

NO. 33431-7-III

FILED
Jul 19, 2016
Court of Appeals
Division III
State of Washington

**COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MIGUEL BARAJAS VERDUZCO, APPELLANT / PETITIONER

APPEAL FROM THE SUPERIOR COURT OF GRANT COUNTY

BRIEF OF RESPONDENT

GARTH DANO
Grant County Prosecuting Attorney

KATHARINE W. MATHEWS
Deputy Prosecuting Attorney
WSBA # 20805
Attorneys for Respondent

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I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- A. IS THE RULE IN *PADILLA* APPLIED RETROACTIVELY UNDER ESTABLISHED WASHINGTON LAW? (ASSIGNMENT OF ERROR NO. 1)
- B. WAS IT ERROR TO FIND TRIAL COUNSEL DID NOT AFFIRMATIVELY MISADVISE BARAJAS VERDUZCO REGARDING THE LONG-TERM IMMIGRATION CONSEQUENCES OF HIS CONVICTION? (ASSIGNMENT OF ERROR NO. 2)
- C. DID COUNSEL'S FAILURE TO ADVISE BARAJAS VERDUZCO OF THE LONG-TERM IMMIGRATION CONSEQUENCES OF HIS CONVICTIONS DEPRIVE HIM OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN HE CANNOT SHOW RESULTING PREJUDICE IN HIS CRIMINAL CASE BECAUSE THE STATE'S CASE WAS STRONG, HE RECEIVED A FAVORABLE PLEA DEAL, AND IT IS INCONCEIVABLE THE STATE WOULD HAVE AGREED TO DISMISS OR ALTER ALL OF THE CHARGES IN A MANNER SUFFICIENT TO EVADE PERMANENT INADMISSIBILITY (PERSONAL RESTRAINT PETITION)?

II. STATEMENT OF THE CASE

A. FACTS IN CRIMINAL CASE

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 I. Manzo. Motion and Affidavit for Arrest and

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.

Detention (attached as Appendix A) at 3. Deputies found items taken in a Royal City burglary three days earlier, worth over \$1,500. *Id.* Deputies also found two firearms, a .22 pistol in Barajas Verduzco's bedroom closet and a shotgun under one of the couches in the living room. *Id.* Manzo and Barajas Verduzco told the deputies they were living illegally in the United States and had no permit to possess the firearms. *Id.*

When the deputies found two baby formula cans with marijuana residue inside and marijuana in plain view in the kitchen on a microwave oven, they applied for and were granted a warrant to search for drugs and drug paraphernalia. Appendix A at 3–4.

Under a different 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 two more formula cans full of marijuana. Appendix A at 4.

Deputies found over \$8,000 in United States currency in Manzo's purse. *Id.* Manzo had not worked for about four months and Barajas Verduzco had been unemployed for one month. *Id.* Manzo agreed to talk with the deputies after having been advised of her *Miranda*² rights.

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

The deputies found no drug paraphernalia. *Id.* Manzo told Deputy R.K. Rectenwald neither she nor Barajas Verduzco used drugs. *Id.* Manzo nodded in affirmance when Rectenwald explained that although they were not using drugs themselves, they were selling to addicts who were stealing property to trade for drugs. *Id.*

Barajas Verduzco pleaded guilty to possession of marijuana with intent to deliver, possession of cocaine with intent to deliver, possessing stolen property in the first degree, and alien in possession of a firearm. CP 13–14. These were the original charges. CP 1–2.

The standard sentencing range on the two drug felonies was six-plus to 18 months confinement. CP 16. The stolen property range was four to 12 months and the unranked firearm charge was 0–twelve months. *Id.* The State recommended low-end concurrent sentences on all counts, explaining Barajas Verduzco “is looking at deportation upon conviction.” CP 47. The State told the court the agreement also allowed Manzo to plead to a single amended count of conspiracy to deliver cocaine with confinement limited to credit for time served. CP 47. The couple had an infant and a one-year old. Appendix A at 4.

The Court and counsel then discussed the fact that under the new sentencing guidelines, a prison sentence—with up to 50 percent good time—would yield substantially the same net length of incarceration with

the additional benefit of serving time in the prison environment instead of the Grant County jail. CP 53. Although Barajas Verduzco preferred to remain in Grant County, the Court said: “I’m going to send him to prison.” CP 53. The Court imposed 13 months confinement on each of the drug charges and six months each on the other two. CP 19. After imposing legal financial obligations, the Court said: “So I guess you’re going back to Mexico, so I don’t know how you’ll pay it.” CP 55.

Barajas Verduzco’s now-disbarred defense attorney, Theodore A. Mahr, had told his client this was the best deal he could get. CP 32. He also told his client the convictions would result in deportation. *Id.*

B. UNDERLYING FACTS CONCERNING IMMIGRATION

Barajas Verduzco asserts Mahr advised him to get a “coyote” to get back into the United States after deportation and that once he got back, Mahr could help him with his immigration case. CP 32. He asserts Mahr never told him the drug convictions would entirely preclude his future ability to reside legally in the United States. *Id.* In his Statement of Additional Grounds,³ filed June 3, 2016, Barajas Verduzco asserts Mahr told him his guilty plea would not matter because Mahr could still “file

³ The State treats the Statement of Additional Grounds as another supplemental declaration because it contains only assertions of fact relating to the question of whether Mahr affirmatively misled Barajas Verduzco concerning immigration consequences of his plea.

special papers” to get him a green card. SAG at ¶ 3. He claims he would never have pleaded guilty otherwise and would have gotten a better lawyer to help him with his case. *Id.*

Immigration and Customs Enforcement (ICE) issued an expedited removal order on December 28, 2007, about three years after Barajas Verduzco’s release. Draft Record of Deportable/Inadmissible Alien (attached as Appendix C) at 2. Before his removal, ICE provided him a list of free legal services. *Id.* at 4. The record is silent concerning whether Barajas Verduzco availed himself of counsel and, if so, whether he told that immigration attorney he been advised to reenter the United States or that he expected Mahr would assist him upon his return.

It is also unknown how long he remained in Mexico. According to immigration attorney Andrew J. White, Jr., Barajas Verduzco said he had lived in the United States since 1998 and left the United States for two months in 2006. CP 35. He apparently did not tell White he had been gone at any other time. *Id.*

Barajas Verduzco contacted Mahr immediately upon his return to Washington. CP 32. Mahr told him the best thing for him to do would be to wait a bit because Mahr expected there would soon be an “amnesty,” making Barajas Verduzco’s immigration case stronger. *Id.* At some point, Mahr told Barajas Verduzco upon payment of \$1,500 he would look into

what laws now applied to Barajas Verduzco's case. CP 33. ICE arrested Barajas Verduzco on September 18, 2011, before he was able to raise the fee. CP 33. He then found out Mahr was no longer a lawyer. CP 33.

B. FACTS CONCERNING CrR 7.8(B) MOTION

In November 2011, Barajas Verduzco, through attorney Brent A. De Young, started filing paperwork concerning his CrR 7.8(b) motion to withdraw his guilty plea and vacate his judgment and sentence. A special evidentiary hearing was held in Superior Court January 9, 2015 for the express purpose of determining whether Mahr had made any affirmative misrepresentations concerning Barajas Verduzco's immigration consequences. Order Transferring Motion to Vacate Conviction (attached as Appendix B) at ¶ I. Based on Barajas Verduzco's two declarations, filed November 16, 2012 and March 3, 2014, the court determined Mahr, "at the time of defendant's plea, did not provide any affirmative misadvice to the defendant regarding the immigration consequences of his plea." *Id.* at ¶ II. Neither of Barajas Verduzco's declarations contained the precise contours of Mahr's alleged affirmative misadvice, which Barajas Verduzco fleshed out in his Statement of Additional Grounds. The court then transferred the motion to this Court as a personal restraint petition. *Id.* at ¶ III.

III. ARGUMENT

A. THE RULE IN *PADILLA* IS APPLIED RETROACTIVELY UNDER ESTABLISHED WASHINGTON LAW.

Padilla v. Kentucky held failure to advise of immigration consequences stemming from a guilty plea renders counsel's performance deficient. 559 U.S. 356, 374, 130 S. Ct. 1473, 1486, 176 L. Ed. 2d 284 (2010). The Washington Supreme Court answered the question of *Padilla's* retroactive application when it held *Padilla* did not announce a new rule under Washington law and applies retroactively to matters on collateral review. *In re Pers. Restraint of Yung-Cheng Tsai*, 183 Wn.2d 91, 103, 351 P.3d 138 (2015). *Padilla* applies in this case.

B. IT WAS ERROR TO FIND TRIAL COUNSEL DID NOT AFFIRMATIVELY MISADVISE BARAJAS VERDUZCO REGARDING THE LONG-TERM IMMIGRATION CONSEQUENCES OF HIS CONVICTIONS.

There is no question Mahr advised Barajas Verduzco his stolen property and drug convictions would result in deportation. Under the Immigration and Nationality Act (INA), aliens committing crimes of moral turpitude are inadmissible. 8 U.S.C. § 1227(a)(2)(A)(i)(I).⁴ Possessing stolen property is a crime of moral turpitude. *See, e.g., Duarte-*

⁴ "Any alien who (I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j) [8 USC § 1255(j)]) after the date of admission, and (II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable." 8 U.S.C.S. § 1227(a)(2)(A)(i)(I).

Rodriguez v. Holder, 356 F. App'x 24, 25 (9th Cir. 2009). Additionally, violation of any law relating to controlled substances renders noncitizens inadmissible. 8 U.S.C. § 1227(a)(2)(A)(i)(II).⁵

It seems possible from Mahr's disciplinary and criminal history he may have made some sort of representation that he could assist Barajas Verduzco with his immigration status after deportation, or otherwise implied the removal would not be permanent.

Any possible assistance Mahr may have been able to provide would have been obviated by advice to illegally reenter the United States following removal, although that result is not, itself, a collateral consequence of the convictions. Illegal reentry after previous removal for any reason renders Barajas Verduzco ineligible for admission, for life if convicted of an aggravated felony. 8 U.S.C. § 1182(a)(9)(A)(ii).⁶

C. COUNSEL'S FAILURE TO ADVISE BARAJAS VERDUZCO OF THE LONG-TERM IMMIGRATION CONSEQUENCES OF HIS CONVICTIONS DID NOT DEPRIVE HIM OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

⁵ "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 (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable." 8 U.S.C.S. § 1227(a)(2)(A)(i)(II)

⁶ "Any alien not described in clause (i) who (I) has been ordered removed under section 240 [8 USCS § 1229a] or any other provision of law, or (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible." 8 U.S.C. § 1182(a)(9)(A)(ii).

BECAUSE HE CANNOT SHOW RESULTING PREJUDICE IN HIS CRIMINAL CASE WHEN THE STATE'S CASE WAS STRONG, HE RECEIVED A FAVORABLE PLEA DEAL, AND IT IS INCONCEIVABLE THE STATE WOULD HAVE AGREED TO DISMISS OR ALTER ALL OF THE CHARGES IN A MANNER SUFFICIENT TO EVADE PERMANENT INADMISSIBILITY.

Mahr's performance was deficient if he affirmatively misled or failed to advise Barajas Verduzco concerning the long-term effect of his convictions on his future ability to live legally in the United States.

Padilla v. Kentucky, 559 U.S. 356, 364, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010). Nevertheless, Barajas Verduzco's consolidated direct appeal and personal restraint petition should be denied and dismissed because he cannot show the outcome in his criminal case would have been different.

Padilla did not hold that counsel's failure to advise of immigration consequences is a per se violation of the Sixth Amendment right to effective assistance of counsel. Instead, the question must be assessed under *Strickland's*⁷ two-pronged analysis. *Padilla*, 559 U.S. at 366. The first prong is "whether counsel's representation 'fell below an objective standard of reasonableness.'" *Id.* (quoting *Strickland*, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984)). If Mahr affirmatively misled his client into believing something could be done to ameliorate the eventual consequences of his convictions—advice falling below an objective

⁷ *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984).

standard of reasonableness—whether Barajas Verduzco is “entitled to relief on his claim will depend on whether he can satisfy *Strickland’s* second prong, prejudice . . .” *Id.* Barajas Verduzco cannot show prejudice.

Prejudice is defined as “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* “A bare allegation that a petitioner would not have pleaded guilty if he had known all of the consequences of the plea is not sufficient to establish prejudice under the *Strickland* test.” *In re Pers. Restraint of Riley*, 122 Wn.2d 772, 782, 863 P.2d 554 (1993).

The burden is on Barajas Verduzco to “must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” *Padilla*, 559 U.S. at 374. He has produced no objective evidence in support of his self-serving contention that he would have rejected the State’s offer and found a better lawyer. It is doubtful any defense lawyer could have wrangled a deal entirely eliminating crimes the conviction of which leads to automatic permanent removal. Of the four counts charged, three were grounds for automatic exclusion. Barajas Verduzco has not put forth any possible crime to which he reasonably

could have pleaded under the facts of his case that would not have resulted in his permanent removal. It is incredible to believe the State would have agreed to such radical and unwarranted amendment of the charges against an undocumented drug dealer.

When determining whether a defendant who has pleaded guilty would have insisted on proceeding to trial had he received competent advice, appellate courts may consider the probable outcome of that trial. Cf. *Hill v. Lockhart*, 474 U.S. 52, 59–60, 106 S. Ct. 366, 88 L.Ed.2d 203 (1985) (probable trial outcome relevant in assessing prejudice from counsel’s deficient performance).

The State’s case was strong. A competently prosecuted trial could have had but one outcome: guilty verdicts on all charges. Absent catastrophic trial error or jury nullification, conviction was inescapable. “A defendant has no entitlement to the luck of a lawless decisionmaker.” *Strickland*, 466 U.S. at 695. Reviewing courts assessing prejudice should exclude consideration of “the possibility of arbitrariness, whimsy, caprice, ‘nullification,’ and the like.” *Id.* Such possibilities “are irrelevant to the prejudice inquiry.” *Id.* Unfortunately, “the luck of the lawless decisionmaker” would have been all Barajas Verduzco had going for him. Property stolen in a recent burglary was found inside his residence, along with bags of pre-packaged drugs stashed under his couch, a shotgun under

another couch, and \$8,000 cash in Manzo's purse when neither adult had been employed for at least a month. Manzo had tacitly admitted selling drugs for stolen property.

The State made a favorable settlement offer that included substantial benefit to Barajas Verduzco's wife, Manzo, and thus to his children as well. As part of the deal, Manzo was allowed to plead to reduced charges and be sentenced to the time she already served. The deal also lowered Barajas Verduzco's period of confinement and his LFOs.

At the time of his arrest, Barajas Verduzco was undocumented and inadmissible on that basis alone. 8 U.S.C. § 1227(a)(6)(A)(i).⁸ A decision to reject a plea bargain minimizing his own incarceration and providing for his wife's immediate release would not have been rational under these circumstances. Considering the totality of these circumstances, it is improbable that immigration consequences played any material part in Barajas Verduzco's plea decision.

Barajas Verduzco fails to show prejudice in his criminal case as a result of his counsel's deficient performance because he cannot.

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⁸ "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." 8 U.S.C. § 1182(a)(6)(A)(i).

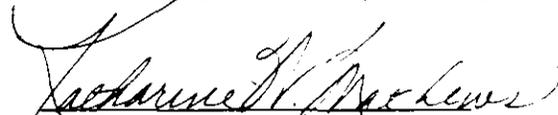
IV. CONCLUSION

Although *Padilla* applies retroactively to Barajas Verduzco's circumstances, he is not entitled to withdraw his pleas and vacate his convictions because he suffered no prejudice in his criminal case from counsel's deficient performance. His personal restraint petition should be denied and his appeal dismissed.

DATED this 19th day of July, 2016.

Respectfully submitted,

GARTH DANO
Grant County Prosecuting Attorney



KATHARINE W. MATHEWS
Deputy Prosecuting Attorney
WSBA # 20805
Attorneys for Respondent
kwmathews@grantcountywa.gov

NO. 33431-7-III

BRIEF OF RESPONDENT

APPENDIX A

MOTION AND AFFIDAVIT FOR ARREST AND DETENTION
Cause No. 03-1-00957-4

SW

FILED	
KENNETH O. KUNES, CLERK	
BY _____	DEPUTY
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RECORDED IN _____	
VOLUME _____	PAGE _____



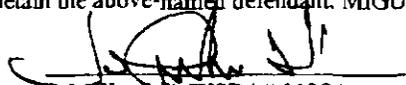
03-250224

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 03 - 1 - 00957 - 4
)	
v.)	MOTION AND AFFIDAVIT FOR ARREST
)	AND DETENTION
MIGUEL BARAJAS-VERDUZCO)	
)	
Defendant.)	

I. MOTION

The Prosecuting Attorney moves for authority to arrest and detain the above-named defendant, MIGUEL BARAJAS-VERDUZCO, based on the following affidavit.


 John Knodell, WSBA# 11284
 Prosecuting Attorney

II. CERTIFICATION

Under penalty of perjury under the laws of the State of Washington the undersigned certifies:

That I am prosecuting attorney for Grant County, and familiar with the files herein;

I believe probable cause exists to detain the above-named person on a charge(s) of COUNT 1: VIOLATION OF UNIFORM CONTROLLED SUBSTANCE ACT, RCW 69.50.401(a)(1)(iii), POSSESSION OF MARIJUANA WITH INTENT TO DELIVER, (CRIME CODE: 07331)
 COUNT 2: VIOLATION OF UNIFORM CONTROLLED SUBSTANCE ACT, RCW 69.50.401(a)(1)(i), POSSESSION OF COCAINE WITH INTENT TO DELIVER, (CRIME CODE: 07331)
 COUNT 3: POSSESSING STOLEN PROPERTY IN THE FIRST DEGREE, RCW 9A.56.150(1) and 9A.56.140(1) (CRIME CODE: 02802)
 COUNT 4: ALIEN IN POSSESSION OF FIREARM, RCW 9.41.170(1) (CRIME CODE: 00527), based upon a report filed with our office by DEP. RYAN RECTENWALD, a law enforcement officer employed by GCSO, a copy of which is attached hereto and incorporated herein.

DATED: NOVEMBER 12, 2003.


 John Knodell

**SUPERIOR COURT OF WASHINGTON FOR GRANT
COUNTY**

**STATEMENT OF ARRESTING OFFICER AND
PRELIMINARY FINDING OF PROBABLE CAUSE**

STATE OF WASHINGTON)
COUNTY OF GRANT) SS. NO.

**COMES NOW DEPUTY RK RECTENWALD, A LAW
ENFORCEMENT OFFICER, AND STATES THAT THE
FOLLOWING PERSON WAS ARRESTED BY THIS OFFICER AT
THE FOLLOWING TIME AND PLACE:
17472 Seattle ST, Beverly WA 98321**

**NAME: Barajas Verduzco, Miguel and Manzo, Maria I
DOB: 07/08/1978 and 09/17/1982**

ADDRESS: CITY: 17472 Seattle ST, Beverly WA 98321

SEX: RACE: Hispanic male and female

DATE AND TIME OF ARREST: 11/10/2003 1730 hours

PLACE OF ARREST: 17472 Seattle ST, Beverly WA 98321

INCIDENT NUMBER: 03GS13451

**LISTED BOOKING CHARGES:
Possession of stolen property 1 degree
Alien in possession of a firearm
Possession of Cocaine with intent to deliver
Possession of Marijuana with intent to deliver
Keeping and maintaining a drug house**

**THE ABOVE INDIVIDUAL WAS ARRESTED FOR THE LISTED
CHARGES BASED UPON THE FOLLOWING FACTS AND
CIRCUMSTANCES:**

On 11/10/2003 at approximately 1730 hours members of the Grant County Sheriff's Office, Regional Tactical Response Team, and the Interagency Narcotics Enforcement Team conducted a search warrant for stolen property at 17472 Seattle ST, Beverly WA 98321.

During the execution of this search warrant both Miguel Barajas Verduzco DOB 07/08/1978 and Maria I Manzo DOB 09/17/1982 were located in or around this residence. Both Manzo and Barajas said that they lived in the residence together and had children in common. After the search warrant was read aloud to Manzo and she was advised of her legal rights per Miranda, which she said she understood and was willing to talk with me, a thorough search of the residence was executed.

During the search several items were located that were taken from a burglary that was reported in the Royal City area on 11/07/2003. Those items were identified as an APEX DVD player with the DVD "From Justin to Kelly", a Sony Trinitron television, and a wooden clock. At first Manzo said that her and Barajas purchased these items from the flea market in Mattawa three weeks ago. Manzo changed her story when I told her that I had located the "From Justin to Kelly" DVD near the stolen APEX DVD player and the Sony Trinitron TV set. Manzo said that a Hispanic male brought these items to their house just three days ago. We also located several pieces of jewelry that was allegedly taken from the Robbery that occurred in the Royal City just weeks ago. The total amount of property located exceeded \$1,500.00.

Deputies also located two firearms in the residence. A Jennings 22 caliber pistol was located in the master bedroom closet and a 410 pump action shotgun was located under the couch located on the south wall in the living room. Both Manzo and Barajas were asked if they were legal residents, both said that they were illegally living in the United States. Both were asked if they possessed a permit to possess the firearms, both stated no.

Deputies located two more baby formula cans that had marijuana residue in them and a box of plastic sandwich baggies under the sink in the master bedroom, and an amount of Marijuana on the microwave oven in the kitchen in plain view. After these items were found a

secondary search warrant was applied for and was granted to search for drugs and paraphernalia.

Deputies located a plastic bag under the couch located on the north wall in the living room. This bag contained several gallon sized plastic bags that contained pre-packaged smaller baggies that were full of green vegetable matter, it field tested positive for Marijuana. We also located plastic bags that contained smaller plastic baggies of white powder substance, the white powder substance later field tested positive for Cocaine. This bag also contained a digital weigh scale, and two baby formula cans that also contained small baggies of the same green vegetable matter.

*****Note***** No drug paraphernalia was located in this residence.

Manzo told me that they did not use the drugs that were located in the residence. I explained that they might not be using drugs but the people that the sell the drugs to are addicted to them and that is why they steal property to buy drugs from them, she nodded her head in the affirmative motion.

Manzo and Barajas had two small children, one newborn and one approximately one year old. The one year old child was walking from couch to couch where both the shotgun and drugs were hiding under.

Deputies also located over \$8000.00 in US currency in Manzo's purse. She said that she has not worked since July of 2003 and Barajas has not worked in one month.

The cocaine and marijuana will be sent to the crime lab for further analysis, detailed reports from Deputies involved with the search of the residence along with a more detailed Officers report will be submitted.

**I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY
UNDER THE LAWS OF THE STATE OF WASHINGTON THAT
THE FOREGOING IS TRUE AND CORRECT.**

RK Rectenwald

DATE AND PLACE 11/10/2003, Ephrata WA

NO. 33431-7-III

BRIEF OF RESPONDENT

APPENDIX B

ORDER TRANSFERRING MOTION TO VACATE CONVICTION
Cause No. 03-1-00957-4



07-800493

FILED

JAN 09 2015

KIMBERLY A. ALLEN
GRANT COUNTY CLERK
KATY MONTEMAYOR

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON
Plaintiff(s),

vs.

MIGUEL BARAJAS WOLOUZCO
Defendant(s).

No. 03-1-00957-4

ORDER

TRANSFERRING MOTION TO VACATE
CONVICTION FILED BY Δ ON 111612
TO THE COURT OF APPEALS AS A
PERSONAL RESTRAINT PETITION

Clerks Action Required

I. BASIS

Δ moved the court for: CLARIFICATION OF
JUDGE SPERLINE'S ORDER OF 031414 SUGGESTING THAT
Δ/C SET THIS MATTER FOR AN EVIDENTIARY HEARING.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

BASED UPON THE AFFIDAVITS OF THE Δ FILED 111612
030314, THE COURT FINDS THAT Δ/C AT THE TIME
OF Δ'S PLEA DID NOT PROVIDE ANY AFFIRMATIVE MISADVICE
TO THE Δ REGARDING THE IMMIGRATION CONSEQUENCES OF
HIS PLEA.

III. ORDER

IT IS ORDERED that: THE Δ HAS NOT MADE A SUBSTANTIAL
SHOWING OF ENTITLEMENT TO RELIEF & THE Δ'S MOTION
TO VACATE HIS CONVICTION SHOULD BE TRANSFERRED TO
THE COURT OF APPEALS AS A PERSONAL RESTRAINT PETITION.
C.R. 78

Dated: 1.9.14

John A. [Signature]
Judge

Appendix B
Page 1 of 1

Carol L. Highland DCA
CAROLE L. HIGHLAND WSB# 20504

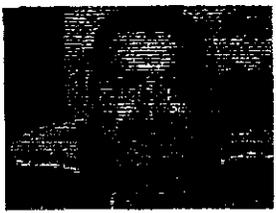
Brent A. De Young #29935
BRENT A. DE YOUNG #29935

NO. 33431-7-III

BRIEF OF RESPONDENT

APPENDIX C

RECORD OF DEPORTABLE/INADMISSIBLE ALIEN

Family Name (CAPS) BARAJAS-VERDUZCO, MIGUEL		First	Middle	Sex M	Hair BLK	Eyes BRO	Complexion MED
Country of Citizenship MEXICO	Passport Number and Country of Issue YAK110900066	File Number 079 769 636		Height 73	Weight 245	Occupation agriculture	
U.S. Address 17452 SEATTLE ST BEVERLY, WASHINGTON, 99321				Scars and Marks See Narrative			
Date, Place, Time, and Manner of Last Entry Unknown Date, UNK, BWI			Passenger Boarded at				
Number, Street, City, Province (State) and Country of Permanent Residence				F.B.I. Number 9208LDC3			
Date of Birth 07/08/1978		Age: 33		Date of Action 09/18/2011		Location Code YAK/SEA	
City, Province (State) and Country of Birth AQUILA, MICHOACAN, MEXICO			Form: (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>				
NIV Issuing Post and NIV Number		Social Security Account Name					
Date Visa Issued		Social Security Number 578-75-4538					
Immigration Record POSITIVE - See Narrative				Criminal Record See Narrative			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) MANZO-ANGUIANO, MARIA NATIONALITY: MEXICO				Number and Nationality of Minor Children None			
Father's Name, Nationality, and Address, if Known BARAJAS, SALVADOR NATIONALITY: MEXICO			Mother's Present and Maiden Names, Nationality, and Address, if Known VERDUZCO, GLORIA NATIONALITY: MEXICO				
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Systems Checks See Narrative		Charge Code Word(s) See Narrative	
Name and Address of (Last) Current U.S. Employer		Type of Employment		Salary		Employed from/to	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FIN: 1069435550							
				Left Index fingerprint		Right Index fingerprint	
							
<p>HCIC Level 3</p> <p>SCARS MARKS AND TATTOOS</p> <p>-----</p> <p>None Indicated - None Indicated</p> <p>Subject Health Status</p> <p>-----</p> <p>APPEARS GOOD</p> <p>... (CONTINUED ON I-831)</p>							
Alien has been advised of communication privileges _____ (Date/Initials)				GEOFFREY WHITE SDDO _____ (Signature and Title of Immigration Officer)			
Distribution:				Received: (Subject and Document(s)) (Report of interview)			
				Officer: GEOFFREY WHITE on: September 18, 2011 (time) Disposition: ADMINISTRATIVE DEPORTATION I-851/I-851A Examining Officer: JEFFREY L. FORTNUM			

DRAFT NOT COMPLETED

Alien's Name BARAJAS-VERDUZCO, MIGUEL	File Number 079 769 636 Event No: YAK1109000066	Date 09/18/2011
<p>Current Criminal Charges</p> <p>-----</p> <p>09/18/2011 - 8 USC 1182 - ALIEN INADMISSIBILITY UNDER SECTION 212</p>		
<p>Current Administrative Charges</p> <p>-----</p> <p>09/18/2011 - 212a2A1II - CONTROLLED SUBSTANCE CONVICTION 09/18/2011 - 212a6A1 - ALIEN PRESENT WITHOUT ADMISSION OR PAROLE - (PWAs)</p>		
<p>Previous Criminal History</p> <p>-----</p> <p>On 11/10/2003, the subject was arrested for the crime of "Possession Stolen Property" which resulted in a conviction. The subject was sentenced to 0 year(s), 13 month(s), 0 day(s).</p> <p>On 11/10/2003, the subject was arrested for the crime of "Possession Of Weapon" which resulted in a conviction. The subject was sentenced to 0 year(s), 13 month(s), 0 day(s).</p> <p>On 11/10/2003, the subject was arrested for the crime of "Marijuana - Smuggle" which resulted in a conviction. The subject was sentenced to 0 year(s), 13 month(s), 0 day(s).</p> <p>On 11/10/2003, the subject was arrested for the crime of "Amphetamine - Sell" which resulted in a conviction. The subject was sentenced to 0 year(s), 13 month(s), 0 day(s).</p> <p>On 02/26/2002, the subject was arrested for the crime of "Driving Under Influence Drugs" which resulted in a conviction. The subject was sentenced to 0 year(s), 0 month(s), 364 day(s).</p>		
<p>Records Checked</p> <p>-----</p> <p>AFIS Pos CLAIM Neg CIS Pos IAFIS Pos NCIC Pos NLETS Pos TECS Neg</p>		
<p>ARRESTING AGENTS</p> <p>-----</p> <p>T 8073 T PETER GEOFFREY WHITE J 4181 L FORTHUN K 3121 J WILKS</p>		
<p>At/Near</p> <p>-----</p> <p>Beverly, WA</p>		
<p>Record of Deportable/Excludable Alien:</p>		
Signature GEOFFREY WHITE	Title SDDO	

DRAFT NOT COMPLETED

Alien's Name BARAJAS-VERDUZCO, MIGUEL	File Number 079 769 636 Event No: YAK1109000066	Date 09/18/2011
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METHOD OF LOCATION AND APPREHENSION:

SUBJECT, Miguel Barajas-Verduzco, was encountered on 09/18/2011 outside his residence at 17452 Seattle, St, Beverly, WA by DO White, SDDO Forthun, IEA Wilks and IEA Peter. At that time, the Yakima FugOps Team, wearing vests with ICE POLICE clearly marked on them, was attempting to locate a known criminal alien, Miguel Barajas-Verduzco, A79 769 636, determined through government database checks to be present in the United States. SUBJECT freely admitted to being a citizen and national of Mexico without documentation to be in the U.S. legally. SUBJECT was taken into custody and booked into the Yakima County Jail pending transport to the Northwest Detention Center, Tacoma, WA.

USC INQUIRY:

SUBJECT was asked if there is any reason to believe that he is a citizen of the United States. SUBJECT stated no. SDDO Initials _____

SUBJECT was also asked if he has any reason to believe that one or both of his parents are United States citizens. SUBJECT stated no. SDDO Initials _____

SERVICE IN THE U.S. MILITARY:

SUBJECT was asked if he had ever served in the U.S. military or is currently serving in the U.S. military. SUBJECT stated no. SDDO Initials _____

ALIENAGE AND REMOVABILITY:

SUBJECT admits to being a citizen and national of Mexico with no documentation through the CIS with which to be or remain in the United States. SUBJECT, an ILLEGAL ENTRANT, further admits to having last entered the United States on _____ after 12/28/2007 at or near an unknown place without being admitted or paroled after inspection by an immigration officer in violation of 212(a)(6)(A)(i) of the INA.

Subject is also in violation of section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, as amended, in that Subject is an alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements 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 (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)). Subject has been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act, 8 U.S.C. 1101(a)(43).

IMMIGRATION HISTORY:

Systems indicate that Subject was issued an Expedited Removal on 12/28/2007 at Douglas, AZ. No documentation can be found to support this removal.

On 11/20/2003, Subject was issued an NTA and personally served. The notice to appear was not filed with EOIR. On 08/04/2011, the NTA was cancelled pursuant to INA 239.2(a)(7) by SDDO Forthun and a new NTA was issued.

CRIMINAL HISTORY:

On 12/30/2003, Subject was convicted of possession of Marijuana with intent to Deliver in the Grant County Superior Court, in violation of RCW 69.50.401(A)(1) and sentenced to 13 months. Case 03-1-00957-4

On 12/30/2003, Subject was convicted of possession of cocaine with intent to Deliver in the Grant County Superior Court, in violation of RCW 69.50.401(A)(1) and sentenced to 13 months. Case 03-1-00957-4

Signature GEOFFREY WHITE	Title SDDO
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Alien's Name BARAJAS-VERDUZCO, MIGUEL	File Number 079 769 636 Event No: YAK1109000066	Date 09/18/2011
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On 12/30/2003, Subject was convicted of possession of stolen property 1 in the Grant County Superior Court, in violation of RCW 9A.56.150. Case 03-1-00957-4 and sentenced to 6 months.

On 12/30/2003, Subject was convicted of alien in possession of a firearm in the Grant County Superior Court, in violation of RCW 9.41.170. Case 03-1-00957-4 and sentenced to 6 months.

On 03/26/2002, Subject was convicted of reckless driving in the Grant County District Court, in violation of RCW 46.61.500 and sentenced to 364 days. Case C00013984

SUBJECT notified of right to contact his consular officer per 8 CFR 236.1(e) as recorded on Form I-826.

SUBJECT was provided with a list of free legal services pursuant to 8 CFR 236.1(e).

SUBJECT expressed no fear of being returned to country of citizenship and birth.

MEDICAL:

SUBJECT claims to be in good health and is not taking any medication.

FAMILY:

Subject's wife, Maria MANZO-Angulano, A 79 769 114, was also located at the residence. Subject's wife was released on an Order of Supervision to care for their 3 USC children. Subject's wife is also 8 months pregnant.

OPERATION:

Cross Check

DISPOSITION:

Subject appears removable under 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(II). Subject notified of right to contact his consular officer per 8 CFR 236.1(e) as recorded on Form I-826. Subject given a free legal services listing. The criteria for an Administrative Removal have been met.

Other Identifying Numbers

ALIEN-079769636
 State Criminal Number/State Bureau Number-WA20588477
 COMMENT: washington
 Driver's License (State and Country)-BARAJM*22MH
 COMMENT: washington state
 Inmate Number - State Prison-866183
 COMMENT: WA State

DRAFT NOT COMPLETED

Signature GEOFFREY WHITE	Title SEDO
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COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

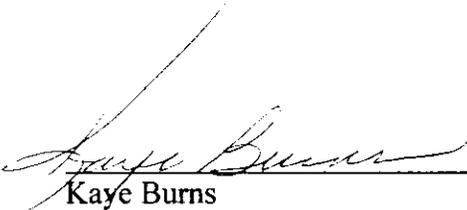
STATE OF WASHINGTON,)	
)	
Respondent,)	No. 33431-7-III
)	
v.)	
)	
MIGUEL BARAJAS VERDUZCO,)	DECLARATION OF SERVICE
)	
Appellant /.)	
Petitioner.)	

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 Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Brent A. DeYoung
deyounglaw1@gmail.com

Dated: July 19, 2016.


Kaye Burns