NO. 30150-8-III
Consolidated With NO. 30766-2-III

STATE OF WASHINGTON

COURT OF APPEALS - DIVISION III

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STATE OF WASHINGTON,

Respondent,

vs.

JUAN PEDRO RAMOS

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR

FRANKLIN COUNTY

# BRIEF OF RESPONDENT

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## A. RESPONSE TO ASSIGNMENT OF ERROR

The sole assignment of error reads as follows: "Appellant assigns error to the denial of his motion to withdraw his guilty plea." However, as reflected in appellant's Statement of the Case, he brought no such motion and the trial court made no such ruling. Rather, he filed (1) a post-judgment motion pursuant to CrR 7.8(b) which the trial court transferred to this court for consideration as a personal restraint petition, and (2) an untimely direct appeal. The State assumes Mr. Ramos is actually (1) asking this court to grant his personal restraint petition, and (2) challenging the trial court's acceptance of his guilty plea by way of direct appeal.

## B. COUNTERSTATEMENT OF ISSUES

1. **DOES THE UNITED STATES SUPREME COURT'S DECISION IN PADILLA V. KENTUCKY APPLY RETROACTIVELY ON COLLATERAL REVIEW?**

2. **MAY A DEFENDANT CHALLENGE A GUILTY PLEA ON DIRECT APPEAL BASED ON MATTERS OUTSIDE THE RECORD OF THE PLEA HEARING WITHOUT GOING THROUGH THE STEP OF MOVING TO WITHDRAW THE GUILTY PLEA OR OTHERWISE COLLATERALLY ATTACKING THE GUILTY PLEA?**

3. **AFTER SENTENCING, MUST ANY CHALLENGE TO A GUILTY PLEA COME BY WAY OF COLLATERAL ATTACK?**

4. ARE POST-JUDGMENT AFFIDAVITS PART OF THE RECORD ON APPEAL WHEN THEY WERE NOT BEFORE THE TRIAL COURT AT THE TIME IT MADE THE DECISION UNDER REVIEW?

5. IS COLLATERAL ATTACK THE PROPER REMEDY WHEN A DEFENDANT MAKES A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON MATTERS OUTSIDE THE RECORD ON APPEAL?

6. VIEWED AS OF 1997, DID PREVAILING PROFESSIONAL NORMS REQUIRE A CRIMINAL DEFENSE ATTORNEY TO PROVIDE A CLIENT WITH ADVICE ON IMMIGRATION MATTERS?

7. ARE THE IMMIGRATION CONSEQUENCES OF A GUILTY PLEA UNCLEAR OR UNCERTAIN WHERE NO DEPORTATION PROCEEDINGS ARE INSTITUTED IN THE 16 YEARS FOLLOWING ENTRY OF CONVICTION AND THERE IS NO SHOWING ANY SUCH PROCEEDINGS ARE CONTEMPLATED?

8. WHEN IMMIGRATION CONSEQUENCES ARE UNCLEAR OR UNCERTAIN, NEED COUNSEL DO ANY MORE THAN ADVISE A NONCITIZEN CLIENT THAT PENDING CRIMINAL CHARGES MAY CARRY A RISK OF ADVERSE IMMIGRATION CONSEQUENCES?

9. DOES A DEFENDANT SUFFER PREJUDICE WHERE (1) HE IS ADVISED THAT HIS GUILTY PLEA IS GROUNDS FOR DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR

**DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES, (2) NO DEPORTATION PROCEEDINGS ARE INSTITUTED IN THE 16 YEARS FOLLOWING ENTRY OF CONVICTION, AND (3) THERE IS NO SHOWING THAT ANY SUCH PROCEEDINGS ARE CONTEMPLATED?**

C. RESPONSE TO STATEMENT OF THE CASE

The State accepts Mr. Ramos's Statement of the Case.

D. RESPONSE TO ARGUMENT

*Personal Restraint Petition*

As Mr. Ramos explains in his Statement of the Case, he is pursuing both a CrR 7.8 motion, which was transferred to this court for consideration as a personal restraint petition, and an appeal. It is necessary to analyze the personal restraint petition and the appeal separately, as different rules apply to each.

Mr. Ramos bases his attack on his guilty plea on Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), which held a lawyer may render ineffective assistance by failing to advise a client of the immigration consequences of a guilty plea. However, the petition is completely disposed of by the United States Supreme Court's recent decision in Chaidez v. United States, __ U.S. __, 133 S. Ct. 1103, __ L. Ed. 2d __ (2013). In Chaidez, the Court held that Padilla announced a new rule of

criminal procedure that does not apply retroactively on collateral review. Chaidez, 133 S. Ct. at 1107-14.

Chaidez is striking similar to the instant case. Roselva Chaidez hails from Mexico, but became a lawful permanent resident of the United States in 1977. About 20 years later, she helped to defraud an automobile insurance company out of $26,000. After federal agents uncovered the scheme, Chaidez pleaded guilty to two counts of mail fraud and was sentenced in 2004 to four years of probation and was ordered to pay restitution. In 2009, she collaterally attacked her criminal conviction, claiming her former attorney's failure to advise her of the immigration consequences of pleading guilty constituted ineffective assistance of counsel. See Chaidez, 133 S. Ct. at 1105-06. Similarly, Mr. Ramos is collaterally attacking a guilty plea entered many years ago. He likewise claims his lawyer's failure to advise him of immigration consequences amounted to ineffective assistance. As in Chaidez, the Padilla decision does not apply retroactively to Mr. Ramos's collateral attack. Thus, the personal restraint petition must be denied.

*Direct Appeal*

Withdrawal of guilty pleas is governed by CrR 4.2(f), which provides in pertinent part: "The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice... If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8." (Emphasis added). CrR 7.8 is the rule dealing with vacation of judgments. RCW 10.73.090(2) provides that the term "collateral attack" includes "a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment." In summary, the sole means to challenge a guilty plea after judgment is by collateral attack, and Padilla does not apply retroactively on collateral review.

The identical issue has been addressed by the Utah courts:

> Utah Code section 77-13-6 requires that a defendant file a motion to withdraw his or her guilty plea before the sentence is announced. See Utah Code Ann. § 77-13-6(2)(b) (2008). "[T]o challenge a guilty plea a defendant must move to withdraw the plea prior to the trial court's announcement of the sentence." State v. Tenerio, 2007 UT App 92, ¶ 6, 156 P.3d 854. "Sentence may not be announced until the motion is denied." Utah Code Ann. § 77-13-6(2)(b). If a defendant fails to timely file a motion to withdraw his plea, this court lacks jurisdiction to consider any claim

> except a challenge to the sentence itself. See State v. Briggs, 2006 UT App 448, ¶ 6, 147 P.3d 969. This jurisdictional bar includes ineffective assistance of counsel claims as they pertain to the plea. See id. Claims of ineffective assistance of counsel raised in the context of guilty pleas may be addressed by the filing of a petition for post-conviction relief if a motion to withdraw the guilty plea was not filed prior to sentencing. See id.

State v. Mata-Martinez, 2011 UT App 135, ¶ 2, 255 P.3d 693 (2011) (quoting State v. Navarro, 2010 UT App 302, ¶ 2, 243 P.3d 302 (2010) The court continued:

> "Under section 77-13-6(2), if a motion to withdraw a plea is not timely filed, this court does not have jurisdiction to review the plea, even on a claim of ineffective assistance of counsel." State v. Briggs, 2006 UT App 448, ¶ 6, 147 P.3d 969. Although Mata-Martinez strenuously argues the merits of a claim that he should be allowed to withdraw his guilty plea based upon Padilla v. Kentucky, __ U.S. __, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), we lack jurisdiction to consider the claim on direct appeal, and it must be asserted in post-conviction proceedings under the Post-Conviction Remedies Act. See Briggs, 2006 UTApp 448, ¶ 6, 147 P.3d 969 ("Because Defendant did not file a timely motion to withdraw his plea, this court lacks jurisdiction to review it on direct appeal. Therefore, Defendant's only remaining option is to raise this claim under the Post Conviction Remedies Act and rule 65C of the Utah Rules of Civil Procedure.").

Mata-Martinez, 255 P.3d at 693, ¶ 4. The Mata-Martinez court further noted that Padilla itself came to the United States Supreme Court in the context of post-conviction proceedings challenging the

validity of a guilty plea based upon ineffective assistance of trial counsel in advising a defendant of the deportation consequences of a guilty plea. Id. n. 1.

The Washington court rules are identical in effect with the Utah statutes and rules. As noted above, CrR 4.2(f) provides that a challenge to a guilty plea after "judgment" may only be made by collateral attack. "[I]n a criminal case, it is the sentence that makes the judgment. Without the sentence there is no judgment." Tembruell v. City of Seattle, 64 Wn.2d 503, 510, 392 P.2d 453 (1964). Thus, a guilty plea ripens into a judgment when sentence is pronounced. Id. at 509-10. In Washington, as in Utah, any attack on a guilty plea after sentencing must come by collateral attack.

In Counts v. State, 376 So.2d 59 (Fla. App. 1979), the court explained that an appeal following a guilty plea is limited to "an exclusive and limited class of issues which occur contemporaneously with the entry of the plea." Counts, 376 So.2d at 60 (quoting Robinson v. State, 373 So.2d 898, 902 (Fla. 1979)). The court explained:

> Furthermore, we find that an appeal from a guilty plea should never be a substitute for a motion to withdraw a plea. If the record raises issues concerning the voluntary or intelligent character of the plea, the issue should first be presented to the trial court in

> accordance with the law and standards pertaining to a motion to withdraw a plea. If the action of the trial court on such a motion were adverse to the defendant, it would be subject to review on direct appeal.

Counts, 376 So.2d at 60 (quoting Robinson, 373 So.2d at 902). The court further explained the underlying public policy reason for the rules:

> The purposes of requiting a motion to withdraw the guilty plea as a prerequisite to an appeal are obvious. The procedure enables the trial judge to pass on any points raised and establishes a record on which an appellate court may base an informed and reasoned disposition of the appeal. Were it not for this record of the motion hearing, the evidence of voluntariness in the vast majority of appeals would be the colloquy between the trial judge and the defendant. In most instances, therefore, the appellate court would not have a sufficient basis to render an informed decision on the issue of voluntariness. By requiring the defendant to make a prior motion to withdraw, however, the question of voluntariness will first be put to the trial court which can conduct an evidentiary hearing, and, if necessary, entertain collateral evidence in support of the defendant's position. If a trial court rules against the defendant on the motion to withdraw, that decision may be challenged upon appeal from the judgment and sentence. . . .
>
> An additional reason supports not allowing direct appeals on the issue of voluntariness from judgment entered upon guilty pleas. If a defendant is permitted to raise voluntariness on any appeal, and he does, in fact, appeal, he might find himself precluded from raising the question of voluntariness in a subsequent collateral attack on the judgment [.]

Counts, 376 So.2d at 60 (footnote omitted).

Washington law is in accord. Claims of ineffective assistance of counsel may be raised on direct appeal only in those rare instances where the record is sufficiently developed to consider the issue. State v. McFarland, 127 Wn.2d 322, 334-39, 899 P.2d 1251 (1995). Otherwise, the remedy is to bring a collateral attack where additional evidence may be taken. Id.

In the instant case, the record of the guilty plea includes only the statement of defendant on plea of guilty and the colloquy between the defendant and the trial judge. Nothing in this record calls into question the voluntariness of the guilty plea. For the plea to valid, due process requires the court to advise the defendant of all direct consequences of the plea. The court is not, however, required to advise the defendant of collateral consequences. State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980); State v. Ross, 129 Wn.2d 279, 916 P.2d 405 (1996). Immigration consequences are considered "collateral", so the court is not constitutionally required to cover them at the plea hearing. State v. Holley, 75 Wn. App. 191, 196, 876 P.2d 973 (1994); State v. Malik, 37 Wn. App. 414, 416, 680 P.2d 770, review denied, 102 Wn.2d 1023 (1984). A Washington statute, however, requires courts to

advise defendants that a criminal conviction could result in deportation, exclusion from admission, or denial of naturalization. RCW 10.40.200. This statute was complied with in this case. Guilty plea statement, paragraph 6(h). (CP 25). Use of the written form set out in CrR 4.2(g) is sufficient to show a defendant is aware of the consequences of his guilty plea. See State v. Hennings, 34 Wn. App. 843, 846, 664 P.2d 10 (1983); State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). RCW 10.40.200 is satisfied where the written guilty plea form contains the required warning, the defendant affirms the form was read, and the form is signed by both the defendant and the defendant's counsel. State v. Cortez, 73 Wn. App. 838, 840-41, 871 P.2d 660 (1994). Here, the guilty plea statement contained the required warning (CP 25) and was signed by both Mr. Ramos and his lawyer (CP 27). Mr. Ramos asserted:

> My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

(CP 27). Mr. Ramos's lawyer stated, "I have read and discussed this statement with the defendant and believe the defendant is competent and fully understands the statement." (CP 27). The trial

judge certified that the statement was signed by the defendant in open court in presence of the defendant's lawyer and the judge, and that the defendant asserted that the form was previously read to him by his lawyer. (CP 27). The trial judge concluded:

> I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

(CP 27). Thus, the trial court's acceptance of the guilty plea was constitutionally valid.

Padilla changed none of this. That case has nothing to do with the due process requirements for valid guilty pleas. Rather, it involved an allegation of ineffective assistance of counsel. The Court held that the Sixth Amendment requires counsel to "inform her client whether his plea carries a risk of deportation." Padilla, 130 S. Ct. at 1486. The Court noted that when immigration consequences are unclear or uncertain, "a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." Id. at 1483.

Padilla does not turn on the distinction between "direct" and "collateral" consequences. Rather, it holds this distinction is irrelevant to ineffective assistance claims:

> Deportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as a direct or collateral consequence. The collateral verses direct distinction is thus ill-suited to evaluating an [ineffectiveness] claim concerning the specific risk of deportation. We conclude that advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.

Id. at 1482.

In short, Padilla deals solely with the Sixth Amendment right to counsel. It has nothing to do the due process requirements for a valid guilty plea. Rather, it sets out standards for determining whether counsel was constitutionally ineffective.

Such ineffectiveness claims are ill-suited to be addressed in a direct appeal. Mr. Ramos contends at page 2 of his brief that he has "presented sufficient corroboration of his assertion that he was not properly informed of the specific immigration consequences of his guilty plea." However, his bases this claim exclusively on the affidavits submitted in support of his personal restraint petition. Such post-judgment affidavits that were not before the trial court at the time the decision was made are not part of the record on appeal

and cannot be considered in the appeal. State v. Siderits, 17 Wn. App. 56, 60, 561 P.2d 231 (1977). Indeed, the entire reason for raising an ineffective counsel claim in a collateral attack is to develop a record on which to base the claim. McFarland, 127 Wn.2d at 334-39. As the post-judgment affidavits cannot be considered in the direct appeal, the appeal must be denied on the basis of an insufficient record.

Even if the post-judgment affidavits are considered, there is no showing of ineffective assistance of counsel. A defendant claiming ineffective assistance must show both deficient performance and resulting prejudice. State v. Rodriguez, 103 Wn. App. 693, 700-01, 14 P.3d 157 (2000); State v. Gomez Cervantes, 169 Wn. App. 428, 434, 282 P.3d 98 (2012). The appellate court will presume counsel was effective. Gomez Cervantes, 169 Wn. App. at 434; McFarland, 127 Wn.2d at 335. Bald assertions and conclusory allegation are insufficient to show deficient performance. Gomez Cervantes, 169 Wn. App. at 434. To meet the second prong of the test, the defendant must show but for the ineffectiveness, there is a reasonable probability that the outcome would have been different. Rodriguez, 103 Wn. App. at 701. A reviewing court need not address both prongs of the test if the

defendant makes an insufficient showing on one prong. Rodriguez, 103 Wn. App. at 701; Gomez Cervantes, 169 Wn. App. at 424-35. Prejudice need not be addressed if there is an insufficient showing of deficient performance. Gomez Cervantes, 169 Wn. App. at 434-35. On the other hand, if it is easier to dispose of an ineffectiveness claim on the basis of a lack of sufficient prejudice, that course should be followed. Rodriguez, 103 Wn. App. at 701.

A court deciding an actual ineffectiveness claim "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (emphasis added). At time of Mr. Ramos's guilty plea in 1997, it was well established that a criminal defense attorney's responsibilities did not extend to advising clients on immigration matters. In State v. Malik, 37 Wn. App. 414, 680 P.2d 770, review denied, 102 Wn.2d 1023 (1984), the court held:

> Deportation is a civil procedure. Its effects are collateral consequences of the criminal proceeding instituted against Malik. Malik's counsel was appointed by the State to represent him on the criminal charge, not in a civil proceeding. The possibility of deportation, being collateral, was not properly a concern of appointed counsel. Trial counsel's responsibility was to aid Malik in evaluating the evidence against him and in discussing the

> possible direct consequences of a guilty plea. By informing Malik that deportation was a possibility and urging him to seek the advice of an attorney skilled in that field, Malik's trial counsel discharged his responsibilities in a constitutionally sufficient manner.

Id. at 416-17 (emphasis original; citations omitted). Three years before the instant guilty plea, in State v. Holley, 75 Wn. App. 191, 876 P.2d 973 (1994), the court stated:

> In the context of plea bargains, effective assistance of counsel means that defense counsel actually and substantially assist his client in deciding whether to plead guilty. It is counsel's responsibility to aid the defendant in evaluating the evidence against him and in discussing the possible direct consequences of a guilty plea.
>
> As we stated above, deportation is a collateral consequence of a criminal conviction. Thus, the trial court is not required to grant a motion to withdraw a guilty plea when a defendant shows that his counsel failed to warn him of the immigration consequences of a conviction.
>
> Holley argues, however, that RCW 10.40.200 imposes on attorneys a duty to apprise their clients of the immigration consequences of guilty pleas. He further argues that failure to satisfy this duty is ineffective assistance of counsel.
>
> Even if we assume that RCW 10.40.200 imposes a duty on attorneys to discuss immigration consequences with their clients, we find no basis to conclude the statute also creates a constitutional right for a defendant to be so advised. Where there is no constitutional right to advisement, counsel's failure to give that advisement does not cause constitutional harm. Thus, Holley has failed to show that he was

> deprived of his right to effective assistance of counsel, a constitutionally protected right. U.S. Const. amend. 6.

Id. at 197-98 (emphasis original; citations, quotes, and footnote omitted). As late as three years after the instant guilty plea, in State v. Martinez-Lazo, 100 Wn. App. 869, 999 P.2d 1275, review denied, 142 Wn.2d 1003 (2000), this division held:

> In the context of a guilty plea, the defendant must show that his counsel failed to actually and substantially assist him in deciding whether to plead guilty, and but for counsel's failure to adequately advise him, he would not have pleaded guilty.
>
> . . .
>
> In view of these considerations, trial counsel has the obligation to aid a defendant in evaluating the evidence against him and in discussing the possible direct consequences of a guilty plea. However, a defendant need not be advised of the possibility of deportation because a deportation proceeding that occurs subsequent to the entry of a guilty plea is merely a collateral consequence of that plea.

Id. at 876 (emphasis original; citations and quotes omitted). The defendant in Martinez-Lazo argued that immigration consequences were no longer collateral in light of changes in federal law making deportation mandatory for certain convictions. This division disagreed, stating that "[a] deportation proceeding is a collateral civil action because it is not the sentence of the court which

accepted the plea but of another agency over which the trial judge had no control and for which he has no responsibility." Id. at 877 (citation and quotes omitted). "The changes to the INA may make Mr. Martinez-Lazo's deportation certain, but they do not alter its collateral nature as an independent civil proceeding over which the sentencing judge has no control." Id. at 877-78.

It is difficult to ascertain the exact point where the prevailing professional norms changed to require criminal defense attorneys to advise on immigration matters. However, both before and after the instant guilty plea, this court held such advice was not required. Viewed as of the time it occurred in 1997, counsel's challenged conduct was not deficient.

Even if Mr. Ramos could show deficient performance, he could not meet the second prong of the Strickland test by showing prejudice. In State v. Sandoval, 171 Wn.2d 163, 249 P.3d 1015 (2011), which unlike the instant case involved a timely attack on a guilty plea, the defendant was "a noncitizen permanent resident of the United States." Id. at 167. He had "earned permanent residency and made this country his home." Id. at 175. He told his attorney "that he did not want to plead guilty if the plea would result in his deportation." Id. at 167. His attorney corroborated that he

was "very concerned" that he would be held in jail after pleading guilty and subjected to deportation proceedings. However, counsel assured him that he would not be immediately deported. Id. Contrary to counsel's assurances, the immigration authorities placed a "hold" on the defendant preventing his release from jail and commenced deportation proceedings. Id. at 168. The defendant swore after the fact the he would not have pleaded guilty if he had known that would happen to him. Id.

The Sandoval court acknowledged that in satisfying the prejudice prong, a defendant challenging a guilty plea must show that there is a reasonable probability that , but for counsel's errors, he would not have pleaded guilty but would have insisted on going to trial. Id. at 174-75. Such a reasonable probability exists if the defendant convinces the court that but for counsel's errors, he would have proceeded to trial. Id. at 175. It must be shown that a decision to reject the plea bargain would have been reasonable under the circumstances. Id.

The court in Sandoval found the defendant had met this burden. The court noted that not only had the defendant sworn after the fact that he would not have pleaded guilty if properly advised, his attorney corroborated that he was very concerned at

the time about the risk of deportation. Id. Finally, the court emphasized that the defendant had "earned permanent residency and made this county his home" and that deportation was a particularly harsh consequence under the circumstances. Id. at 175-76.

Similarly, the challenge to the guilty plea in State v. Martinez, 161 Wn. App. 436, 253 P.3d 445 (2011) was timely. Mr. Martinez was a "legal alien" and "lawful permanent resident". Id. at 438. He was not advised that he faced certain deportation as a result of his guilty plea. Id. Mr. Martinez asserted after the fact that he would not have pleaded guilty had he been properly advised and his attorney verified that deportation was a "material factor" for him. Id. at 443. Under these circumstances, both prongs of the test for ineffective assistance of counsel were met. Id.

In contrast, the defendant in our case has not shown that his guilty plea actually generated any deportation proceedings or that any are contemplated. While it is argued that his trial counsel should have known that deportation was a certain result of a guilty plea, that is clearly not true as no such proceedings were instituted in the 16 years since the conviction was entered. At most, it can be

said that the immigration consequences of the guilty plea were unclear or uncertain.

As previously noted, the United States Supreme Court stated in Padilla that when immigration consequences are unclear or uncertain, "a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." Padilla, 130 S. Ct. at 1483.

The affidavit of attorney James E. Egan dated August 17, 2010 (attached to the personal restraint petition and Appendix F of appellant's brief), explained that defendant's trial counsel, Mr. Rembert Ryals, was at the time of the affidavit retired from the practice of law and in failing health. Mr. Ryals has subsequently passed away. *Washington State Bar News,* Vo. 65 No. 11, Page 44 (November, 2011). However, Mr. Egan stated regarding Mr. Ryals that "[i]t was his (as well as my own) practice simply to read the 'immigration warnings' in the guilty plea statements to our clients." Egan affidavit, page 2, paragraph 5. Here, the guilty plea statement includes an acknowledgment on page 4 signed by the defendant stating that his lawyer had discussed each paragraph of the form with him, as well as a certification by defense counsel that

he read the statement to the defendant. (CP 27). The "immigration warning in the guilty plea statement" was as follows: "If I am not a citizen of the United States, a plea of guilty to an offense punishable by 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 25). The warning read by Mr. Ryals to the defendant was exactly that required by Padilla under these circumstances: "a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." Padilla, 130 S. Ct. at 1483. Even if something more was required of counsel, Mr. Ramos suffered no prejudice since the information he received informed him of the actual circumstances applicable to his own situation. Nor has Mr. Ramos shown it is plausible he would have risked going to trial rather than accept a plea bargain with a lenient sentence that was unlikely to, and did not in fact, result in deportation proceedings. Again, the case is vastly different from Sandoval and Martinez where the defendants faced certain deportation as a result of their guilty pleas.

Mr. Ramos has failed to establish that his counsel failed to comply with Padilla. Nor has he presented any evidence that he

was prejudiced by his counsel's actions. Accordingly, his claim of ineffective assistance of counsel fails.

## E. CONCLUSION

On the basis of arguments set forth herein, it is respectfully requested (1) the personal restraint petition be denied, and (2) the trial court's acceptance of the guilty plea be affirmed.

Dated this 8th of April 2013.

Respectfully submitted,

SHAWN P. SANT
Prosecuting Attorney

By: Frank W. Jenny
Frank W. Jenny,
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Deputy Prosecuting Attorney

## AFFIDAVIT OF MAILING

STATE OF WASHINGTON )
) SS.
County of Franklin )

COMES NOW Abigail Iracheta, being first duly sworn on oath, deposes and says:

That she is employed as a Legal Secretary by the Prosecuting Attorney's Office in and for Franklin County and makes this affidavit in that capacity.

I hereby certify that on the 8th of April 2013, a copy of the foregoing was delivered to Juan Pedro Ramos, Appellant, 1225 N. Union Street, Kennewick, WA 99336, and to Brent Adrian DeYoung, Attorney for the Appellant, DeYoung Law Office, P. O. Box 1668, Moses Lake, WA 98837-0258 by depositing in the mail of the United States of America a properly stamped and addressed envelope.

Signed and sworn to before me this 8th day of April, 2013.

Notary Public in and for
the State of Washington,
residing at Kennewick.
My appointment expires:
May 19, 2014.