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FILED
March 12, 2015
Court of Appeals
Division I
State of Washington
No. 71802-9-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SACIID NADIF,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

REPLY BRIEF

JAN TRASEN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION
WHEN IT DENIED MR. NADIF'S MOTION TO
WITHDRAW HIS GUILTY PLEA.

1. Mr. Nadif was not clearly advised of the immigration consequences of his plea, resulting in the violation of his constitutional right to counsel.

Mr. Nadif's attorney's advice concerning the immigration consequences of his plea was misleading and confusing. Mr. Nadif would not have taken a guilty plea and risked deportation, had he understood the risks of the plea to his immigration status. An attorney's performance has been found deficient if he or she fails to inform a client whether a guilty plea carries a risk of deportation. Padilla v. Kentucky, 559 U.S. 356, 373-74, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010); State v. Sandoval, 171 Wn.2d 163, 175-76, 249 P.3d 1015 (2011); State v. Martinez, 161 Wn. App. 436, 441-42, 253 P.3d 445 (2012).

Even in situations where may not seem rational that a defendant would refuse a favorable plea offer, this Court has held that due to counsel's misadvisement of a defendant who stated immigration consequences were a "material factor," the Strickland test is met. Martinez, 161 Wn. App. at 443. Similarly, the Supreme Court found prejudice in Sandoval, where Mr. Sandoval stated that he would not have accepted the plea, absent deficient

advice from counsel, and counsel admitted Mr. Sandoval “was very concerned” about the risk of deportation. Sandoval, 171 Wn.2d at 175.

This Court has recently recognized the importance of assessing a defendant’s full understanding of the immigration consequences of a conviction in State v. Chetty, ___ Wn. App. ___, 338 P.3d 298, 303 (2014) (granting motion to extend time to file notice of appeal due to ineffective assistance of counsel). Because Mr. Nadif similarly lacked a full understanding of the immigration consequence of his conviction, his plea is similarly invalid.

2. The trial court abused its discretion.

A trial court’s order on a motion to withdraw a guilty plea or vacate a judgment is reviewed for an abuse of discretion. In re the Personal Restraint of Cadwallader, 155 Wn.2d 867, 879-80, 123 P.3d 456 (2005); State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (abuse of discretion when an order is “manifestly unreasonable or based on untenable grounds”).

The trial court here abused its discretion because the court’s finding that Mr. Nadif was properly advised is untenable, in light of trial counsel’s equivocation and Mr. Nadif’s testimony that he was not advised he would be deported. Quismundo, 164 Wn.2d at 504. The court’s denial of Mr. Nadif’s

motion therefore rested on facts unsupported in the record and was reached by applying the wrong legal standard.” Id.

B. CONCLUSION

For the reasons set forth above, as well as those contained in the Opening Brief of Appellant, Mr. Nadif asks this Court to reverse the order denying his motion to withdraw the guilty plea.

Respectfully submitted this 12th day of March, 2015.



JAN TRASEN - 41177
Washington Appellate Project - 91052
Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

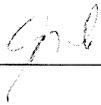
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 71802-9-I
v.)	
)	
SACIID NADIF,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 12TH DAY OF MARCH, 2015, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] AMY MECKLING, DPA	()	U.S. MAIL
[paoappellateunitmail@kingcounty.gov]	()	HAND DELIVERY
[amy.meckling@kingcounty.gov]	(X)	E-MAIL BY AGREEMENT
KING COUNTY PROSECUTOR'S OFFICE		VIA COA PORTAL
APPELLATE UNIT		
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

SIGNED IN SEATTLE, WASHINGTON THIS 12TH DAY OF MARCH, 2015.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710