IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

SONG CHA KONG, Appellant

vs. NO. 83-MCA-1148

STATE OF TEXAS, Appellee

OPINION

The issue here presents a case of first impression for this Court. The question presented is whether a Defendant who has been issued two citations at approximately the same time and growing out of the same transaction, can request to be referred to a Defensive Driving Course pursuant to Article 6701D, Section 143A, V.A.T.C.S.

In the instant case, the Appellant was cited for speeding and a red light violation, timely requested Defensive Driving School as to both offenses, the Court denied the request on the red light violation, but granted it as to the speeding violation. Appellant was then convicted of the red light violation which resulted in the instant appeal.

Pursuant to Section 143A of 6701D, V.A.T.C.S., if a person is charged with a misdemeanor offense committed while operating a motor vehicle, the Court shall defer proceedings and allow the person 90 days to present written evidence that, subsequent to the alleged act, the person has successfully completed a Defensive Driver's Course approved by the Texas Department of Public Safety if:

A. Person presents the Court an oral request or written motion to take the course;

B. A person has a valid Texas Driver's License or permit; and

C. The person's driving record . . . does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense.

Under the above section, the Trial Court has no discretion in sending a person to the Defensive Driving Course, and it is mandatory. The language of the statute does not address multiple offenses, but it certainly appears that in situations in which multiple traffic citations are issued at or about the same time and arising out of the same transaction or series of events, that there is no prohibition to taking the Defensive Driving Course in lieu of convictions on those multiple offenses.

In view of the fact that a timely request for the course was requested by the Appellant, the Trial Court erred in denying the Appellant the opportunity to take and complete the course. Therefore, this case is remanded to the Trial Court in order to allow Appellant an opportunity to take the course, if Appellant has not already completed the course incident to the other citation which was issued. In such event, the satisfactory completion of that course would be equally applicable to this citation, and would require the Trial Court to dismiss both citations upon proof of such completion.

The judgment of the Trial Court is reversed and remanded with instructions to proceed in accordance herewith.

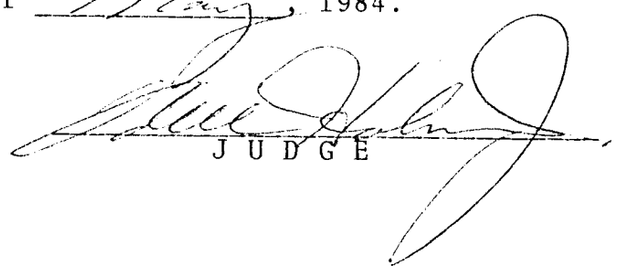
Signed this 14 day of May, 1984.

JUDGE

J U D G M E N T

The Judgment of the Trial Court is hereby reversed and remanded with instructions to proceed in accordance herewith.

Signed this 14 day of May, 1984.



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