

**NO. 49048-0-II**

**COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION II**

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**JOSE MANUEL CURIEL-RAMOS,**

**Appellant.**

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**BRIEF OF APPELLANT**

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## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

1. The trial court erred when it entered findings of fact unsupported by substantial evidence.

2. The trial court erred when it denied the defendant's motion to withdraw his guilty plea because (1) trial counsel and the court's advice that the defendant "might be" deported was incorrect, and (2) trial counsel and the court's failure to inform the defendant that his guilty plea would preclude reentry rendered the defendant's plea unknowingly and neither voluntarily nor intelligently entered.

### ***Issues Pertaining to Assignment of Error***

1. Does a trial court err if it enters findings of fact unsupported by substantial evidence?

2. Does a trial court err if it denies a non-citizen defendant's motion to withdraw his or her guilty plea when that defendant shows that (1) trial counsel and the court's advice that the defendant "might be" deported as a result of the plea was incorrect, and (2) trial counsel and the court failed to inform the defendant that his or her guilty plea would preclude reentry into the United States?

## STATEMENT OF THE CASE

On April 24, 2008, the Cowlitz County Prosecutor filed an Information charging the defendant Jose Manuel Ramos-Curiel with one count of possession of cocaine under RCW 69.40.4013 and one count of violation of a domestic violence no contact order under RCW 26.50.100 and RCW 10.99.020. CP 1-2. Mr. Ramos-Curiel is a Mexican national who has lived for over 10 years in the United States. CP 44-45. He was born in 1963. *Id.* At his first appearance on this charge the court found Mr. Ramos-Curiel indigent and appointed the Cowlitz County Office of Public Defense (OPD) to represent him. CP 45. Upon receiving notice of this appointment. OPD assigned Mr. Thomas Ladouceur as his attorney. *Id.*

On April 23, 2008, Mr. Ladouceur received an offer from the Cowlitz County Prosecutor in the defendant's case as follows:

25 days; First Time Offender; 24 months Community Custody; Costs; Drug Evaluation and Treatment; 365/365 on the misdemeanor; 24 months Probation; No Contact Order with Victim; Anger Management Therapy.

CP 12.

Mr. Ladouceur communicated this offer to the defendant, who eventually agreed to accept it. CP 45. Based upon the defendant's statement Mr. Ladouceur prepared a written statement of defendant on plea of guilty and reviewed it with the defendant. CP 3-12. Both Mr. Ladouceur and the

defendant signed the document. CP 10. Subsection(6)(i) of the Statement of Defendant on Plea of Guilty states:

- (i) If I am not a citizen of the United States, 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 6.

According to the affirmation the defendant filed in support of his Motion for Relief from Judgment under CrR 7.8(b), Mr. Ladouceur did not tell him that his convictions would require his expulsion from this country and would prevent him from ever legally returning. CP 44-46. Rather, he simply told him that a conviction for any crime “could” result in his deportation. *Id.* According to the defendant, he would not have pled guilty had Mr. Ladouceur informed him that a conviction for either offense would require his deportation and would prevent him from ever legally returning to the United States. *Id.*

On October 14, 2008, the defendant appeared in court before the Honorable Judge James Warne and pled guilty pursuant to the plea offer. CP 108-119. During that hearing, the following colloquy took place between the court and the defendant concerning the immigration consequences of his plea:

THE COURT: Do you understand – are you an American citizen?

THE DEFENDANT: No.

THE COURT: Do you understand if you enter a guilty plea to a felony, you *may be* deported?

THE DEFENDANT: Yes, I understand.

CP 112 (emphasis added).

Once again, Mr. Ramos-Curiel has stated in his affirmation that had the court informed him that conviction on either charge offered would require his deportation and prevent him from ever returning to this country he would not have pled guilty. CP 44-46.

In fact, Mr. Ramos-Curiel is now the subject of federal deportation proceedings pursuant to the government's argument that under 8 U.S.C. § 1227(a)(2)(B) his two Cowlitz County convictions in this case require his deportation and permanently exclude him for ever returning to this country. CP 126-131. Mr. Ramos-Curiel is represented in that proceeding by attorney Amanda E. Gray, of the Portland law firm of Parker, Butte & Lane. *Id.* According to Ms Gray's affirmation, under 8 U.S.C. § 1227(a)(2)(B), as it existed in 2008 and as it still exists today, the defendant's convictions for possession of cocaine and for violation of a domestic violence no contact order each require his deportation and exclusion from reentry into this country. *Id.* As she explained in her affirmation, the statement that a non-citizen's conviction for these offenses "could" result in deportation is erroneous and misleading. *Id.* As she explained, under federal law

deportation and exclusion are required. *Id.*

Based upon these factual claims the defendant moved to withdraw his guilty plea upon the following four arguments: (1) that under RCW 10.73.100(6) as interpreted by the Washington Supreme Court in *State v. Tsai, infra*, the defendant's motion to withdraw his guilty plea is timely; (2) that under CrR 7.8(b)(5) as well as his state and federal constitutional rights to due process, the defendant did not knowingly, voluntarily and intelligently enter his guilty plea; (3) that trial counsel's failure to determine and inform the defendant of the correct immigration consequences of his guilty plea denied the defendant his statutory rights under RCW 10.40.200 as well as his state and federal constitutional rights to effective assistance of counsel; and (4) that under CrR 7.8(c) this court should order a show cause hearing because the defendant's motion is not time barred under RCW 10.74.090, he had made a substantial showing that he is entitled to relief and resolution of the motion would require a factual hearing. CP 26, 27-43.

The state and the trial court initially agreed with the defendant's first and fourth arguments and set a fact-finding hearing on the defendant's motion for May 14, 2016. RP 10. At that hearing the state called Mr. Thomas Ladouceur as its only witness. RP 13-28. During his testimony Mr. Ladouceur stated that he had no independent recollection of any conversations he had with the defendant. RP 23. However, he believed that

he did read paragraph (6)(i) of the Statement of Defendant on Plea of Guilty to the defendant and that the paragraph stated as follows:

If I am not a citizen of the United States, 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.

RP 24-25.

Mr. Ladouceur also accepted the proposition that the transcript of the hearing indicated that during the guilty plea colloquy the court told the defendant that he “may be deported” based upon his guilty plea. RP 24-26.

In addition, Mr. Ladouceur did not believe he spoke to the defendant about the effect his guilty pleas would have upon his ability to reenter the country.

RP 27-29.

Following this testimony the parties presented argument, after which the court took the matter under advisement. RP 39-40. The court later denied the defendant’s motion and entered the following “Ruling on Motion to Withdraw Guilty Plea.”

Based on the files and records herein, the testimony, argument of counsel, the Court finds the following:

1. The parties stipulate that this Motion to Withdraw Guilty Plea is timely and properly before this Court.

2. That on October 14, 2008, the Defendant did plead guilty to the charges of Count I Violation Uniform Controlled Substance Act (possession of cocaine) and Count II Violation of Domestic Violence No Contact Order.

3. At that time the Defendant was represented by the attorney Tom Ladouceur.

4. That paragraph 4(i) of the Statement of Defendant on Plea of Guilty signed and entered by the Defendant states: "If I am not a citizen of the United States, 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."

5. At the time of the guilty plea, the Defendant was not a US Citizen. Under the immigration law at the time a plea of guilty by the Defendant was made to the offenses stated, the Defendant would be deported.

6. Mr. Ladouceur went through the language of paragraph 4(i) of the Statement of Defendant on Plea of Guilty with the Defendant. Mr. Ladouceur does not recall whether he had any contact with an immigration attorney to determine the applicable law specific to the defendant pleading guilty as herein and then subsequently advise the Defendant of the information.

7. Mr. Ladouceur did properly advise that Defendant that the crimes he was pleading guilty to were deportable offenses. Mr. Ladouceur did not give wrong advice to the Defendant regarding the offenses.

8. The judge taking the plea also reviewed the language of paragraph 4(i) of the Statement of Defendant on Plea of Guilty with the Defendant. The judge made the finding the "defendant's plea of guilty to be knowingly, intelligently and voluntarily made. . ."

9. That based on the law that applies to the time of the entry of the plea of guilty by the Defendant, Mr. Ladouceur gave appropriate legal advice and therefore did not provide ineffective legal assistance. Further, the language of the plea form and the colloquy of the judge were appropriate.

Thus, the Court concludes:

1. The Motion to Withdraw Guilty Plea has been timely made;

and

2. Defendant did make a knowing, intelligent and voluntary plea to the charges of the above-entitled case.

Therefore, the Motion to Withdraw Guilty Plea made pursuant to CrR 7.8(b)(5) is denied.

CP 132-134.

Following entry of this order the defendant filed timely notice of appeal. CP 135.

## ARGUMENT

### I. THE TRIAL COURT ERRED WHEN IT ENTERED FINDINGS OF FACT UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

The purpose of findings of fact and conclusions of law is to aid an appellate court on review. *State v. Agee*, 89 Wn.2d 416, 573 P.2d 355 (1977). The Court of Appeals reviews these findings under the substantial evidence rule. *State v. Nelson*, 89 Wn.App. 179, 948 P.2d 1314 (1997). Under the substantial evidence rule, the reviewing court will sustain the trier of facts' findings "if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *State v. Ford*, 110 Wn.2d 827, 755 P.2d 806 (1988). In making this determination, the reviewing court will not revisit issues of credibility, which lie within the unique province of the trier of fact. *Id.* Finally, findings of fact are considered verities on appeal absent a specific assignment of error. *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994).

By contrast, an appellant need not assign error to a specific conclusion of law by number in order to preserve the issue on appeal because this argument presents an issue of law that the appellate court reviews de novo. *State v. Dempsey*, 88 Wn.App. 918, 947 P.2d 265 (1997). However, when a conclusion of law contains an assertion of fact, it functions as a finding of fact and is reviewed under the substantial evidence rule and requires an

assignment of error for consideration on review. *Estes v. Bevan*, 64 Wn.2d 869, 395 P.2d 44 (1964).

In the case at bar, appellant assigns error to Findings of Fact No. 7 and 9, which state:

7. Mr. Ladouceur did properly advise that Defendant that the crimes he was pleading guilty to were deportable offenses. Mr. Ladouceur did not give wrong advice to the Defendant regarding the offenses.

. . .

9. That based on the law that applies to the time of the entry of the plea of guilty by the Defendant, Mr. Ladouceur gave appropriate legal advice and therefore did not provide ineffective legal assistance. Further, the language of the plea form and the colloquy of the judge were appropriate.

CP 133.

Whether or not the advice the defendant's attorney and the court gave the defendant concerning the immigration consequences of his guilty plea was legally correct constitutes a question of law that need not be assigned as an error of fact. These two findings read as if they were conclusions of law. However, to the extent these two findings can be interpreted as factual findings about what the trial attorney and the court said, then appellant assigns error to them. Specifically, the record before the trial court only supports the factual findings that trial counsel, the court, and the guilty plea form told the defendant that his convictions "might", "may" or "could" result

in his deportation and continued exclusion from the country.

There is no evidence in the record that trial counsel, the trial court or the guilty plea form explained to the defendant that he “would be” or “had to be” deported or that deportation and continued exclusion was required under the law based upon the guilty pleas to these two particular offenses. To the extent that this court interprets these findings to communicate this claim, appellant assigns error to them as unsupported by the record.

**II. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT’S MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE (1) TRIAL COUNSEL AND THE COURT’S ADVISE THAT THE DEFENDANT “MIGHT BE” DEPORTED WAS INCORRECT, AND (2) TRIAL COUNSEL AND THE COURT’S FAILURE TO INFORM THE DEFENDANT THAT HIS GUILTY PLEA WOULD PRECLUDE REENTRY RENDERED THE DEFENDANT’S PLEA UNKNOWINGLY AND NEITHER VOLUNTARILY NOR INTELLIGENTLY ENTERED.**

Under the due process clauses found in Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, all guilty pleas must be knowingly, voluntarily, and intelligently entered. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 36 P.3d 1005 (2001). Guilty pleas that are entered without a statement of the consequences of the sentence are not “knowingly” made. *State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988). While the trial court need not inform a defendant of all possible collateral

consequences of his or her guilty plea, the court must inform the defendant of all direct consequences. *State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996). Failure to inform a defendant of direct sentencing consequences upon a plea of guilty is also governed by court rule. Under CrRLJ 4.2(f), a court must allow a defendant to withdraw a guilty plea if necessary to correct a “manifest injustice.” A plea that is not knowingly, voluntarily and intelligently entered produces a manifest injustice. *State v. Saas*, 118 Wn.2d 37, 820 P.2d 505 (1991).

For example, in *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001), the state originally charged the defendant with First Degree Kidnapping, First Degree Rape, and Second Degree Assault. The defendant later agreed to plead guilty to a single charge of Second Degree Rape upon the state’s agreement to recommend a low end sentence upon a range that both the state and the defense miscalculated at 86 to 114 months. In fact, at sentencing, the court and the attorneys determined that the defendant’s correct standard range was from 95 to 125 months. Although the state recommended the low end of the standard range, the court imposed an exceptional sentence of 136 months based upon a finding of intentional cruelty. The defendant thereafter appealed, arguing that his plea was not voluntarily, knowingly, and intelligently made, based upon the error in calculating his standard range.

On appeal, the Court of Appeals affirmed, finding that since the

defendant did not move to withdraw his guilty plea at the time of sentencing when the correct standard range was determined, he waived his right to object to the acceptance of his plea. On further review, the Washington Supreme Court reversed, finding that (1) a claim that a plea was not voluntarily made constituted a claim of constitutional magnitude that could be raised for the first time on appeal, (2) that the record did not support a conclusion that the defendant waived his right to claim his plea was involuntary, and (3) a plea entered upon a mistaken calculation of the standard range is not knowingly and voluntarily made. The court stated the following on the final two holdings:

Walsh has established that his guilty plea was involuntary based upon the mutual mistake about the standard range sentence. Where a plea agreement is based on misinformation, as in this case, generally the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea. The defendant's choice of remedy does not control, however, if there are compelling reasons not to allow that remedy. Walsh has chosen to withdraw his plea. The State has not argued it would be prejudiced by withdrawal of the plea.

The State suggests, however, that Walsh implicitly elected to specifically enforce the agreement by proceeding with sentencing with the prosecutor recommending the low end of the standard range. The record does not support this contention. Nothing affirmatively shows any such election, and on this record Walsh clearly was not advised either of the misunderstanding or of available remedies.

*State v. Walsh*, 143 Wn.2d at 8-9. See also, *State v. Kissee*, 88 Wn.App. 817, 947 P.2d 262 (1997) (Mistaken belief that the defendant qualifies for a SOSSA sentence is a basis upon which to withdraw a guilty plea).

As is set out in the following examination of the decisions in *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) and *In re Yung-Cheng Tsai*, 183 Wn.2d 91, 351 P.3d 138 (2015), a non-citizen defendant is entitled to correct advice concerning the immigration consequences of his or her guilty plea under both RCW 10.40.200 and well as under the state and federal constitutional right to effective assistance of counsel. Absent this information, as the defendant claimed in his supporting affirmation in this case, his plea was not knowingly, voluntarily, and intelligently entered. Consequently, the failure to provide this critical information to the defendant in the case at bar rendered his plea involuntary and unknowing and denied him due process under the state and federal constitutions as well as effective assistance of counsel.

In *Tsai, supra*, the Washington Supreme Court held that under RCW 10.40.200, a non-citizen defendant has a statutory right to be informed of the immigration consequences of a guilty plea. Subsection (1) of this statute, which was originally adopted in 1983, states:

(1) The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded

by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is further the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court.

RCW 10.20.200(1).

As was noted in *Tsai, supra*, this statutory right includes the requirement that a defendant be correctly advised of the immigration consequences of his or her guilty plea following sufficient research by the attorney. The failure to do sufficient research and correctly advise the defendant, as is required under the statute, falls below the standard of a reasonable prudent attorney. The court noted as follows on this point:

RCW 10.40.200's plain language gives non-citizen defendants the unequivocal right to advice regarding immigration consequences and necessarily imposes a correlative duty on defense counsel to ensure that advice is provided. *State v. Butler*, 17 Wn.App. 666, 675, 564 P.2d 828 (1977) ("Beyond the defendant's power of knowledge and intelligence, the duty to protect the defendant lies first and foremost with his attorney."). While defense counsel's duty to advise regarding immigration consequences is imposed by statute, "[r]easonable conduct for an attorney includes carrying out the duty to research the relevant law." *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009) (citing *Strickland*, 466 U.S. at 690-91, 104 S.Ct. 2052). In many cases defense counsel's failure to fulfill his or her statutory duty may be due to an unreasonable failure to research or apply RCW 10.40.200, and there is no conceivable tactical or strategic purpose for such a failure.

*In re Yung-Cheng Tsai*, 183 Wn. 2d at 101-102.

Thus, in the case at bar, the failure of defendant's attorney to research and correctly inform the defendant of the immigration consequences of his

plea fell below the standard of a reasonably prudent attorney. Specifically, defendant's attorney incorrectly informed the defendant that his guilty pleas "could" "may" or "might" result in his deportation. That advice was incorrect because the defendant's guilty pleas absolutely required deportation. In addition, counsel did not give the defendant any oral advice concerning exclusion. Rather, the guilty plea form counsel prepared told the defendant that his plea "[was] grounds for . . . exclusion." The phrase "is grounds for" is the equivalent of telling the defendant just what the trial court told the defendant: that he "might" be deported. Thus, counsel's advice through the guilty plea form concerning exclusion was also erroneous and fell below the standard of a reasonably prudent attorney and constituted ineffective assistance of counsel because counsel's erroneous advice denied the defendant the rights outlined in RCW 10.40.200.

As the following analysis of *Padilla* also clarifies, the duty to research and adequately inform a non-citizen defendant of the immigration consequences of a plea is also a constitutional violation separate from the statutory violation.

In *Padilla*, a non-citizen permanent resident of the State of Kentucky sought to withdraw his guilty plea for marijuana trafficking, arguing that he would not have pled guilty had his attorney and the court correctly informed him that his convictions would subject him to automatic deportation under

8 U.S.C. § 1227(a)(2)(B). Both the trial court and the Kentucky Supreme Court rejected this argument on the basis that concerning immigration consequences are “collateral” consequences to a guilty plea and the failure to give correct advice concerning those consequences cannot form a basis for withdrawing a plea, even if the defendant would have gone to trial but for that misadvice. Following rejection of his claim in state court, the defendant sought and obtained review by the United States Supreme Court.

In its decision in *Padilla*, the court first made an extensive review of the history of deportation consequences for non-citizens convicted of crimes committed in the United States. As the court noted, for many years there were few offenses for which conviction would require deportation, and even in those circumstances, both the courts and the United States Attorneys had statutory power to overrule the requirement. However, a series of laws passed by congress have, on the one hand, dramatically increased the number of offenses for which deportation is required. On the other hand, those same laws have eliminated the authority of both the courts and the United States Attorneys to countermand those deportation requirements. Thus, for non-citizens, the immigration consequences of a guilty plea are most time central to the decision whether or not to plead guilty. In *Padilla v. Kentucky, supra*, the United States Supreme Court stated the following concerning this issue.

These changes to our immigration law have dramatically raised

the stakes of a non-citizen's criminal conviction. The importance of accurate legal advice for non-citizens accused of crimes has never been more important. These changes confirm our view that, as a matter of federal law, deportation is an integral part – indeed, sometimes the most important part – of the penalty that may be imposed on non-citizen defendants who plead guilty to specified crimes.

*Padilla v. Kentucky*, 559 U.S. at 356, 130 S. Ct. at 1476.

Thus, for the purposes of analyzing a claim of incorrect advice concerning the immigration consequences, the court rejected the “direct consequences” as opposed to “collateral consequences” analysis that has been the traditional measure for what information a defendant must be given in order to knowingly, voluntarily, and intelligently enter a guilty plea. Indeed, the court disclaimed ever having really adopted such a dichotomy.

In analyzing the defendant's claim in *Padilla*, the court also noted that there are a number of offenses for which the immigration consequences are uncertain. However, under 8 U.S.C. § 1227(a)(2)(B), this is not the case for virtually all drug convictions. Under this statute, all drug crimes require automatic deportation. The only exception under that federal statute is for possession of under 30 grams of marijuana for personal use. The court noted as follows on this point.

In the instant case, the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence for Padilla's conviction. See 8 U. S. C. §1227(a)(2)(B)(i) (“Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State,

the United States or a foreign country relating to a controlled substance . . . , other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable"). Padilla's counsel could have easily determined that his plea would make him eligible for deportation simply from reading the text of the statute, which addresses not some broad classification of crimes but specifically commands removal for all controlled substances convictions except for the most trivial of marijuana possession offenses.

*Padilla v. Kentucky*, 559 U.S. at 368, 130 S. Ct. at 1483.

Thus, since the defendant's offense was for one of those crimes defined in 8 U.S.C. § 1227(a)(2)(B), he should have been informed that his guilty plea would result in his automatic deportation from the United States. The failure to do so violated the defendant's right to effective assistance of counsel under United States Constitution, Sixth Amendment.

The same conclusion applies in the case at bar. In this case Mr. Ramos-Curiel's conviction for possession of cocaine also qualifies as a deportable offense under 8 U.S.C. § 1227(a)(2)(B)(i). Thus, trial counsel's failure to adequately inform Mr. Ramos-Curiel that the law required is deportation and exclusion also denied Mr. Ramos-Curiel his right to effective assistance of counsel under the Sixth Amendment and under Washington Constitution, Article 1, § 22. Indeed, the advice that the defendant did receive (that he could or might or may be deported) was incorrect and deceptive.

In addition, in this case the defendant's conviction for violation of a

domestic violence protection order also requires his deportation under 8 USC § 1227(a)(2)(E)(ii). This section lists the following as offenses requiring deportation:

**(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and**

. . . .

**(ii) Violators of protection orders**

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding.

8 USC § 1227(a)(2)(E)(ii) (bold in original).

As was set out in the affirmation of Amanda Gray, the defendant’s immigration attorney, the defendant’s conviction for possession of cocaine and violation of a domestic violence protection order also made the defendant ineligible for cancellation of removal under 8 USC § 1229b(b). This statute states:

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents

(1) In general The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien –

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

8 USC 1229b(b).

As is listed in 8 USC 1229b(b)(1)(c), a defendant convicted of an offense listed in 8 USC § 1227(a)(2), as was defendant, does not qualify for cancellation of removal even though he has lived in this country for over 10 years. Thus, just as counsel was ineffective *in Padilla* for failing to inform the defendant that his conviction for an offense listed in 8 USC § 1227(a)(2) required his deportation, so counsel in this case was also ineffective for failing to inform the defendant that his convictions for offenses listed in 8 USC § 1227(a)(2) required his deportation, precluded cancellation of removal, and precluded reentry. Consequently, in the same manner that the trial court in

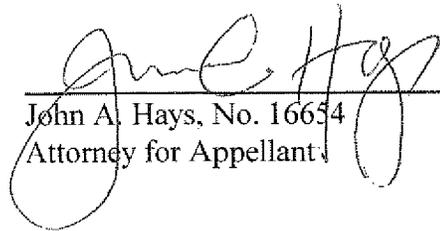
*Padilla* erred when it denied the defendant's motion to withdraw his guilty plea, so the trial court in the case at bar erred what it denied the defendant's motion to withdraw his guilty plea.

## CONCLUSION

The trial court erred when it denied the defendant's motion to withdraw his guilty plea because that plea was not knowingly, voluntarily and intelligently entered. As a result, this court should reverse the order of the trial court and remand with instructions to grant the defendant's motion to withdraw his guilty plea.

DATED this 30<sup>th</sup> day of September, 2016.

Respectfully submitted,



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John A. Hays, No. 16654  
Attorney for Appellant

**APPENDIX**

**WASHINGTON CONSTITUTION  
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION  
ARTICLE 1, § 22**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

**UNITED STATES CONSTITUTION,  
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,  
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

**8 U.S.C. § 1227(a)(2)(B)**

**(B) Controlled substances**

**(i) Conviction**

Any alien who at any time after admission has been convicted of a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

**(ii) Drug abusers and addicts**

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

**8 USC § 1227(a)(2)(E)(ii)**

**(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and**

**(ii) Violators of protection orders**

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a *pendente lite* order in another proceeding.

**8 USC § 1229b(b)**

**(b) Cancellation of removal and adjustment of status for certain nonpermanent residents**

(1) In general The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien --

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien’s spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

**COURT OF APPEALS OF WASHINGTON, DIVISION II**

**STATE OF WASHINGTON,**  
**Respondent,**

**NO. 49048-0-II**

**vs.**

**AFFIRMATION  
OF SERVICE**

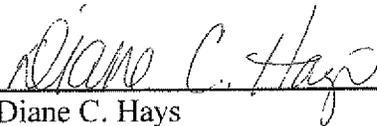
**JOSE M.CURIEL-RAMOS,**  
**Appellant.**

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The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Ryan Jurvakainen  
Cowlitz County Prosecuting Attorney  
312 SW First Avenue  
Kelso, WA 98626  
sasserm@co.cowlitz.wa.us
2. Jose Manuel Curiel-Ramos  
2475 Corman Road  
Longview, WA 98632

Dated this 30<sup>th</sup> day of September, 2016, at Longview, WA.

  
Diane C. Hays

## HAYS LAW OFFICE

**September 30, 2016 - 12:57 PM**

### Transmittal Letter

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Court of Appeals Case Number: 49048-0

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Objection to Cost Bill

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Personal Restraint Petition (PRP)

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