

Supreme Court NO. 94630-2

Court of Appeals No. 33432-5-III
Consolidated with No. 33052-4-III
Grant County Superior Court No. 03-1-00956-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MARIA MANZO, PETITIONER

STATE'S RESPONSE TO PETITION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF RESPONDING PARTY.

The responding party is the State of Washington, by and through the Grant County Prosecuting Attorney's Office.

II. STATEMENT OF RELIEF SOUGHT

The State asks this Court to find there are no grounds for discretionary review and deny this Petition for discretionary review pursuant to RAP 13.4(b).

III. FACTS RELEVANT TO THE PETITION

A. Facts from the superior court proceedings

1. The crime

On November 10, 2003, Grant County law enforcement and the Interagency Narcotics Enforcement Team (INET) executed a search warrant for stolen property at the residence of Miguel Barajas Verduzco and his wife,¹ Maria Isabel Manzo. CP at 15. Deputies obtained a second warrant to search for drugs and related paraphernalia after finding marijuana in plain view in the kitchen. CP at 16. Under a couch in the living room, deputies found a bag containing several gallon-sized plastic bags in which were smaller pre-packaged baggies of marijuana, plastic bags holding smaller plastic baggies of cocaine, a scale, and four formula

¹ Manzo does not appear to be legally married to Barajas Verduzco but does refer to herself as his wife. The State will use that designation when referring to her.

cans full of marijuana. CP at 15-16. The deputies did not find any drug paraphernalia. CP at 16.

Although Ms. Manzo had been unemployed for about four months and her husband for one, her purse held over \$8,000 in United States currency. *Id.* Following *Miranda*² warnings, Ms. Manzo nodded affirmatively when a deputy suggested she and her husband were selling to addicts who stole property to trade for drugs. *Id.*

At the time of her arrest, Ms. Manzo and her husband had an infant and a one year old child. *Id.*

2. *The plea change hearing*

Ms. Manzo pleaded guilty to a single amended count of conspiracy to deliver cocaine, with confinement limited to the sixty days “time served” under global settlement of the charges against both her and her husband. CP at 18, 23. Her husband had already pleaded guilty and was in prison. CP at 50.

Ms. Manzo signed her Statement of Defendant on Plea of Guilty, attesting that she and her lawyer, assisted by an interpreter, had fully discussed all of its provisions and that she understood them all. CP at 13-14. Paragraph 6(i) of the plea statement recites: “If I am not a citizen of

² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

the United states, [sic] a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” CP at 9. Before taking her plea, the judge confirmed Ms. Manzo had gone over her plea statement with her lawyer and fully understood its provisions. CP at 47-49.

Speaking in favor of the plea agreement, Ms. Manzo’s lawyer said:

Your Honor, we’re in full agreement with the State. Justice is what we’re looking for. My client has -- actually *I know my client has an immigration hold and she’ll be deported.* She’ll be joined by her infants in Mexico once she gets to Mexico. The deportation in itself is punishment. *She won’t be able to come back to this country and she won’t be able to acquire legal status in this country as the law stands right now.*

CP at 50 (emphasis added). Ms. Manzo’s only statement on her own behalf was: “I just want to be reunited with my children.” *Id.* She had nothing else to say. *Id.*

3. *Representations made on CrR 7.8(b) Motion to Withdraw*

Ms. Manzo filed an amended Memorandum of Authorities (Amd. Memorandum) on January 18, 2013, in support of her CrR 7.8(b) motion to withdraw her guilty plea. In it, she asserts her trial lawyer advised her to

enter an *Alford*³ plea because he “assumed that if she didn’t admit to specific facts, she could avoid immigration consequences.” Amd. Memorandum at 1. There is no evidence trial counsel made such a statement; he asserts he advised her to enter an *Alford* plea so her own words could not be used against her in a later immigration proceeding. CP at 36. Counsel has not represented anywhere in the record he ever believed his client could avoid immigration consequences. CP at 35-36; 54-55. He believed it likely she would be deported. *Id.*

Ms. Manzo also asserts the reason her lawyer told the court she would be deported was only to ensure the court followed the favorable sentencing recommendation. CP at 42. She asserts her lawyer told her he did not know whether she would actually be deported and that the deportation decision was ultimately up to the immigration court. *Id.* She states: “[t]he only things that were told to me were in the papers that I signed.” CP at 41. She asserts she understood from those papers she would have some chance to argue to stay in the United States. *Id.* She does not say her lawyer, or anyone else, told her that. *Id.*

Ms. Manzo also asserts the first time she saw her Judgment and Sentence was in court at her plea change hearing. CP at 42. She does not

³ *N.C. v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L.Ed.2d 162 (1970).

deny having seen her Statement of Defendant on Plea of Guilty before the hearing. *Id.*

Following an evidentiary hearing, the trial court found Ms. Manzo's lawyer "did not provide any affirmative misadvice to the defendant regarding the immigration consequences of her plea." January 9, 2015 Order Transferring Motion to Vacate Conviction at ¶ II.

4. *U-Visa application*

About nine months later, on September 28, 2015, Manzo sent a request to the Grant County Prosecuting Attorney's Office asking for certification as a cooperating crime victim so she could obtain "U Nonimmigrant Status Certification" (U-Visa). Appendix A, Ex. 1. Among her submitted documents was a Grant County Sheriff's Office report concerning a 2008 incident in which Manzo and her husband reported an unknown person had fired shots at and through their house. *Id.* at 5–6. Manzo's street address was redacted, but the city—Beverly, Washington—is the same city in which she and her husband lived when she changed her plea almost five years earlier. *Id.*

B. Decision of Court of Appeals

Division Three of the Court of Appeals rejected Ms. Manzo's claim of ineffective assistance of counsel, finding her lawyer warned Ms. Manzo of the full legal consequences of her guilty plea. *State v. Manzo*,

<http://www.courts.wa.gov/opinions/pdf/334317>, at *6 (Ct. App. Mar. 9, 2017). The Court rejected Ms. Manzo’s argument, and, by inference, her various assertions concerning what her lawyer told her, holding: “Contrary to the argument of Maria Manzo, her trial counsel specifically warned she would be deported and not be eligible to return to the United States.” *Manzo, supra*, at 9. The court quoted counsel’s in-court statements that she would be joined by her infants in Mexico once she arrived there and that she would not be able to return to the United States or acquire legal status “as the law stands right now.” *Id.* at 9-10. Specifically, the court noted Ms. Manzo did not assert her lawyer “advised her contrary to his court comments or that [he] later recanted his comments.” *Id.* at 10.

In its statement of controlling authority, the court indirectly cited CrR 4.2(f) when it held a defendant may withdraw a guilty plea when the withdrawal is necessary to correct a manifest injustice (*id.*), citing *In re Detention of Scott*, 150 Wn. App. 414, 426, 208 P.3d 1211 (2009). *Scott* cites CrR 4.2(f) for that proposition. *Scott*, 150 Wn. App. at 426, n. 33.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

Considerations governing acceptance of discretionary review following dismissal of a personal restraint petition by the Court of Appeals and on denial of a direct appeal are governed by RAP 13.5(b), which provides a petition will be accepted by the Supreme Court only if (1) the

decision of the Court of Appeals in is conflict with a decision of the Supreme Court; or (2) the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, or (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

A. CONTESTED FACTS, ALONE, DO NOT SUPPORT DISCRETIONARY REVIEW.

Ms. Manzo first asserts “the court of appeals erred in finding that [her lawyer] did *not* advise his client consistently with what he stated to the court. Petition at 5 (emphasis added). The state assumes from the context of her argument and from the court’s decision this is a typographical error and that Ms. Manzo intends to assign error to the court’s finding “trial counsel specifically warned that she would be deported and not be eligible to return to the United States.” *Manzo*, 334317 at 9.

To support her assertion of error, Ms. Manzo reargues facts rejected by the court of appeals. The court reviewed all the facts Ms. Manzo resubmitted in her Petition, as well as the State’s response to those facts. Ms. Manzo omits facts that would tend not to support her own

version of events, most notably that she has not yet been deported.⁴ She did not and does not deny she had an immigration hold at the time she changed her plea. She was in custody the entire time the case was pending. CP at 41. She and her attorney spoke about a variety of matters when she was in custody. CP at 40-41. It beggars belief that she never discussed her immigration hold with her lawyer before her plea change. The fact her lawyer knew she planned to have her two children join her in Mexico is strong evidence she knew in advance of her plea change she would have to leave the United States and was making arrangements to do so. She, herself, told the court her only concern was to be reunited with her children.

The court of appeals reviewed the declaration of Ms. Manzo's lawyer in which he recalled he was not positive Ms. Manzo would be sent for deportation, only that he thought her deportation "likely." CP at 54. This turned out to be accurate—Although Ms. Manzo's convictions make her deportable and prevent any chance of legal return to the United States, she has not yet been deported. By July 2012, she had a total of six children born in the United States, having had four more children in this country since her plea change.

⁴ Ms. Manzo notes in a footnote there is no evidence of her deportation.

Ms. Manzo's insistence on her version of the facts, including her jaw-dropping, uncorroborated allegation that her lawyer, an officer of the court, lied at sentencing to ensure a the judge followed a favorable sentencing recommendation, fails to meet any of the considerations required for acceptance of discretionary review. Ms. Manzo had a full evidentiary hearing at the trial court level, at the conclusion of which the court transferred her CrR 7.8(b) motion to the court of appeals.

1. *The decision of the Court of Appeals is not in conflict with any decision of the Supreme Court.*

The decision of the court of appeals is consistent with decisions in this Court's post-*Padilla*⁵ cases challenging the voluntariness of a plea change due to ineffective assistance of counsel. The court discussed Ms. Manzo's burden under *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), to show counsel's assistance was objectively unreasonable and caused her to suffer prejudice. *Manzo* at 7. The court concluded Ms. Manzo's lawyer accurately informed her of her immigration consequences, implicitly finding counsel's performance was not deficient. *Id.* at 10. The court also recited its familiarity with "a full *Padilla* analysis." *Id.* at 9.

⁵ *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010)

Nothing in the court's opinion conflicts with the analytical procedures established by this Court.

2. *The decision is not in conflict with another decision of a lower court.*

For the reasons stated above, this decision is consistent with post-*Padilla* decisions in divisions one and two of the court of appeals.

Although the legal principles applicable to a post-*Padilla* challenge have evolved in Washington over the past several years, the decision in this case does not create a conflict with decisions in any lower court.

3. *Ms. Manzo fails to identify any significant question of law under the Constitution of the State of Washington or of the United States raised by the decision of the court of appeals.*

Ms. Manzo fails to identify any constitutional question raised by the decision of the court of appeals. Her argument boils down to “the court of appeals got the facts wrong.” She cites to the declarations she submitted to the trial court in support of her motion to withdraw her guilty plea, declarations included in the record before Division Three. Before sending the motion to the court of appeals, the trial court reviewed Ms. Manzo's declarations and presided over an evidentiary hearing. The trial court also concluded her lawyer provided accurate immigration advice related to her plea change decision.

Factual disputes do not implicate constitutional questions. Ms.

Manzo does not claim a due process violation or some other procedural defect which led to rejection of her self-serving recollections of what she knew, what she had been told, and what she was thinking in 2004. She simply wants this court to agree with her version of the facts.

No constitutional error supports acceptance of discretionary review.

4. *Ms. Manzo fails to identify any issue of substantial public interest that should be determined by this Court.*

Ms. Manzo fails to identify any issue of substantial public interest related to the finding her attorney accurately informed her of immigration consequences. The facts of this case, including Ms. Manzo's contested facts, do no support the fourth, and final, justification for accepting discretionary review.

- B. MANIFEST INJUSTICE IS NOT AN "ADDITIONAL BURDEN" INAPPLICABLE TO A DEFENDANT ASSERTING INEFFECTIVE ASSISTANCE OF COUNSEL.

Ms. Manzo argues in the second subheading of her Petition that the court imposed the additional burden of a manifest injustice test when it assessed her allegation of ineffective assistance. Manifest injustice is not an additional burden on a defendant seeking to withdraw a guilty plea.

Two rules of criminal procedure apply to withdrawal of a guilty plea. CrR 4.2(f) authorizes withdrawal of a plea "whenever it appears that

the withdrawal is necessary to correct a manifest injustice . . . *If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.*" (emphasis added). The manifest injustice standard of CrR 4.2(f) is a lower standard than that required by CrR 7.8 and, alone, is insufficient when considering postjudgment motions. *State v. Lamb*, 175 Wn.2d 121, 129, 285 P.3d 27, 31 (2012). Postjudgment motions must meet the requirements of both rules, or of the more stringent requirements of CrR 7.8. *Id.* "CrR 7.8 represents a potentially higher standard than CrR 4.2(f) for withdrawing a plea." *In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 602, 316 P.3d 1007 (2014) (citing *Lamb, supra*, 175 Wn.2d at 128; *State v. Robinson*, 172 Wn.2d 783, 263 P.3d 1233 (2011)).

The court of appeals did not subject Ms. Manzo to an additional and unwarranted burden when it declined to find manifest injustice under the facts of her case.

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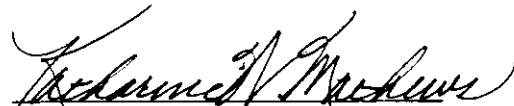
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V. CONCLUSION

Ms. Manzo fails to demonstrate either of her asserted grounds supporting discretionary review. This Court should deny her petition.

Respectfully submitted this 2nd day of August, 2017.

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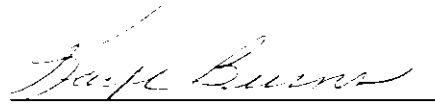
DECLARATION OF SERVICE

Under penalty of perjury of the laws of the State of Washington,
the undersigned declares:

That on this day I served a copy of the State's Response to Petition
for Discretionary Review in this matter by e-mail on counsel for
Appellant-Petitioner, receipt confirmed, pursuant to the parties'
agreement:

Brent DeYoung
deyounglaw1@gmail.com

Dated: August 2, 2017.



Kaye Burns

GRANT COUNTY PROSECUTOR'S OFFICE

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