

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

DAVID MENDEZ

Appellant,

v.

STATE OF TEXAS

Appellee.

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No. 11-MCA-3454

Ticket #: 18375497.1

OPINION

Appellant appeals his conviction in Municipal Court for a violation of Section 542.404, Tex. Trans. Code, for speeding in a construction zone when workers were present. Fines assessed for violation of that Section are doubled. Appellant was cited for going 61 miles per hour in a 35 mile per hour zone, and a fine of \$400.00 was assessed.

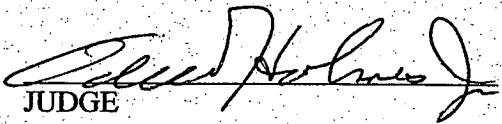
Appellant states that he was keeping pace with other traffic and that he did not believe he was posing any immediate danger to anybody. Traveling with the flow of traffic is not a defense if you are violating the Law in doing so. Further, in order to prove the instant offense, the State is not required to show that any of the workers present were in immediate danger, only that Appellant was exceeding the posted speed limit in a construction zone where workers were present. It is presumed that exceeding that posted speed limit does, in fact, pose a danger to those workers. The speed at which Appellant was allegedly traveling also suggests, to this Court, that he would have placed those workers in danger as a result of his actions.

Appellant also requests this Court to consider allowing him to take a Driving Safety Course. First of all, this Court has no authority to grant that relief for the first time on

appeal. Additionally, pursuant to Art. 45.0511, Tex. Code Crim. Pro., Appellant would have been ineligible to receive such relief from the Trial Court. Under that Article, among other things, Appellant must elect to take the Driving Safety Course, enter a plea of no contest or guilty, and not have exceeded the speed limit by 25 miles per hour. At a minimum, Appellant was traveling 25 miles per hour over the posted speed limit, and entered a plea of not guilty. Therefore, neither the Trial Court, and of course, this Court, could have granted him the relief requested because he was not eligible for it.

Therefore, the judgment of the Trial Court is affirmed.

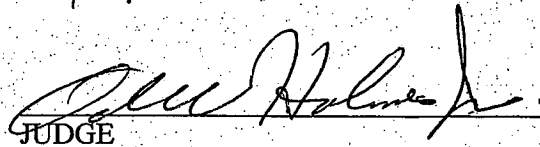
SIGNED this 5th day of May, 2011.


JUDGE

J U D G M E N T

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 5th day of May, 2011.


JUDGE