

**NO. 49048-0-II**

**IN THE 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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**RESPONDENT'S BRIEF**

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## **I. STATE'S RESPONSE TO ASSIGNMENT OF ERROR**

1. The trial court did not err in entering findings.
2. The trial court properly denied the defendant's motion to withdraw his guilty plea because trial counsel's advice to the defendant was proper, as was the plea form and the colloquy of the sentencing judge.

## **II. STATEMENT OF THE CASE**

On April 24, 2008, Jose Ramos-Curiel was charged with one count of possession of cocaine and one count of violation of a domestic violence no-contact order. CP 1–2. He was represented by Thomas Ladouceur of the Office of Public Defense. CP 45. Both Mr. Ladouceur and Ramos-Curiel signed a statement of defendant on plea of guilty which stated:

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, of denial of naturalization pursuant to the law of the United States.

CP 6, CP 10.

Mr. Ladouceur went through the language of the statement of defendant on plea of guilty, including the language regarding immigration, with Ramos-Curiel. RP 15. He also advised Ramos-Curiel that the charges he was facing were deportable offenses. *Id.* Ramos-Curiel entered his guilty plea to the charges on October 14, 2008. CP 108. During that

hearing, the judge asked Ramos-Curiel whether he understood that he may be deported; Ramos-Curiel stated that he understood. RP 4.

### **III. ARGUMENT**

In 2010, the United States Supreme Court held that a defense attorney must inform his or her client whether a plea carries a risk of deportation. *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010). The Court explained that, when the deportation consequences in a case are clear, the attorney must clearly explain the risk. *Id.* at 369. However, there will likely be many situations in which the immigration consequences of a plea are unclear or uncertain; in those situations, the attorney's duty is more limited. *Id.*

The Washington Supreme Court interpreted and applied *Padilla* in *In re Tsai*, 183 Wn.2d 91, 351 P.3d 138 (2015). In that case, the Court first had to determine whether the petitioner's PRPs were time-barred by RCW 10.73.090. The Court therefore conducted a *Teague* analysis to determine if *Padilla* announced a new rule under Washington law. *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060 (1989). Whether a rule applies to collateral attacks on a judgment depends on whether the rule is considered "new" or "old." Under *Teague*, new constitutional rules of criminal procedure typically only apply to matters on direct review, but old rules apply retroactively to matters on both direct and collateral review. Therefore, if

the rule enunciated in *Padilla* is considered a new rule under Washington law, it would not apply to this case. However, if it is considered an old rule, it applies retroactively.

The Court in *Tsai* held that *Padilla* did not announce a new rule under Washington law because it was merely an application of the *Strickland* factors to a particular set of facts. *Tsai*, 183 Wn.2d at 103; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). The failure to give advice regarding immigration consequences of a plea was already determined to be deficient performance in Washington. *Tsai*, 183 Wn.2d at 99. Therefore, *Padilla* applies retroactively under *Teague*. In other words, the rule announced in *Padilla* applies to this case even though *Padilla* was issued in 2010 and the defendant pleaded guilty to his charge in 2008. Therefore, the defendant's motion is not time-barred. While the motion was timely, this court should nonetheless deny the appeal because the trial court did not err in finding Ramos-Curiel's plea to be knowing, intelligent, and voluntary.

Under *Tsai*, the failure to do sufficient research and correctly advise the defendant falls below the standard of a reasonably prudent attorney. 183 Wn.2d at 101. In this case, trial counsel conducted sufficient research and did correctly advise the defendant. First, Mr. Ladouceur testified that his standard practice was to ascertain the client's immigration status and then

consult information obtained from CLEs that explained classification of certain crimes. RP 14. He also testified that his opinion in 2008 was that Possession of a Controlled Substance was a deportable offense. RP 16. Additionally, Mr. Ladouceur testified that he was familiar with other resources he could consult regarding immigration questions. RP 20. Therefore, Mr. Ladouceur did sufficient research. He also correctly advised Ramos-Curiel.

Under 8 U.S.C. § 1227 (a)(2)(B), “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, of a foreign country relating to a controlled substances, other than a single offense involving possession for one’s own use of 30 grams or less of marijuana, is deportable.” The statute does not say that a person convicted of such a violation absolutely will be deported. For a defense attorney to tell his or her client that the defendant will definitely be deported would require the attorney to know what Immigration Services would do in the future. No person can know what another government agency will do in future, including whether the INS or IS will deport somebody.

What *Padilla* and 8 U.S.C. § 1227 requires is simply that the attorney give the advice he is capable of giving. In this case, the trial attorney gave that advice – he knew Ramos-Curiel was not a citizen and

went over the plea form with him, focusing especially on the language about immigration consequences of a plea. Additionally, the court advised the defendant that he may be deported. The advice from trial counsel and the sentencing court was proper.

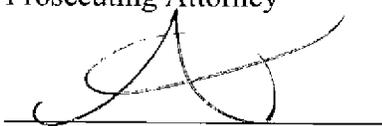
#### **IV. CONCLUSION**

For the reasons stated above, the State of Washington respectfully requests this court deny the appeal.

Respectfully submitted this ~~14<sup>th</sup>~~ day of November, 2016

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Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington, on the 15<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
Michelle Sasser

**COWLITZ COUNTY PROSECUTOR**

**November 15, 2016 - 11:38 AM**

**Transmittal Letter**

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