Clerk as being undeliverable. The clerk has also advised this Court that the notices printed represent the Clerk's code that the notices were mailed as required by law. If the notices had been returned undelivered, there would be a memo to that effect, and there is no such memo.

Appellant contends that she was never informed by her attorney of even being granted the right to take a driving safety course nor did she receive any notices from the clerk as to the deadlines or the hearing on the show cause matter because she was out of country most of the relevant times when these events occurred. She further contends that it was not until August 19, 2013 that she was advised by the clerk's office that she had been granted a driving safety course

in lieu of prosecution, and she immediately took action to file the present appeal, took the driving course online, and submitted the Uniform Certificate of Completion to the Trial Court and to this Court (see attached).

On appeal, Appellant's primary contention is that she was denied effective assistance of counsel, and although she never received the Notice of the Show Cause Hearing, when she did learn of her obligation to complete the driving safety course she did so promptly and timely. However, when Appellant failed to appear at the Show Cause Hearing, the Court did not enter an adjudication of guilt and impose sentence, but rather ordered an arrest commitment be issued. This Court has no found authority for the Trial Court to issue an arrest commitment for failure to appear at the Show Cause Hearing. Subsequently, a warrant was issued and her attorney, without her approval or authorization, agreed to a payment plan in order to get the warrant withdrawn.

Appellant raises a claim of ineffective assistance of counsel by alleging that her attorney failed to notify her of being granted the right to take a Driver's Safety Course, failed to notify her of the Show Cause Hearing, nor had the authority to enter into a payment plan to get the issued warrant recalled.

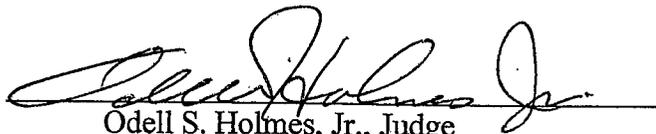
In assessing claims of ineffective assistance of counsel, the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) held that legal representation violates the Sixth Amendment if it falls "below an objective standard of reasonableness," as indicated by "prevailing professional norms," and the Defendant suffers prejudice as a result. The Court further held that this standard, provided sufficient guidance for resolving virtually all claims of ineffective assistance, even though their particular circumstances will differ. That standard has been adopted by Texas in *Hernandez v. State*, 726 SW2d 53 (Tex. Crim. App. -1986).

Judicial scrutiny of counsel's performance is highly differential and involves a strong presumption that counsel's conduct falls within a wide range of reasonable professional assistance. Generally, for an appellate court to find that counsel's performance was deficient, such deficiency must be affirmatively demonstrated by the trial record and the Defendant must produce evidence sufficient to overcome the presumption that the challenged action of the attorney was sound trial strategy. It is only when there appears to be no plausible basis for counsel's actions that the Court will inquire into counsel's trial techniques. While a single error will not typically result in a finding of ineffective assistance of counsel, it is possible that a single egregious error of omission or commission by Appellant's counsel constitutes ineffective assistance. *Villa v. State*, No. PD 0792-1 (Tex.Crim. App. 2013).

That being said, clearly an attorney who represents someone before the Trial Court on a traffic citation, appears on their behalf, obtains a referral to take a driving safety course in lieu of prosecution for his client, has a duty to inform the client of such result and has a continuing responsibility to appear and represent that client at any subsequent Show Cause Hearings. Having failed to do so this Court finds the Appellant received ineffective assistance of counsel and that she was prejudiced by her attorney's failure to adequately represent her in these proceedings.

Therefore, for the reasons stated above, this Court reverses this matter and remands it to the Trial Court for further consideration of the issues presented, as well as whether the Trial Court will be willing to belatedly accept Appellant's satisfaction and completion of the driving safety course in lieu of prosecution and dismiss the case

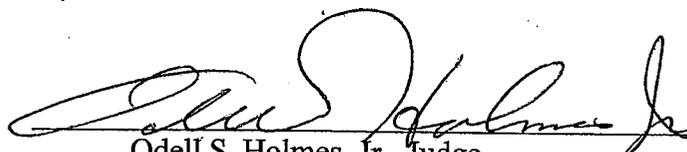
SIGNED this 22<sup>nd</sup> day of January, 2014.

  
Odell S. Holmes, Jr., Judge  
El Paso Municipal Court of Appeal

**JUDGEMENT**

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 is reversed and remanded.

SIGNED this 22<sup>nd</sup> day of January, 2014.

  
Odell S. Holmes, Jr., Judge  
El Paso Municipal Court of Appeals

ORIGINAL CERTIFICATE

UNLAWFUL IF REPRODUCED OR ALTERED

Certificate Number: CP090-18446324

School-Classroom: C1995-001

Instructor: Wittingham, Glenn

Completion Date: 08/21/2013

Issue Date: 08/22/2013

Student's DL Number: 27450351

Student's DOB: 05/21/1990

Student's Phone No: 915-860-8256

Reason for Attendance: Traffic Citation

Court: El Paso Municipal Ct.

Student's Name and Mailing Address:

Miriam D. Cruz  
11201 Cielo Azul  
El Paso, TX 79927



12926 Dairy Ashford Rd., Ste 150, Sugar Land, TX 77478  
1-800-558-9887

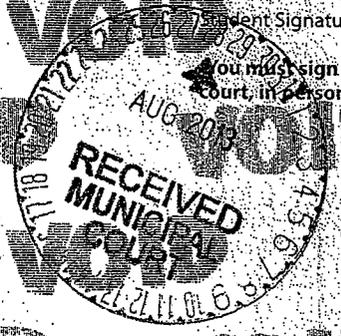
Caution: regarding verification of validity may contact Driver Training Associates at 1-800-558-9887.

STATE OF TEXAS DRIVING SAFETY COURSE UNIFORM CERTIFICATE OF COMPLETION

This certifies that the student named herein has successfully completed a six (6) hour driving safety course that is approved and regulated by the Texas Education Agency. You may contact the Driver Training Division with any complaints at 512-919-5313.

Under penalty of perjury, I certify that I have received six (6) hours of instruction.

Instructor Signature: *[Signature]*  
You must sign this document at the time you submit it to the Court, in person or by mail.



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