



The Superior Court granted the motion to transfer. Following transfer, the petitioner filed a "Supplemental Brief" in this court. This brief discusses the recent decision of the Washington Supreme Court in State v. Sandoval, 171 Wn.2d 163, 249 P.2d 1015 (2011). The court has directed the Snohomish County Prosecutor to "file a response to the supplemental brief addressing the impact, if any, of Sandoval on the consideration of the petition."

### **III. ARGUMENT**

The State's substantive response to the petitioner's claims is set out in the State's Motion to Transfer Motion for Relief from Judgment. The State sees no reason to repeat the arguments set out in that pleading. Consequently, the Motion to Transfer is incorporated herein by reference.

The petitioner claims that a guilty plea is involuntary unless the defendant was advised of immigration consequences. He points out that defendants must be advised of "direct" consequences of the plea but not "collateral" consequences. State v. Ross, 129 Wn.2d 279, 916 P.2d 405 (1996). He then argues that deportation can no longer be characterized as a "collateral" consequence, based on Padilla v. Kentucky, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010). Motion for Relief from Judgment at 4-6.

The State's Motion to Transfer sets out two reasons for rejecting the petitioner's claims. First, the petition is barred by the time limit set out in RCW 10.73.090. Second, Padilla does not change the requirements for valid guilty pleas. That case only involves claims of ineffective assistance of counsel – which has not been raised here.

Sandoval does not change this analysis. With regard to the State's first argument, the case says nothing at all. The personal restraint petition in Sandoval was

filed concurrently with his direct appeal. Sandoval, 171 Wn.2d at 168 ¶ 5. The one-year time limit for collateral attacks does not even begin to run until the mandate is issued on a timely direct appeal. RCW 10.73.090(3)(b). Consequently, there was no issue in Sandoval about the timeliness of the petition.

With regard to the State's second argument, Sandoval reinforces the State's analysis. Sandoval does *not* characterize deportation as a "direct" consequence of a guilty plea. It does *not* say that *the court* is required to advise defendants of immigration consequences when they plead guilty. Rather, it says that "advice about deportation consequences falls within the ambit of the Sixth Amendment right to counsel." Id. at 170 ¶ 10.

The petitioner claims that Sandoval "holds that guilty pleas are not knowing and voluntary where a defendant is not informed of immigration consequences of the conviction." Supplemental Brief at 2. In reality, Sandoval says the opposite:

Counsel's faulty advice can render the defendant's guilty plea involuntary or unintelligent. To establish the plea was involuntary or unintelligent because of counsel's inadequate advice, the defendant must satisfy the familiar two-part ... test for ineffective assistance claims – first, objectively unreasonable performance, and second, prejudice to the defendant. *Ordinary due process analysis does not apply.*

Sandoval, 171 Wn.2d at 169 ¶ 9 (emphasis added; citations deleted). Thus, lack of information about immigration consequences does *not* render a plea involuntary. Rather, the plea is involuntary if *counsel* gave *unreasonable* advice concerning immigration consequences and that advice resulted in *prejudice*.

In short, Sandoval discusses the standards for determining whether counsel's advice concerning immigration consequences constitutes ineffective assistance. This part of Sandoval's analysis is irrelevant to the present case, which does not involve any

claim of ineffective assistance. Sandoval does *not* change the due process standards for guilty pleas. Consequently it does not demonstrate that the plea in the present case violated those standards. Nor does it affect the timeliness requirements for personal restraint petitions. The petition in the present case should be dismissed, either as untimely or on the merits.

Respectfully submitted on June 20, 2011.

FOR MARK ROE  
Snohomish County Prosecutor



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Deputy Prosecuting Attorney  
Attorney for Respondent

On this day I mailed a properly stamped envelope addressed to the attorney for the defendant that contained a copy of this document.

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office  
this 21 day of July, 20 11.

