The Insurance Service Organization End Run: is Deferred Disposition still a viable option?

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I suggest to you that it is not. For decades now we in the Traffic Ticket Defense field have had three viable options when dealing with Class C traffic tickets that cannot otherwise be readily dismissed with no re-file. They are Trial, Deferred Disposition, and Driving Safety Courses. I needn't belabor the difficulties associated with trial. That left, to my way of thinking, only Deferred Disposition (hereinafter "DD") as the only sensible way, other than trial, to get our clients what they were after, a "clean driving record". That primary goal was key to to minimizing the amount of money our clients must continually shell out to the insurance companies; each entry incentivizing a rate increase for five years following the offense date. Driving Safety Courses (hereinafter DSC) dirty up the record. Anybody who reads the record sees a moving violation underlying the DSC entry. A secondary goal is to minimize the temporal costs associated with achieving that end, and Trial and DSC both do the opposite. So then, DD is the correct answer, right? WRONG.

The April 2016 TMCEC organ The Recorder blew the whistle on the dirty little secret the Insurance Companies held so close to their chests: The Insurance Service Organizations were selling the fact that our Clients (inter alia) who took DD had entered guilty pleas to entitle themselves to it. In a front page expose, they pondered whether DD was a viable means to dispose of moving traffic tickets. Being enterprising sorts, the ISOs realized that their Insurance Company brethren were completely voracious and frankly insatiable when it came to our clients' premium money and would pay dearly for any information they could lay hold of that would allow them to charge more. They call it "managing risk". Visualize a Great White Shark eating a seal or a big tuna. Seeing this gold liberally scattered about, the ISOs theorized that they stood at the dawning of a new age of data mining.

They saw the opportunity to make a lot of money themselves, with minimal labor cost. They hired

sharp attorneys to read the existing language of Tex.CodeCrim.Proc. Art. 45.0511 (the DSC Statute)

very closely and compare it to that found in Art. 45.051. These paragons of the legal profession immediately saw that 45.0511 (o) contains a prohibition against the insurance companies' using a Defendant's decision to avail themselves of a dismissal via "taking" DSC to "rate up" the Defendant. It reads as follows:

(o) An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged an insured under the policy because the insured

completed a driving safety course or a motorcycle operator training course, or had a charge dismissed under this article.

But they also quickly realized that there was no direct analog in 45.051. There is only the general restriction found in;

"(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

Their crack legal staff formulated the interpretation they were looking for; that in finding out that a guilty plea was entered on an alleged moving violation at the commencement of the DD, and then selling that precious information to the Defendant's insurance company to enable them to raise their insureds' rates, you aren't using the Complaint against the Defendant/ Insured, just the fact of the guilty plea. Such is their pernicious doctrine. In this, they are mimicking ICE in its exclusion criteria.

Obviously, quickest way to lay this scurrilous practice to rest would be the inclusion into Art. 45.051of new subpart (e)(1):

An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged an insured under the policy because the insured initiated and successfully completed a driving probationary period and thereby had a charge dismissed under this article.

which is a paraphrase of 45.011 (o). Doing so would scotch any further efforts along the lines currently pursued.

I have already contacted several sitting Judges, Harris County District Court Administration (who manage the JP Courts), and the City of Houston Presiding Judge's Office to this end. In addition, I have sent feelers out to the staff of Rep. Senfronia Thompson, D-Houston, with whom I have collaborated

previously to get needed, helpful Legislation introduced and passed. A stalwart Lobbying effort will be required since we will certainly be opposed by the ISOs and the Insurance Companies themselves, and arguably by the Defensive Driving people, into whose arms the current state of affairs drives our clients.

Of direct concern to us is that this data mining practice has been widespread, going on universal, for SIX YEARS now. During all of that time, we have been giving our clients a very bum steer. We've been telling our clients that DD is a relatively "good (though nearly prohibitively expensive) deal".

Not so. Quite the opposite, in fact. Our clients have been paying us, paying the Court, and toeing the line for 30 – 180 days, thinking because we told them so, that doing all of this would save them from the greatest, by far, Pirates the world has ever known; the insurance companies. In all seriousness, this has to end, immediately, before legal careers start to.

Conclusion

The short answer to the question posed in the title is NO. Deferred Disposition is no longer a viable option for our Clients. It is a pipeline from their wallets into the insurance companies' coffers. Its only residual value, unless or until it is modified, is to keep points off your record. DSC does that too. So does trial, far more often than not. Points are a non-issue for most of our clients. I will wager that you can count on your fingers the number of clients who got into surcharge trouble from cases you dealt with. On what basis can we argue to our clients that they ought to be signing up for higher insurance rates?