

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN RE The Personal Restraint Petition of
SANTOS W. ORANTES,
Petitioner.

Case No. 66891-9-I

PERSONAL RESTRAINT PETITION-
SUPPLEMENTAL BRIEF

FILED
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STATE OF WASHINGTON
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COMES NOW Petitioner, SANTOS W. ORANTES, by and through undersigned counsel, Christopher Black, and submits to this Court the following supplemental brief in support of his Personal Restraint Petition for relief from the judgment previously entered in the above-noted matter.

I. Procedural History

Mr. Orantes filed a motion for relief from judgment on January 13, 2011 in Snohomish County Superior Court. On February 24, 2011, the court entered an order to transfer this motion to the Court of Appeals as a personal restraint petition. On April 15, 2011, Mr. Orantes paid the filing fee for the personal restraint petition. Mr. Orantes files this supplemental brief in order to direct the Court to relevant caselaw decided subsequent to the filing of the instant petition.

II. **State v. Sandoval is new controlling authority on the validity of guilty pleas where the defendant was not informed of the immigration consequences of conviction.**

Mr. Orantes seeks to bring the court's attention to State v. Sandoval, 2011 Wash. LEXIS 247 (Wash. Mar. 17, 2011), a recent decision by the Washington State Supreme Court that significantly departs from prior state caselaw. Sandoval was filed on March 17, 2011, after Mr. Orantes's case was transferred on February 24, 2011 from Snohomish County Superior Court to the Division I Court of Appeals as a personal restraint petition. The decision affirms Padilla v. Kentucky, __ U.S. __, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010). It is relevant to Mr. Orantes's pending petition because it holds that guilty pleas are not knowing and voluntary where a defendant is not informed of immigration consequences of the conviction. In particular, it clarifies that generic immigration warnings in plea agreements pursuant to RCW 10.40.200 are insufficient to properly inform defendants of the immigration consequences of a conviction.

In Sandoval, the defendant was a non-citizen permanent resident who was charged with rape in the second degree. Sandoval, 2011 Wash. LEXIS 247. When the State offered a reduced charge of rape in the third degree, Sandoval asked his attorney whether this conviction would result in his deportation. His attorney advised that he would have enough time before deportation to hire an immigration attorney, who could ameliorate any potential immigration consequences of the guilty plea. Id. at *2. Sandoval pleaded guilty and affirmed that he had read through the entire plea statement, which included a generic warning about the possibility of deportation. Id. at *2. Sandoval was sentenced to 6 to 12 months in jail. Id. at *3. Before he was released

from jail, the United States Customs and Border Protection put an immigration “hold” on him and initiated deportation proceedings. Id. at *3.

Affirming Padilla, the Sandoval opinion states that “[b]ecause of deportation’s close connection to the criminal process, advice about deportation consequences falls within the ambit of the Sixth Amendment right to counsel.” Id. at *6 (internal quotations omitted). Therefore, a defendant who receives inadequate advice about the immigration consequences of his guilty plea may seek to withdraw that plea as involuntary and unintelligent. Sandoval also clarified the type and quality of immigration warnings that constitutionally competent attorneys must provide to criminal defendants:

If the applicable immigration law is truly clear that an offense is deportable, the defense attorney must correctly advise the defendant that pleading guilty to a particular charge would lead to deportation. If the law is not succinct and straightforward, counsel must provide only a general warning that pending criminal charges may carry a risk of adverse immigration consequences.

Id. at *7 (internal quotations omitted). As applied in Sandoval, the defendant’s rape conviction made him deportable and classified him as an aggravated felon. As an aggravated felon, he was ineligible for discretionary relief from deportation. Therefore, Sandoval’s attorney had a duty to advise him of these “truly clear” consequences.

The Sandoval court explicitly rejected the argument that the immigration advisement in Sandoval’s plea agreement excused the defense attorney from making the requisite warnings. Sandoval was given the warnings in his form plea agreement required by law in Washington State. Despite these warnings, the advice of Sandoval’s lawyer was incompetent under the Sixth Amendment. “[T]he guilty plea statement warnings required by RCW 10.40.200(2) cannot save the advice that the counsel gave...RCW 10.40.200 and other such warnings do not excuse defense attorneys from

providing the requisite warnings.” Id. at *13. This generic advisement about possible immigration consequences is insufficient under both Padilla and Sandoval. Padilla, 130 S. Ct. at 1486 n. 15; Sandoval at *13.

As in Sandoval, the warning contained within Mr. Orantes’s plea agreement does not diminish his attorney’s responsibility to provide accurate legal advice about the immigration consequences of conviction. Mr. Orantes’s attorney failed to provide accurate advice about a direct consequence of a criminal conviction, so the guilty plea was not voluntary. The generic immigration warning in Mr. Orantes’s plea agreement is not an effective warning about the direct consequences of the plea and therefore does not render the plea knowing and voluntary.

III. Procedural History

For the foregoing reasons, and the reasons set forth in the materials previously filed in this matter, the Court should grant Mr. Orantes’s personal restraint petition in this matter and order that his plea of guilty be withdrawn and that the judgment and sentence be voided.

DATED this 6th day of May, 2011.

Respectfully submitted,

LAW OFFICE OF CHRISTOPHER BLACK, PLLC



Christopher Black, WSBA No. 31744
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, and attachment, was served on May 6, 2011, via U.S. Mail, upon the parties required to be served in this action:

Seth Fine
Snohomish County Prosecuting Attorney's Office
3000 Rockefeller Ave., M/S 504
Everett, WA 98201

DATED this 6th day of May, 2011.

Respectfully submitted,

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