

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

ALI AFSHARNA

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 02-MCA-2761

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense. A fine of \$98.00 was assessed.

Appellant pled guilty but asked to take a driving safety course pursuant to Article 45.0511, Code of Crim. Proc.

Appellant appearance was before the Arraignment Court and not a regular Municipal Court Judge. Evidently, the Court determined that Appellant was not eligible to take the driving safety course because he had taken the course within twelve (12) months of preceding the date of the offense. Nothing in the record before this Court reflects the date of that offense, but Appellant contends that he took the course in Arizona and not in Texas.

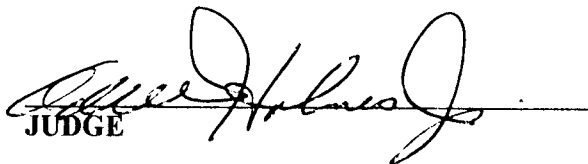
Regrettably, Article 45.0511 does not specifically address a person's eligibility to have a Texas traffic citation dismissed if he has taken an out of state course within twelve (12) months. However, the tenure of the statute seems to apply only to Texas residents, and it appears to this Court that having taken a driving safety course in some other state would not prevent a person from taking a driving safety course in Texas in lieu of prosecution even though he had taken a similar course within twelve (12) months in some other state.

Additionally, under Article 45.0511(d), a Court has the discretion to allow a person to take a driving safety course regardless of the requirements of subsection (c)(1).

Therefore, this Court has decided to reverse and remand this case to a regular Municipal Court to make the determination as to whether Appellant is eligible to take a driving safety course, or whether in it's sole discretion, he should be allowed to do so.

It is the opinion of this Court that the fact that a person has taken a driving safety course in a state other than Texas within twelve (12) months would not destroy his eligibility to do so in Texas.

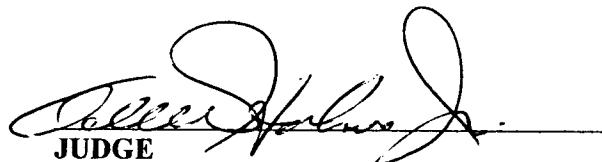
SIGNED this 16 day of July, 2002.


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 reversed and remanded to the Trial Court for re-trial.

SIGNED this 16 day of July, 2002.


JUDGE