

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

REPLY TO RESPONDENT'S  
RESPONSE TO  
PETITIONER'S  
SUPPLEMENTAL BRIEF

COMES NOW Petitioner, SANTOS W. ORANTES, by and through undersigned counsel, Christopher Black, and submits the following reply to Respondent's response to Petitioner's supplemental brief in support of his Personal Restraint Petition.

I. ARGUMENT

The State argues in response to petitioner's argument that State v. Sandoval, 171 Wn.2d 163, 249 P.2d 1015 (2011) supports his claim that his guilty plea in this case was involuntary, that Sandoval does not support his claim because it does not address the due process standards for guilty pleas. See, Response to Petitioner's Supplemental Brief, at p. 3-4. The State's argument in this regard mirrors its prior arguments that Padilla v. Kentucky, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010), does not affect the due

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process standards for guilty pleas. See, Response to Petitioner's Supplemental Brief, at p. 2. The basis for both of these arguments is that those cases involved ineffective assistance of counsel rather than claims of involuntariness under the due process clause. See, id., at p. 2, 3-4.

While the State is correct that both Padilla and Sandoval revolve around claims of ineffective assistance of counsel, it is not correct that this fact renders those decisions irrelevant to the question of whether or not immigration consequences are the sort of direct consequences which due process requires that a defendant be advised of prior to entering a guilty plea, or collateral consequences of which he or she need not be advised prior to pleading guilty.

Only where a defendant claims that a plea was involuntary because he or she received ineffective assistance of counsel do the standards from Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), come into play in evaluating the claim. Both Sandoval and the case on which it relies, Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985), involved claims that the defendant had received ineffective assistance of counsel in deciding to plead guilty. Sandoval, 171 Wn.2d at 168 ("Sandoval [claimed] his plea was not knowing, voluntary, or intelligent due to ineffective assistance of counsel..."); Hill, 474 U.S. at 56 ("Here petitioner does not contend that his plea was 'involuntary' or 'unintelligent'

simply because the State through its officials failed to supply him with information about his parole eligibility date... Instead, petitioner relies entirely on the claim that his plea was 'involuntary' as a result of ineffective assistance of counsel because his attorney supplied him with information about parole eligibility that was erroneous.") The United States Supreme Court, in Hill, held that, to sustain claims of involuntariness in such circumstances, the defendant must show deficient performance of counsel and prejudice. Hill, 474 U.S. at 58-59. The Washington Supreme Court, in Sandoval, affirmed this. Sandoval, 171 Wn.2d at 169.

However, as the State accurately points out, Mr. Orantes has not raised a claim of ineffective assistance of counsel. Mr. Orantes has claimed that his plea was involuntary because he was not informed of a direct consequence of his plea. Such a claim does not rise or fall on the performance of counsel, and courts do not analyze such claims through the prism of the sixth amendment right to counsel. See generally, State v. Barton, 93 Wash.2d 301, 305, 609 P.2d 1353 (1980); State v. Ward, 123 Wash.2d 488, 869 P.2d 1062 (1994); State v. Ross, 129 Wash.2d 279, 916 P.2d 405 (1996); State v. Olivera-Avila, 89 Wash.App. 313, 949 P.2d 824 (1997). The test for voluntariness is simply whether or not the defendant has been informed of the direct consequences of the guilty plea. Ross, 129 Wn.2d at 284. The cases make no distinction regarding whose duty it is to

inform the defendant of the consequences of the plea. What is required is simply a showing that the defendant was informed of all of the direct consequences of the guilty plea. If he or she was not, then the plea was involuntary.

Petitioner, in his Motion for Relief from Judgment, as well as in his Response to the State's Motion to Transfer Motion for Relief from Judgment, has set forth his arguments regarding Padilla's holding that immigration consequences of criminal convictions are not "collateral." Petitioner will not repeat those arguments here. If those consequences are no longer "collateral," then they must necessarily be "direct," as, in this context, the universe of types of consequences contains only those two options. If immigration consequences are direct consequences of a guilty plea, and Mr. Orantes was not informed of those consequences prior to entering his guilty plea, then he did not enter his plea voluntarily. See Ross, 129 Wn.2d at 284. The context in which the Supreme Court held that immigration consequences cannot be considered collateral to criminal convictions should make no difference. It would be utterly illogical for courts to view immigration consequences differently in the rubrics of the sixth amendment and due process.

II. CONCLUSION

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 15<sup>th</sup> day of July, 2011.

Respectfully submitted,

LAW OFFICE OF CHRISTOPHER BLACK, PLLC



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Christopher Black, WSBA No. 31744  
Attorney for Santos W. Orantes

CERTIFICATE OF SERVICE

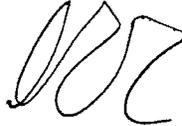
I hereby certify that a copy of the foregoing was served on July 15, 2011, via U.S. Mail, upon the parties required to be served in this action:

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

DATED this 15<sup>th</sup> day of July, 2011.

Respectfully submitted,

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