

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

EDWARD J. SOLIS

Appellant,

v.

STATE OF TEXAS

Appellee.

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No. 10-MCA-3392
Ticket #: 18243130

OPINION

Appellant appeals his conviction in Municipal Court for a red light violation. A fine of \$100.00 was assessed.

Appellant contends that he retained an attorney but was not able to communicate with his attorney which he attributes to the fault of the attorney.

The Record before this Court reflects that Appellant's attorney entered a plea of "nolo contendere" in this case, but there is no Record of any hearing before the Trial Court which would support Appellant's claim of ineffectiveness of counsel. In a reply brief, the State correctly contends that if he was unable to communicate with his attorney, he should have terminated his relationship with that attorney or complain to the proper authorities with the Bar Association if he believed that his attorney failed to properly represent him.

In reviewing claims of ineffective assistance of counsel, the Court is guided by the analysis of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). No Motion for a new trial was filed, and the Record before this Court is silent as to the facts, circumstances, and rationale behind Appellant's Attorney's particular course of action. Therefore, Appellant has failed to overcome his burden to overcome the presumption that the challenged conduct can be considered sound trial strategy or within the parameters of the

authority granted to the Attorney by Appellant in handling his case. Morales v. State, No. 08-06-00067-CR (Tex. Civ. App.--El Paso--2009).

Next, Appellant contends that no Record of the proceedings was taken. Section 30.00130, Tex. Gov. Code does not require that a Record be taken unless the Defendant, the Prosecutor, or the Judge demands it. In this case, there is no evidence that Appellant nor his attorney requested that a Record be taken. Even if a Record had been requested, it would still be incumbent on Appellant to have secured a transcription of that Record and to file it in the papers before this Court. Additionally, although the failure to have a Record before this Court limits this Court's legal authority in reviewing Appellant's contentions concerning the sufficiency or admissibility of evidence as well as other matters, it does not insure that the result of that review would be any different.

Appellant then attacks the complaint for failing to specifically reference a statute or code which is a basis of the violation charged. No law, nor does Appellant cite this Court to any, requires that that be done. Additionally, Appellant contends that his true and correct name is Edward J. Solis and the citation was issued accordingly. However, the complaint charges a Joseph J. Solis with the offense. Although such discrepancy in the name was subject to objection, there was no pretrial motion to quash the complaint for such defect. A failure to object to a defect, error, or irregularity of form or substance in the complaint before the date on which the trial on the merits commences, waives such a defect. Article 45.019 (f) (Tex. Code Crim. Pro.).

Lastly, Appellant suggests that the State did not introduce evidence of cameras which Appellant alleges are installed at "nearly every intersection". There is nothing in the Record before the Court that suggests that this particular intersection is controlled by cameras, and if it

had been, Appellant's case would have been handled administratively as a civil matter rather than a judicial proceeding heard before the Municipal Court.

Having found no reversible error, the judgment of the Trial Court is affirmed.

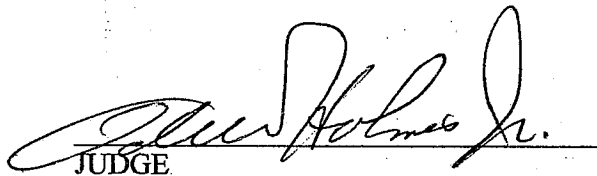
SIGNED this 26th day of August, 2010.


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 26th day of August, 2010.


JUDGE