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Supreme Court No. 98026-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 79621-6-I

In re the Personal Restraint of:

Alejandro Garcia Mendoza,

Petitioner.

MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

Alejandro Garcia Mendoza (“Mr. Garcia”), petitioner below, asks this Court to accept discretionary review of the Court of Appeals decision terminating review designated in Part II of this petition.

II. COURT OF APPEALS DECISION

Petitioner requests discretionary review of the decision of the Court of Appeals, Division I in In re Personal Restraint of Alejandro Garcia Mendoza, filed on December 2, 2019, No. 79621-6-I, denying his request to withdraw his guilty plea on the ground that his statutory rights under RCW 10.40.200 were violated because he was not advised of the specific immigration consequences of his conviction by his attorney as required by that statute. A copy of the decision is attached to this petition as Appendix (“App.”) A.

III. ISSUES PRESENTED FOR REVIEW

Whether the Court of Appeals erred by holding that Mr. Garcia’s personal restraint petition does not fall within the exception to the statute of limitations on collateral attacks provided for in RCW 10.73.100(6) because this Court’s decisions in State v. Sandoval, 171 Wn.2d 163, 249 P.3d 1015 (2011) and In re Personal Restraint of Tsai, 183 Wn.2d 91, 351 P.3d 138 (2015) did not overturn appellate precedent on the statutory right to be advised of the immigration consequences of a criminal conviction under RCW 10.40.200?

IV. STATEMENT OF THE CASE¹

Petitioner, Alejandro Garcia Mendoza, was born in Mexico City, Mexico. His parents brought him to the United States when he was only 13 years old. After coming to the United States, he attended Rose Hill Junior and Lake Washington High School in Kirkland, Washington. Mr. Garcia married a United States citizen and the two started a family together. The couple is happily married and are raising their twelve-year-old daughter together. Mr. Garcia has worked hard to provide for his family over the years. For the past seven years he has operated his own painting company. Mr. Garcia's wife and daughter rely on him heavily for financial and emotional support, and Mr. Garcia is actively involved in his daughter's life, frequently volunteering at her school. Altogether, Mr. Garcia has lived in this country more than 20 years, albeit in undocumented status.

Like many youths, Mr. Garcia had run-ins with the law as a teenager and young adult. Consequently, he was convicted of drug possession in the King County Superior Court in 2004 and 2005, respectively. On March 27, 2007, when Mr. Garcia was only 22 years old, he pleaded guilty to one count

¹ Unless noted otherwise, the facts contained herein are derived from the declaration of Alejandro Garcia Mendoza, dated October 3, 2018, and attached hereto as App. G, Exhibit ("Ex.") A.

of possession of a controlled substance in this case for possessing small amounts of cocaine and methamphetamine for personal use. On July 18, 2007, Mr. Garcia was sentenced to 110 days in jail and ordered to pay fines and court costs. Before Mr. Garcia pleaded guilty, his attorney, Rachel Forde, failed to advise him that the crime that he was pleading guilty to was a ground for inadmissibility to the United States, which would permanently prevent him from adjusting to lawful permanent resident status and prevent him from applying for cancellation of removal for non-permanent residents in deportation proceedings, one of the most important forms of relief available to longtime undocumented residents of the United States. See App. G, Ex. B (“Declaration of Rachel Forde”); 8 U.S.C. § 1182(a)(2)(A)(i)(II) (providing that a noncitizen who is convicted of a violation of any law relating to a controlled substance is inadmissible); 8 U.S.C. § 1255(a) (providing that a noncitizen who is inadmissible to the United States is ineligible to adjust to lawful permanent resident status). Mr. Garcia is currently in deportation proceedings and his conviction in this case, as well as his convictions from King County present a bar to relief from removal in the form of cancellation of removal in immigration court. 8 U.S.C. § 1229b(b)(1)(C) (providing that an individual who has been convicted of an offense listed in § 1182(a)(2), including a controlled substance offense is ineligible to apply for cancellation of removal). If

granted, this form of relief would permit Mr. Garcia to obtain lawful permanent resident status and remain in the United States with his family.

On October 18, 2018, Mr. Garcia moved, under CrR 7.8, to withdraw his guilty plea in the Snohomish County Superior Court on the ground that he was not advised of the immigration consequences of his conviction in violation of his Sixth Amendment right to effective assistance of counsel as construed by the United States Supreme Court in Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d (2010), and on the alternative ground that he was eligible for relief under RCW 10.40.200 independent of his eligibility for relief under Padilla.² App. G. Mr. Garcia argued that under the plain language of RCW 10.40.200, he was entitled to relief based on his attorney's failure to advise him of the specific immigration consequences of his plea even without a showing of prejudice. App. E at 8 – 9.

The Superior Court transferred Mr. Garcia's motion to Division I of the Washington Court of Appeals as a personal restraint petition on February 22, 2019. App. C at 7. In its decision transferring Mr. Garcia's case, the Superior Court held that Mr. Garcia's ineffective assistance of

² The State asserted in its briefing that Mr. Garcia added this argument to his original Sixth Amendment claim later in the litigation. However, the statutory claim was raised in Mr. Garcia's original motion. See App. G at 9, n.4.

counsel under Padilla failed because as a result of his two prior King County convictions, he could demonstrate neither deficient performance nor that he was prejudiced by counsel's failure to advise him of the immigration consequences of his conviction. See id. at 3 – 5. The trial court did not address Mr. Garcia's statutory claim.

On December 2, 2019, the Court of Appeals issued an unpublished decision denying Mr. Garcia's personal restraint petition addressing only Mr. Garcia's statutory claim without reaching his constitutional claim. App. A. The Court found Mr. Garcia's petition time-barred as a mixed petition, holding that while this Court's decision in Tsai established that ineffective assistance claims under Padilla were not subject to the one-year time-bar on collateral attacks imposed by RCW 10.73.090 because Padilla constituted a significant change in the law within the meaning of RCW 10.73.100(6), Mr. Garcia's alternative claim for relief under RCW 10.40.200 was time-barred because neither Padilla nor any subsequent Washington decision changed the law with respect to a defendant's statutory right to be advised of the immigration consequences of a criminal conviction under RCW 10.40.200. See id. at 5 – 7. Mr. Garcia now seeks review of the Court of Appeals decision.

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

In determining whether a motion for discretionary review of a Court of Appeals decision dismissing a personal restraint petition should be granted, this Court applies the standards set forth in Rule 13.4(b) of the Rules of Appellate Procedure (“RAP”). See RAP 13.5A(b). Thus, a motion for discretionary review may be granted for any of the reasons set forth in RAP 13.4(b) pertaining to petitions for review. Review should be granted in Mr. Garcia’s case because the decision of the Court of Appeals conflicts with the decisions of this Court and because this case presents a question of substantial public interest. See RAP 13.4(b)(1); RAP 13.4(b)(4).

A. The Court of Appeals Decision Conflicts with this Court’s Decisions Interpreting RCW 10.40.200 and RCW 10.73.100(6).

This Court may accept a petition for review where the decision of the Court of Appeals conflicts with a decision of this Court. See RAP 13.4(b)(1). This Court should accept review of Mr. Garcia’s petition because the Court of Appeals decision conflicts with this Court’s holdings in State v. Sandoval, 171 Wn.2d 163, 168 (2011) and In re Personal Restraint of Tsai, 183 Wn.2d 91 (2015), construing the statutory right to be advised of the immigration consequences of a criminal conviction under RCW 10.40.200, as well as this Court’s decisions defining the term “significant change in law” as used in RCW 10.73.100(6) which creates an

exception to the time limit on collateral attacks for claims based on significant material changes in the law. See RAP 13.4(b)(1).

Mr. Garcia asserts that his statutory right to receive specific advice about the immigration consequences of his guilty plea under RCW 10.40.200 was violated because while he received a general warning about the *potential* immigration consequences of a plea to a criminal offense, his defense attorney failed to apply RCW 10.40.200 to his case and provide him with *specific* advice about the impact of his conviction on his immigration status and ability to remain in the United States.

The Court of Appeals held that Mr. Garcia's claim under RCW 10.40.200 was time-barred under RCW 10.73.090 because while this Court's decision in In re Personal Restraint of Tsai exempts claims of ineffective assistance of counsel based on failure to advise of immigration consequences under Padilla from the time limit on collateral attacks, it does not exempt claims under RCW 10.40.200 from the time limit because there has been no significant change in law pertaining to the construction and application of RCW 10.40.200 that would bring such claims within the exception to the time limit set forth in RCW 10.73.100(6). Specifically, the Court of Appeals found that this Court's post-Padilla decisions did not constitute a significant change in law within the meaning of RCW 10.73.100(6) with respect to the interpretation of RCW 10.40.200. In so

holding, the Court of Appeals misconstrued this Court’s decisions in State v. Sandoval and In re Personal Restraint of Tsai, which overturned older interpretations of RCW 10.40.200, as well as the decisions of this Court defining what constitutes a “significant change in law” for purposes of the exception to the time limit on collateral attacks provided for in RCW 10.73.100(6).

RCW 10.73.100(6) provides that the time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on the fact that:

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100(6). This Court has held time and time again, that a decision constitutes a “significant change in the law” for purposes of RCW 10.73.100(6) when it “has effectively overturned a prior appellate decision that was originally determinative of a material issue.” See In re Personal Restraint of Greening, 141 Wn.2d 687, 697, 9 P.3d 206 (2000). “One test to determine whether an appellate decision represents a significant change

in law is whether the defendant could have argued this issue before publication of the decision.” In re Personal Restraint of Stoudmire, 145 Wn.2d 258, 264, 36 P.3d 1005 (2001).

Under this standard, it is clear that the change in law effected by Padilla and subsequent Washington decisions construing that case also effected a change in the construction and application of RCW 10.40.200. Prior to Padilla courts in Washington uniformly rejected claims under RCW 10.40.200 where the boilerplate advisement was read to the defendant and no other immigration advice was given. An example of how Washington courts construed RCW 10.40.200, prior to the sea change effected by Padilla and its progeny is found in State v. Holley, 75 Wn. App. 191, 876 P.2d 973 (1985). The decision in that case makes clear that the only factor that courts considered in determining whether a violation of RCW 10.40.200 occurred is whether the boilerplate statutory warning found in a statement of defendant on plea of guilty was read to the defendant. After finding that the defendant in Holley submitted sufficient evidence to rebut the presumption resulting from the presence of the immigration warning in his plea statement, the court explained as follows:

Thus, he is entitled to a hearing to attempt to persuade the trial court by a preponderance of the evidence, that he did not receive the statutory warnings . . . Therefore, we remand this matter to the [trial court] to determine whether: (1) defense counsel advised Holley not to read paragraph 17 of the

statement of defendant on plea of guilty; (2) Holley, acting on the advice of counsel, in fact did not read paragraph 17; (3) Holley was advised of the possibility of deportation any other way; and (4) deportation is a collateral consequence of Holley's convictions

Id. at 201. The foregoing passage demonstrates that prior to Padilla Washington courts construed RCW 10.40.200 to be satisfied where a defendant was read the boilerplate advisement in a plea form. As a consequence, a defendant who had the statutory immigration advisement read to him from his plea form during his plea proceedings had no basis to raise a claim for relief under RCW 10.40.200.

As late as 2013, Division II of the Court of Appeals held in State v. Martinez-Leon, 174 Wn. App. 753, 300 P.3d 481 (2013), that a reading of the boilerplate immigration advisement was sufficient to satisfy the requirements of RCW 10.40.200 before Padilla was decided:

And, unlike Littlefair, Martinez-Leon signed a statement on the plea of guilty that provided, "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, or denial of naturalization pursuant to the laws of the United States." . . . Although Martinez-Leon's defense counsel did not specifically advise him that a 365-day sentence on his assault conviction would result in definite deportation under United States immigration laws, such an obligation was not required before Padilla.

Id. at 762; see also In re Personal Restraint of Yim, 139 Wn.2d 581, 590, 989 P.2d 512 (1999) (reading of standard plea statement warning was

sufficient to notify defendant “that there was a risk of deportation”); State v. Jamison, 105 Wn. App. 572, 594, 20 P.3d 1010 (2001) (finding that defendant was adequately warned under RCW 10.40.200 where the statement of defendant contained a standard advisement and prosecutor asked “Do you understand that if you are not a citizen . . . that this guilty plea will affect your ability to be in the United States?”).

Padilla and subsequent Washington decisions construing that case marked a departure from the line of cases holding that merely advising a defendant in general terms of possible immigration consequences is enough to satisfy RCW 10.40.200. In Sandoval, this Court held that the presence of a standard advisement in a plea statement is not enough to establish that counsel’s duties under Padilla were satisfied. Sandoval, 171 Wn.2d at 173. The Court explained in Sandoval that a reading of the standard advisement was not enough to save counsel’s deficient advice about immigration consequences. See id. Then, in In re Personal Restraint of Tsai, this Court held that the boilerplate advisement found in Washington’s form plea statements was not itself the advice required by RCW 10.40.200 and that the statute gives noncitizens the “unequivocal right to advice regarding immigration consequences” and requires defense counsel to research and apply RCW 10.40.200 to his or her client’s case. See Tsai, 183 Wn. 2d at 101. The Court reasoned:

Our legislature did [in 1983] what Padilla did in 2010—it rejected the direct-versus collateral distinction as applied to immigration consequences, declaring that a noncitizen defendant must be warned of immigration consequences before pleading guilty. To give effect to this statute, the standard plea form in CrR 4.2 was promptly amended to include a statement warning noncitizen defendants of possible immigration consequences. *That warning statement is not, itself, the required advice; it merely creates a rebuttable presumption that the defendant has been properly advised.*

RCW 10.40.200’s plain language gives noncitizen defendants the *unequivocal right to advice regarding immigration consequences and necessarily imposes a correlative duty on defense counsel to ensure that advice is provided.* . . . While defense counsel’s duty to advise regarding immigration consequences is imposed by statute, reasonable conduct for an attorney includes carrying out the duty to research the relevant law. *In many cases defense counsel’s failure to fulfill his or her statutory duty may be due to an unreasonable failure to research or apply RCW 10.40.200, and there is no conceivable tactical or strategic purpose for such a failure.*

Tsai, 183 Wn.2d at 101 – 102 (emphasis added); (internal citations and quotation marks omitted). In so holding, this Court expressly overruled prior cases holding that a general advisement about immigration consequences is sufficient to satisfy RCW 10.40.200 and clarified that the statute requires defense counsel to research the immigration consequences of each particular case and provide clients with case-specific immigration advice. See id. at 106 – 07. (“Padilla superseded the theory underlying these decisions—that ‘anything short of an affirmative misrepresentation

by counsel of the plea's deportation consequences could not support the plea's withdrawal. . . . This was a significant change in Washington law.”). The language of this Court's decision in Tsai makes clear that RCW 10.40.200 itself, separate and apart from the Sixth Amendment's requirements, imposes a duty on counsel to research and advise a defendant of the specific immigration consequences of his or her guilty plea and not just parrot the warning found in the statement of defendant on plea of guilty. This is a material departure from the way that RCW 10.40.200 was interpreted by Washington courts before Padilla.

Consequently, because the change in law effected by Padilla and Tsai also effected a change in law on the construction and application of RCW 10.40.200, litigants whose cases became final before Tsai was decided should be permitted to raise claims under RCW 10.40.200 after the expiration of the one year time limit on collateral attacks pursuant to the exemption set forth in RCW 10.73.100(6).

Prior to the issuance of the decisions in Padilla, Sandoval, and Tsai, Mr. Garcia was precluded from arguing that a violation of RCW 10.40.200 occurred in his case, because under the holdings of cases like Holley, Yim, and Jamison having the boilerplate warning in his statement of defendant on plea of guilty read to him by his attorney was sufficient to satisfy RCW 10.40.200. However, after the issuance of the decision in Tsai, it became

clear that such advice was not sufficient to satisfy the requirements of RCW 10.40.200, and that his attorney was required to research and apply RCW 10.40.200 to Mr. Garcia's specific case, which she failed to do. See Tsai, 183 Wn.2d at 102. Thus, by overturning precedent that would have precluded him from arguing that a violation of RCW 10.40.200 occurred in his case, Tsai constituted a material change in law that is retroactively applicable to Mr. Garcia's case for purposes of the exemption from the time-bar set forth in RCW 10.73.100(6).

The Court of Appeals in this case held that neither Padilla nor Sandoval and Tsai changed the interpretation of RCW 10.40.200, but that holding stands in direct conflict with this Court's decisions on what constitutes a significant change in the law within the meaning of RCW 10.73.100(6) and the plain language of Tsai. Never before Tsai had this Court held that RCW 10.40.200 requires criminal defense counsel to advise a client about the specific immigration consequences of a conviction instead of simply reading the general immigration warning. Indeed, decisions like Holley, Yim, and Jamison, expressly precluded Mr. Garcia from arguing that he had a statutory right to case-specific immigration advice under RCW 10.40.200. Thus, Tsai changed the interpretation of RCW 10.40.200 and overturned prior appellate precedent that prevented defendants who received a one-size-fits-all immigration warning in their

plea statements from raising claims under RCW 10.40.200. As such, under this Court's precedents, Tsai constituted a significant change in the law for purposes of RCW 10.73.100(6). See In re Personal Restraint of Light-Roth, 191 Wn.2d 328, 334, 422 P.3d 444 (2018) (“A “significant change in the law” is likely to have occurred if the defendant was unable to argue the issue in question before publication of the intervening decision.”). Because the Court of Appeals decision in this case conflicts with the decisions of this Court, the Court should grant review in Mr. Garcia's case pursuant to RAP 13.4(b)(1).

B. Mr. Garcia's Case Presents a Question of Substantial Public Interest.

This Court should also grant review under RAP 13.4(b)(4) because Mr. Garcia's case presents a question of substantial public interest. In In re Personal Restraint of Tsai, this Court stated the following in support of its holding:

This case is not a faceless one that bears no consequences. Numerous noncitizen defendants have benefited from the *clear statutory requirement* that defense counsel has a duty to advise them about the immigration consequences of pleading guilty. However, numerous meritorious claims that defense counsel unreasonably failed to fulfill this duty have been rejected based on the mistaken belief that RCW 10.40.200 has no constitutional implications. Now that this mistaken belief has finally been corrected, holding such meritorious claims procedurally barred would deprive many others of the opportunity to have the merits of their constitutional claims reviewed.

Tsai, 183 Wn.2d at 108 (emphasis added). As this Court acknowledged in Tsai, immigration consequences flowing from criminal convictions concern numerous criminal defendants in Washington, so many, in fact, that in 1983 the state Legislature enacted RCW 10.40.200, which this Court construed in Tsai to require criminal defense attorneys to provide specific immigration advice to a client before advising the client to plead guilty. This Court clearly viewed the right to immigration advice under RCW 10.40.200 to be a statutory right, separate and apart from any constitutional right to effective assistance of counsel, calling the right “unequivocal.” Id. at 102. The statute that created the unequivocal right to immigration advice, also provides that relief is appropriate without a showing of prejudice where a defendant who has pleaded guilty later establishes that the guilty plea in fact carried immigration consequences. See In re Personal Restraint of Peters, 50 Wn. App. 702, 705 , 750 P.2d 463 (1998) (“After this date, if a defendant is not advised as required by RCW 10.40.200(2) and shows that conviction of the offense to which a guilty plea was entered may lead to deportation, the court “shall vacate the judgment” and permit the withdrawal of the plea.”).

However, before this Court’s decision in Tsai, RCW 10.40.200 was construed narrowly by Washington Courts to only permit vacatur and withdrawal of a guilty plea where the standard immigration warning was

not read to the defendant. See Holley, 75 Wn. App. at 201. This Court's holding in Tsai corrected that erroneous construction, and held that the advice contained in the standard plea warning is not itself the required advice, and that a statutory violation occurs where counsel fails to research and apply the statute to his or her client's particular case. See Tsai. Now that this Court has established that a violation of RCW 10.40.200 occurs whenever a defense attorney fails to research RCW 10.40.200 and provide his or her client with case-specific immigration advice, it would be fundamentally unfair to deny relief to an entire class of criminal defendants who did not have the benefit of this Court's construction of RCW 10.40.200 in Tsai before the time limit to collaterally attack their convictions had expired.

The availability of relief under 10.40.200 is particularly important to defendants like Mr. Garcia who pleaded guilty to more than one deportable offense, like simple drug possession, without being advised of the immigration consequences of their convictions and only later learned that their convictions resulted in devastating immigration consequences. Unfortunately, this is not an uncommon occurrence. See e.g., State v. Littlefair, 112 Wn. App. 749, 755, 59 P.3d 116 (2002) (defendant did not learn of immigration consequences for more than two years after conviction); Tsai, 183 Wn.2d at 97 (defendant did not learn of immigration

consequences until more than a year after his conviction). This is especially so where for many years, our State's laws made it so that even a misdemeanor offense, like theft in the third degree, could render a defendant an aggravated felon under the immigration laws, making the defendant deportable from the United States and ineligible for discretionary forms of relief from deportation in immigration court, and defendants pleaded guilty to multiple misdemeanors or other petty offenses, without being advised of the devastating immigration consequences they carried. See RCW 9A.20.021; Laws of 2011, Chapter 96, § 1. RCW 10.40.200, which creates an unequivocal right to relief without a showing of prejudice in these types of situations, is the only mechanism for such defendants to ameliorate the immigration consequences of their convictions and escape the harsh consequence of deportation. See Matter of Thomas and Thompson, 27 I&N Dec. 674 (A.G. 2019) (holding that state post-conviction relief will only be given full faith and credit for immigration purposes where the relief is based on a substantive or procedural defect underlying the criminal proceedings).

The need for relief from poorly counseled convictions resulting in adverse immigration consequences is greater now than it has ever been before, as multitudes of longtime Washington residents, like Mr. Garcia Mendoza, are being deported as a result of old petty convictions committed

in their youth. See Matt Driscoll, Fear Grips Cambodian Communities who fled here to Escape Genocide – They’re Trying to Deport Me. Tacoma News Tribune (May 16, 2019), <https://www.thenewstribune.com/news/local/news-columns-blogs/matt-driscoll/article230266884.html>; Nina Shapiro, “He’s Mexican. She’s American. Deportation Forced this Washington Family to Make a Choice. The Seattle Times (July 27, 2018), <https://www.seattletimes.com/seattle-news/hes-mexican-shes-american-a-deportation-order-left-this-washington-state-family-with-a-difficult-choice/>. This Court’s decision in Tsai, was a good first step toward correcting the flaws in Washington precedent that allowed convictions entered in violation of RCW 10.40.200 to stand. Mr. Garcia’s case presents the Court with an opportunity to ensure that relief under RCW 10.40.200 is available to those who need it most. Because Mr. Garcia’s case presents a question of substantial public interest, this Court should grant review in this case pursuant to RAP 13.4(b)(4).

VI. CONCLUSION

For the foregoing reasons, the Court should accept Mr. Garcia’s petition for review.

DATED this 30th day of December 2019.

Respectfully submitted,

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APPENDIX A

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

In re Personal Restraint of:)	No. 79621-6
)	
ALEJANDRO GARCIA-MENDOZA)	UNPUBLISHED OPINION
)	
<hr/>)	FILED: December 2, 2019

ANDRUS, J. — Alejandro Garcia-Mendoza seeks relief from his 2006 conviction for possession of a controlled substance, a crime to which he pleaded guilty. In this personal restraint petition, Garcia-Mendoza argues that he was deprived of his Sixth Amendment right to counsel under Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), because defense counsel did not inform him of the immigration consequences of pleading guilty outside of the standard form plea agreement. He also argues that he was deprived of a statutory right to be informed of the immigration consequences of pleading guilty under RCW 10.40.200. Although the former claim is timely, the latter is time-barred. We thus dismiss Garcia-Mendoza's petition as time-barred.

FACTS

Alejandro Garcia-Mendoza moved to the United States from Mexico with his parents in 1998, when he was 13 years old. Although his wife and daughter are citizens of the United States, Garcia-Mendoza never became a United States citizen.

On September 19, 2006, the State charged Garcia-Mendoza with one count of possession of a controlled substance. On March 27, 2007, Garcia-Mendoza pleaded guilty to the crime and agreed to a 110-day sentence and 12 months' community custody. Subsection (r) to the Defendant's Statement said: "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, or denial of naturalization pursuant to the laws of the United States."

On July 19, 2007, the court accepted Garcia-Mendoza's plea and sentenced him to 110 days in confinement. On October 18, 2018, Garcia-Mendoza moved to withdraw his guilty plea, initially arguing that he was deprived of his Sixth Amendment right to counsel because defense counsel failed to inform him of the immigration consequences of entering a plea of guilty. He acknowledged that his petition was over the one-year time limit of RCW 10.73.090 but argued that Padilla v. Kentucky was a significant change in the law and made his petition timely under RCW 10.73.100(6). At the time he moved to withdraw his guilty plea, Garcia-Mendoza was in deportation proceedings.

On November 15, 2018, the State filed a motion to transfer Garcia-Mendoza's motion for relief from judgment to the Court of Appeals for consideration as a personal restraint petition. It conceded that in light of Padilla, Garcia-Mendoza's claim was not time-barred by RCW 10.73.090. In Garcia-Mendoza's response to the State's motion to transfer, he alleged that he was also entitled to withdraw his conviction because he did not receive adequate advice about the immigration consequences of his conviction as he claims are now

required by RCW 10.40.200. The State argued that Garcia-Mendoza's RCW 10.40.200 claim was time-barred and rendered his entire motion untimely.

On February 22, 2019, the trial court issued an order transferring Garcia-Mendoza's motion to this court. In its transfer order, the trial court found that Garcia-Mendoza's ineffective assistance claim was not subject to the time bar, but it did not address Garcia-Mendoza's second claim.

ANALYSIS

RCW 10.73.090(1) states that "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." A petitioner, however, may overcome the one-year time bar by demonstrating that all of his claims fall under an exception outlined in RCW 10.93.100, including showing a "significant change in the law, whether substantive or procedural, which is material to the conviction [or] sentence. . . ." RCW 10.73.100(6). Our courts have repeatedly said that "a personal restraint petition is exempt from the one-year time limit of RCW 10.73.090 under RCW 10.73.100 only if *all* asserted grounds for relief in the petition fall within an exception set forth in RCW 10.73.100." In re Pers. Restraint of Hankerson, 149 Wn.2d 695, 699-700, 72 P.3d 703 (2003) (emphasis added); see also In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 5 P.3d 1240 (2000). If one or more of the grounds asserted falls within an exception but one or more do not, then the petition is a "mixed petition" and must be dismissed. Hankerson, 149 Wn.2d at 700.

In the present case, the State initially conceded that Garcia-Mendoza's ineffective assistance claim was not time-barred. But it argues that Garcia-Mendoza's RCW 10.40.200 claim, which he added later, is time-barred and that Garcia-Mendoza's petition should now be dismissed in its entirety as a mixed petition. Because the State conceded that Garcia-Mendoza's ineffective assistance is not time-barred, we will focus our analysis on Garcia-Mendoza's RCW 10.40.200 claim.

Our courts have held that a significant change in the law under RCW 10.73.100(6) occurs "when an intervening appellate decision overturns a prior appellate decision that was determinative of a material issue." In re Pers. Restraint of Light-Roth, 191 Wn.2d 328, 333, 422 P.3d 444 (2018) (internal quotation marks omitted) (quoting State v. Miller, 185 Wn.2d 111, 114, 371 P.3d 528 (2016)). But "An intervening appellate decision that settles a point of law without overturning prior precedent or simply applies settled law to new facts does not constitute a significant change in the law." Id. at 333-34. "One test to determine whether an appellate decision represents a significant change in the law is whether the defendant could have argued this issue before publication of the decision." In re Pers. Restraint of Stoudmire, 145 Wn.2d 258, 264, 36 P.3d 1005 (2001).

Garcia-Mendoza asserts that he did not receive the statutory advice required by RCW 10.40.200(2). The statute provides in part:

Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, . . . the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

A defendant who did not receive this advice is statutorily entitled to withdraw his guilty plea. RCW 10.40.200(2). The statute also states, however, that any defendant signing a guilty plea statement containing the statutory advisement “shall be presumed to have received the required advisement.” RCW 10.40.200(2).

Garcia-Mendoza argues that before Padilla, he had no statutory claim to withdraw his plea because he signed a guilty plea statement containing the general deportation warning. He contends, however, that the Washington Supreme Court expanded his statutory right to withdraw a plea to circumstances in which defense counsel failed to provide adequate legal advice on the immigration consequences of a plea. In other words, he contends that his attorney’s lack of adequate immigration advice triggered the statute, regardless of whether that representation met the Sixth Amendment test for ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Garcia-Mendoza bases this argument on State v. Sandoval, 171 Wn.2d 163, 249 P.3d 1015 (2011) and In re Personal Restraint of Tsai, 183 Wn.2d 91, 351 P.3d 138 (2015). He contends that these two cases, decided after Padilla, held that the defendant has a statutory right under RCW 10.40.200 to withdraw a plea any time defense counsel failed to adequately inform that defendant of the possible immigration consequences of pleading guilty. We disagree with this reading of Sandoval and Tsai.

In Sandoval, the defendant, a noncitizen permanent resident of the United States, was informed of the immigration consequences of pleading guilty but was

also told by defense counsel that he would have “sufficient time to retain proper immigration counsel to ameliorate any potential immigration consequences of his guilty plea.” 171 Wn.2d at 167. Despite defense counsel’s assertion otherwise, the United States Customs and Border Protection commenced deportation proceedings against the defendant before his release from jail. Id. at 168.

After the United States Supreme Court issued Padilla, our Supreme Court rejected the State’s argument that the statutory warnings required by RCW 10.40.200(2) cured the misinformation provided by defense counsel. Id. at 174 (“Just as Padilla’s lawyer incorrectly dismissed the risks of deportation, Sandoval’s counsel’s categorical assurances nullified the constitutionally required advice about the deportation consequence of pleading guilty.”). It further found that the court-provided statutory warnings in RCW 10.40.200 “do not excuse defense attorneys from providing the requisite warnings. Rather, for the Court, these plea-form warnings underscored how critical it is for *counsel* to inform her noncitizen client that he faces a risk of deportation.” Id. at 173 (internal quotation marks omitted) (quoting Padilla, 130 U.S. at 1486). The Sandoval court concluded that defense counsel’s performance during the plea process was ineffective because it fell below an objective standard of reasonableness and that the defendant was prejudiced by this representation. Id. at 174. The case did not rest on any new interpretation of RCW 10.40.200.

Similarly, in Tsai, two petitioners each argued that their counsel had not informed them of the immigration consequences of pleading guilty and moved to withdraw their pleas in light of Padilla and Sandoval. 183 Wn.2d at 97-98. In

analyzing whether Padilla should apply retroactively on collateral review under Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), our Supreme Court stated that RCW 10.40.200 “gives noncitizen defendants the unequivocal right to advice regarding immigration consequences and necessarily imposes a correlative duty on defense counsel to ensure that advice is provided.” Tsai, 183 Wn.2d at 101. It held that there is no conceivable tactical or strategic purpose for defense counsel to fail to ensure that the mandatory warnings set out in RCW 10.40.200 are given to a client. Id. at 102. It thus concluded that Padilla was a “garden-variety” application of the Strickland test that “simply refines the scope of defense counsel’s constitutional duties as applied to a specific fact pattern.” Id. at 103. The court concluded that because Padilla was not a “new rule” under Teague, it applied retroactively to cases on collateral review. Id.

Our Supreme Court went on to hold that Padilla nevertheless effected a significant change in Washington law for purposes of RCW 10.73.100(6). Prior to Padilla, anything short of an affirmative misrepresentation by counsel of the immigration consequences of pleading guilty could not support the plea’s withdrawal. Id. at 107. After Padilla, defense counsel’s failure to provide any immigration advice could support withdrawal of a plea. Id. As a result of this analysis, the Court determined that one of the two defendants was entitled to an evidentiary hearing on his personal restraint petition to determine if he received effective assistance of counsel when deciding to plead guilty. Id. But the court dismissed the second defendant’s petition because he had failed to file a timely

motion to withdraw his guilty plea and failed to appeal the trial court's denial of that motion. Id. at 108.

Again, nothing in Tsai involved a change to our courts' interpretation of RCW 10.40.200. The sole claim was constitutionally ineffective assistance of counsel under Strickland. Tsai did not address whether either defendant had a statutory right to withdraw their pleas. The cases on which Garcia-Mendoza relies do not support his argument that there has been a significant change in the law under RCW 10.40.200.

Garcia-Mendoza's constitutional claim based on Padilla was not time-barred but his second statutory claim based on RCW 10.40.200 is time-barred under RCW 10.73.090. We thus dismiss Garcia-Mendoza's petition as mixed and decline to address the merits of Garcia-Mendoza's ineffective assistance claim.

WE CONCUR:

A handwritten signature in black ink, appearing to be "H. Anderson", written over a horizontal line.A handwritten signature in black ink, appearing to be "Anderson, J.", written over a horizontal line.A handwritten signature in black ink, appearing to be "Dwyer, J.", written over a horizontal line.

APPENDIX B

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SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON

STATE OF WASHINGTON

Plaintiff,

vs.

GARCIA-MENDOZA, ALEJANDRO

Defendant.

Case No.: 06-1-02314-0

ORDER AMENDING ORDER
TRANSFERRING MOTION
FOR RELIEF FROM JUDGMENT

(Clerk's Action Required)

The Court amends the Order Transferring Motion for Relief from Judgment as follows:

Page 5, line 18, add the following after the word "charge":

Washington State Adult Sentencing Guidelines Manual 2006, pages III-57 and III-272.

The clerk of this court shall transmit copies of this order to the Court of Appeals.

Dated this 26th day of February, 2019.



Linda C. Krese
Judge

ORDER AMENDING ORDER
TRANSFERRING MOTION
FOR RELIEF FROM JUDGMENT - 1

APPENDIX C

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SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON

STATE OF WASHINGTON

Plaintiff,

vs.

GARCIA-MENDOZA, ALEJANDRO

Defendant.

Case No.: 06-1-02314-0

ORDER TRANSFERRING MOTION
FOR RELIEF FROM JUDGMENT

(Clerk's Action Required)

This matter came before the court on the defendant's motion to withdraw guilty plea and the state's motion to transfer the motion to withdraw guilty plea to the Court of Appeals. The court heard argument of counsel and has reviewed the records and files herein, including each party's motion, the response of the opposing party and any reply. The court enters the following:

DISCUSSION

The defendant, Alexandro Garcia-Mendoza, moves this court to allow him to withdraw his guilty plea to one count of Possession of a Controlled Substance, entered in this case on March 27, 2007. The defendant asserts that he received ineffective assistance of counsel at the time he entered his plea because he was not advised by his attorney at the time that a conviction

1 on this charge would make him automatically inadmissible to the United States, preclude him
2 from becoming a lawful permanent resident in the future, and make him ineligible to apply for
3 cancellation of removal from deportation in immigration court. He further states that he “would
4 have refused to plead guilty if I had known the serious consequences of doing so.”

5
6 The Statement of Defendant on Plea of Guilty, signed by Mr. Garcia-Mendoza at the time
7 he entered his plea of guilty, specially sets forth at paragraph 6(r) the possible consequences of
8 pleading guilty if the defendant was not a citizen of the United States. In addition, the court
9 reviewed these possible consequences with the defendant at the time he entered his plea. The
10 enumerated consequences include that the plea of guilty may be “grounds for deportation,
11 exclusion from admission to the United States, or denial of naturalization.”

12 Mr. Mendoza in his declaration filed in support of this motion states that his attorney at
13 the time of entry of his plea “failed to advise me that my conviction in this case would bar me
14 from applying for cancellation of removal for non-permanent residents in immigration court and
15 becoming a lawful permanent resident in the future.” He further states that he is aware of the
16 provisions of paragraph 6(r), but that his attorney did not explain these immigration
17 consequences to him.
18

19 Rachel Forde, Mr. Mendoza’s attorney at the time of entry of his plea, filed a declaration
20 in support of his motion in which she states that she does not “recall the immigration advice that
21 I gave to Mr. Garcia before he pleaded guilty in this case, although I was aware of his
22 immigration status.” She goes on to state that, “my general practice was to read the standard
23 immigration warning contained in the statement of defendant on plea of guilty with my client.”
24 According to Ms. Forde, at some point in her practice she began contacting the Washington
25

1 Defender Association’s Immigration Project (WDAIP) for immigration advice on behalf of non-
2 citizen clients. However, in this case, she has no record of such a communication on the
3 defendant’s behalf and no record or recollection of any specific advice she may have provided to
4 him.

5
6 In response to Mr. Garcia-Mendoza’s motion, the state has filed a motion to transfer this
7 matter to the Court of Appeals as a personal restraint petition pursuant to CrR 7.8(c)(2), which
8 requires the trial court to transfer a post-conviction motion for relief from judgment to the Court
9 of Appeals for consideration as a personal restraint petition “unless the court determines that the
10 motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial
11 showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual
12 hearing.”

13
14 RCW 10.73.090(1) requires that a motion to vacate judgments be filed within one year
15 after the judgment becomes final. This motion has been filed outside that time limit. However,
16 the state concedes that, pursuant to *In re Tsai*, 183 Wd.2d. 91, 351 P.3d 138 (2015), the time
17 limit does not apply to this case because there has been a significant change in the law which is
18 applicable retroactively based on the United States Supreme Court’s decision in *Padilla v.*
19 *Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). That case held that the duties
20 of defense counsel include providing advice regarding immigration consequences of a guilty plea
21 and that failure to provide such advice can constitute ineffective assistances of counsel. *Padilla*,
22 559 U.S. at 365-66.

23
24 The state takes the position that the defendant has not demonstrated his guilty plea
25 resulted from ineffective assistance of counsel in that he has not demonstrated that counsel’s

1 performance was deficient. The defendant acknowledges that he was warned that a guilty plea
2 could result in deportation, exclusion from admission if he left the United States, and denial of
3 naturalization. There is no evidence that he was informed that a foreign national with a drug
4 conviction is ineligible for cancellation of removal. However, at the time of his guilty plea, the
5 defendant already had two prior drug convictions. Therefore, the present plea of guilty did not
6 change his status with regard to the consequences. No additional consequences applied because
7 of this conviction.
8

9 The state also asserts that the defendant has not demonstrated prejudice. In order to
10 demonstrate prejudice, “the defendant must show that there is a reasonable probability that, but
11 for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial,”
12 *Hill v. Lockhart*, 474 U.S. 52, 59, 100 S.Ct. 366, 88 L.Ed.2d. 203 (1985). He must also
13 demonstrate that such a decision would have been rational under the circumstances, *Padilla*, 559
14 U.S. at 372. To establish prejudice the defendant cannot rely solely on his own assertions but
15 must present some contemporaneous evidence to support his claim. *Lee v. United States*, ___ U.S.
16 ___, 137 S.Ct. 1958, 198 L.Ed. 476 (2017)
17

18 In this case, by pleading guilty, the defendant avoided facing two additional felony
19 charges of bail jumping based on his failures to appear as required in this case on December 21,
20 2006, and February 22, 2007. In addition, based on the affidavit of probable cause in this case,
21 the state’s case on the charge of possession of controlled substance appeared to be strong.
22 Therefore, the defendant not only faced a strong likelihood of conviction on the charge to which
23 he pleaded guilty, but the possibility of being found guilty of two other felony charges as well.
24 This situation is distinguishable from the situation in *Lee*, where the defendant presented
25

1 contemporaneous evidence demonstrating his concern about the impact of a guilty plea on his
2 immigration status and received advice that a finding of guilt would not subject him to the risk of
3 deportation. *Lee*, 137 S.Ct. at 1963

4 In this case, there is no contemporaneous evidence to support the claim that the defendant
5 would not have accepted the state's plea offer had he been told that a finding of guilt would
6 definitely impact his immigration status. In fact, the defendant's immigration status was not
7 changed by the finding of guilt in this case. However, if he rejected the plea offer, he would
8 have been subject to the possibility (perhaps probability) of being found guilty of three felony
9 charges, rather than only one. The defendant's standard range on his plea to one count of
10 possession of a controlled substance was zero to six months of confinement. A finding of guilt
11 on even one of the bail jumping charges alone would have subjected him to a standard range of
12 four to twelve months. One bail jumping charge plus the controlled substance charge would
13 have resulted in a standard range of nine to twelve months on the bail jumping charge and six to
14 eighteen on the controlled substance charge. If he was found guilty of all three, he would have
15 faced standard ranges of twelve to sixteen months on each bail jumping count and six to eighteen
16 on the controlled substance count. In other words, if Mr. Garcia-Mendoza was found guilty of
17 all three counts that the state could have taken to trial, he would have faced a prison sentence of
18 at least 12 months and a day unless the court found grounds for an exceptional sentence
19 downward. Thus the defendant had a strong reason to accept the state's offer to forego filing
20 additional charges if he pleaded guilty to one count of possession of controlled substance.
21
22
23

24 The defendant has not established that but for the alleged failure to advise him
25 specifically of the effect of his guilty plea, he would not have pleaded guilty. Further, he has not

1 c. State's Motion to Transfer Motion for Relief from Judgment (filed
2 11/15/2018);

3 d. Defendant's Response to State's Motion to Transfer (filed 11/29/2018);

4 e. State's Reply to Response to Motion to Transfer (filed 11/29/2018).
5

6
7 Dated this 22nd day of February, 2019.

8 

9 Linda C. Krese
10 Judge

APPENDIX D

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

GARCIA-MENDOZA, ALEJANDRO,

Defendant.

No. 06-1-02314-0

STATE'S REPLY TO
RESPONSE TO
MOTION TO TRANSFER

I. INTRODUCTION

This Reply responds to the Defendant's Response to State's Motion to Transfer (which was received yesterday afternoon, November 27). The Response adds a new ground for relief — an alleged statutory violation. Because of this new ground, the defendant's motion is now time barred.

II. ARGUMENT

A. THE INCLUSION OF ONE GROUND THAT IS TIME BARRED RENDERS THE ENTIRE MOTION UNTIMELY.

The statutory exception to the time limit apply to "a petition or motion that is based *solely* on one or more of the following grounds." RCW 10.73.100 (emphasis added). If a petition raises multiple grounds, and any one of them is time barred, the *entire* petition must be dismissed. "Under such circumstances the court will not analyze every claim that is raised in order to determine or advise which claims are time barred

and which are not, nor will it decide claims under RCW 10.73.100 that are not time barred.” In re Hankerson, 149 Wn.2d 695, 702, 72 P.3d 703 (2003).

The defendant’s original Motion to Withdraw Guilty Plea raised one ground for relief: an allegation of ineffective assistance of counsel. As the State conceded, this ground falls within the exception set out in RCW 10.73.100(6). The response, however, includes a new ground: an alleged violation of RCW 10.40.200. Unless that claim falls within an exception to the time limit, the entire motion is untimely, without regard to the merits of the defendant’s ineffectiveness claim. An untimely motion must be transferred to the Court of Appeals. CrR 7.8(c)(2).

B. RCW 10.40.200 ONLY REQUIRES COURTS TO PROVIDE GENERAL ADVISEMENTS, NOT DETAILED WARNING TAILORED TO A DEFENDANT’S PARTICULAR CIRCUMTANCES.

RCW 10.40.200 requires courts to ensure that defendants who plead guilty receive general advice concerning possible immigration consequences:

Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, ... the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

RCW 10.40.200(2). The required advice is set out in the guilty plea form in CrR 4.2(g).

The defendant admits that he received this advice. Def. Dec. at 3 ¶ 19.

The defendant claims, however, that this advice is insufficient. He argues that the statute also requires detailed advice concerning possible immigration consequences under his specific circumstances. If the statute requires such advice from the *court*, there has probably *never* been a valid guilty plea entered by a non-citizen since the statute was enacted. As this case illustrates, immigration consequences can be affected

by numerous facts — not only the defendant’s immigration status, but his marital status, family relationships, employment, and method of entry.

When a defendant pleads guilty, is a court expected to ask the defendant in open court about his immigration status? Must the court ask whether he entered the United States illegally? Whether he has been employed illegally? Whether he has committed crimes for which he was not prosecuted? Whether he is married or intends to be? What his wife’s immigration status is? What his relationship with his family is? *All* of these questions can be highly relevant to the immigrations consequences for a particular defendant.

Asking such questions in open court is not only totally impractical, but likely to be harmful to the defendant. The duty must lie with defense counsel, not the court. Only counsel can ask the questions confidentially and conduct the necessary investigation to determine the effect of the answers. The court’s duty must be limited to general advice, which was given in this case.

C. TSAI DID NOT CHANGE THE COURT’S INTERPRETATION OF RCW 10.40.200— IT LOOKED TO THE STATUTE AS DEFINING DUTIES THAT ALREADY EXISTED.

The defendant argues, however, that Tsai changed the interpretation of RCW 10.40.200 with regard to the advice that needs to be provided. The issue in Tsai was whether Padilla is retroactively applicable. A “significant change in the law” is retroactive if it does not constitute a “new rule.” In deciding whether Padilla constituted a “new rule,” the court looked to the obligations imposed by RCW 10.40.200:

RCW 10.40.200’s plain language gives noncitizen defendants the unequivocal right to advice regarding immigration consequences and necessarily imposes a correlative duty on defense counsel to ensure that advice is provided. While defense counsel’s duty to advise regarding immigration consequences is imposed by statute, reasonable conduct for an attorney includes carrying out the duty to research the relevant law. In

many cases defense counsel's failure to fulfill his or her statutory duty may be due to an unreasonable failure to research or apply RCW 10.40.200, and there is no conceivable tactical or strategic purpose for such a failure.

In re Tsai, 183 Wn.2d 91, 101–02 ¶ 18, 351 P.3d 138 (2015) (citations and footnote omitted).

From this analysis, two things are clear. First, the duty to provide detailed advice rests on counsel, not the court. Second, this was not a new requirement. The Supreme Court looked at the statute as defining duties that had always existed. Since Tsai did not constitute a significant change in the law with regard to RCW 10.40.200, a claim based on that statute does not fall within any exception to the statutory time limit. Since the defendant's motion now includes a time-barred claim, it is untimely as a whole and should be transferred to the Court of Appeals.

D. TSAI DID NOT ELIMINATE THE REQUIREMENT OF SHOWING PREJUDICE TO DEMONSTRATE INEFFECTIVE ASSISTANCE OF COUNSEL.

Even if the statutory claim is timely, it does not lead to a different substantive result. It is true that when a *court* failed to give the advice required by RCW 10.40.200, courts have granted relief without a showing of prejudice. The same is not true, however, if *counsel* fails to give the necessary advice. Tsai treated Padilla as “a garden variety application of the test in Strickland.” Tsai, 183 Wn.2d at 103 ¶ 20. That test requires a showing of prejudice. Strickland v. Washington, 466 U.S. 668, 693, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

It is true that in one case where the *court* had failed to fulfill its statutory duties, relief was granted without consideration of prejudice. State v. Littlefair, 112 Wn. App. 749, 51 P.3d 116 (2002). The same is not true, however, if *counsel's* failure to provide adequate advice. Rather, every case that has granted relief has done so on a showing

of prejudice. See, e.g., State v. Sandoval, 171 Wn.2d 163, 174-75 ¶¶ 19, 249 P.3d 1015 (2011); State v. Martinez, 161 Wn. App. 436, 442 ¶¶ 12, 253 P.3d 445 (2011). Even if counsel failed to give the required advice, the defendant is not entitled to relief unless he can demonstrate prejudice.

III. CONCLUSION

The defendant's motion is now untimely. It also fails to set out facts establishing entitlement to relief. It should be transferred to the Court of Appeals for consideration as a personal restraint petition.

Respectfully submitted on November 28, 2018.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 
SETH A FINE, WSBA #: 10937
Deputy Prosecuting Attorney

APPENDIX E

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6 SNOHOMISH COUNTY SUPERIOR COURT
7 STATE OF WASHINGTON

8 STATE OF WASHINGTON,

9 Plaintiff,

10 v.

11 ALEJANDRO GARCIA MENDOZA,

12 Defendant.

Case No. 06-1-02314-0

DEFENDANT'S RESPONSE TO
STATE'S MOTION TO TRANSFER

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14
15 COMES NOW Defendant, Alejandro Garcia Mendoza ("Mr. Garcia"), by and through
16 undersigned counsel, and submits the following response to the State's motion to transfer his
17 motion to withdraw the guilty plea in the above-noted matter.
18

19 ARGUMENT

20 **I. Mr. Garcia has Established Deficient Performance.**

21 In Padilla v. Kentucky, 559 U.S. 356 (2010), the Supreme Court of the United States held
22 that where the immigration consequences of a conviction are clear, the defendant must be advised
23 of those consequences, but where the immigration consequences of a conviction are unclear
24 counsel may simply advise a criminal defendant that his conviction may carry adverse
25 immigration consequences. See Padilla, 559 U.S. at 359. Failure to advise of clear immigration

DEFENDANT'S RESPONSE TO STATE'S MOTION
TO TRANSFER- 1

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1 consequences amounts to deficient performance under the Strickland v. Washington, 466 U.S.
2 668 (1984), test for ineffective assistance of counsel. The State contends that Mr. Garcia has
3 failed to establish deficient performance on the part of his criminal defense attorney because he
4 had already been convicted of two drug offenses prior to the conviction in this case and therefore
5 because the instant conviction did not result in any “additional” immigration consequences to Mr.
6 Garcia, reading the boilerplate immigration warning found in Mr. Garcia’s statement of defendant
7 on plea of guilty was sufficient to satisfy counsel’s duty under Padilla.

8 The State’s argument misconstrues Padilla’s holding. First, Padilla makes clear that a
9 defendant must be advised of the impact that a conviction will have on forms of relief from
10 deportation. As the Court explained in that case:

11 [W]e have recognized that preserving the possibility of discretionary relief from
12 deportation under § 212(c) of the INA would have been one of the principal
13 benefits sought by defendants in deciding whether to accept a plea offer or instead
14 to proceed to trial. We expected that counsel who were unaware of discretionary
relief measures would follow the advice of numerous practice guides to advise
themselves of the importance of this particular form of discretionary relief.

15 Id. at 368 (internal citations and quotation marks omitted). Thus, Mr. Garcia’s defense attorney
16 had a duty to advise him about the impact that his conviction would have on his ability to apply
17 for cancellation of removal and other forms of relief from deportation, i.e. that his plea would
18 bar him from applying for important forms of relief from deportation.

19 The State does not appear to dispute that as a general matter it was clear for purposes of
20 Padilla analysis that a drug conviction would make Mr. Garcia permanently inadmissible to the
21 United States and ineligible for cancellation of removal for long-term lawful permanent residents
22 of the United States. See 8 U.S.C. § 1182(a)(2)(A)(i)(II); 8 U.S.C. § 1229b(b)(1)(C) (providing
23 that a noncitizen convicted of a drug offense is ineligible for cancellation of removal). Rather,
24 the State’s argument seems to be that because Mr. Garcia had already been convicted of two
25

1 prior drug offenses, his attorney in this case had no duty to advise him of the clear consequences
2 that a conviction for a drug offense has for a longtime undocumented resident of the United
3 States. But, the State's argument is unsupported by any case law. It is unclear why a defendant
4 with prior convictions has any less of a right to be advised of the automatic immigration
5 consequences of a particular type of crime than a defendant with no criminal convictions.
6 Indeed, as the Supreme Court explained in Padilla, where a conviction results in adverse
7 immigration consequences, promoting silence on the part of criminal defense counsel would:

8 [D]eny a class of clients least able to represent themselves of the most
9 rudimentary advice on deportation when it is readily available. It is
10 quintessentially the duty of counsel to provide her client with available
11 advice about an issue like deportation and the failure to do so clearly
12 satisfies the first prong of Strickland analysis.

13 Id. at 371. In the instant case, the requirements of Padilla are clear. A conviction for an offense
14 related to a controlled substance makes a non-citizen inadmissible to the United States and
15 ineligible to apply for cancellation of removal in deportation proceedings. See 8 U.S.C. §
16 1182(a)(2)(B); 8 U.S.C. § 1229b(b)(1)(C). Mr. Garcia had a right to be advised of these clear
17 immigration consequences under Padilla. It matters not that Mr. Garcia was previously convicted
18 of drug related offenses. Because the immigration consequences of Mr. Garcia's conviction in
19 this case were clear and automatic under the immigration statutes, the boilerplate immigration
20 warning found in Mr. Garcia's statement of defendant on plea was insufficient to satisfy the
21 requirements of Padilla. See State v. Sandoval, 171 Wn.2d 163, 170 (2011). Counsel's
22 performance in this case was constitutionally deficient.

23 **II. Mr. Garcia has Established Prejudice.**

24 The State next contends that Mr. Garcia cannot establish that he was prejudiced by
25 counsel's deficient performance because the State's evidence against him was strong and because

1 there was no guarantee that he would have received cancellation of removal in immigration court
2 even if he had not been convicted of drug possession since that form of relief is discretionary.

3 Both of the State's arguments have already been considered and rejected by the Supreme
4 Court. In United States v. Lee, _U.S._, 137 S. Ct. 1958, 1969 (2017), the Court held that a
5 defendant who is not advised of the immigration consequences of a plea that will inevitably result
6 in his deportation is prejudiced even if he has no defense at trial to the underlying charges. See
7 id. ("Lee would have known that accepting the plea agreement would *certainly* lead to deportation.
8 Going to trial? *Almost certainly*. . . . and if the consequences of taking a chance at trial were not
9 markedly harsher than pleading, as in this case, that 'almost' could make all the difference.").

10 Further, in United States v. St. Cyr, 533 U.S. 289, 323 (2001), the Supreme Court
11 acknowledged "that preserving the possibility of [discretionary relief from deportation] would
12 have been one of the principal benefits sought by defendants deciding whether to accept a plea
13 offer or instead to proceed to trial." Thus, given the importance of cancellation of removal as a
14 form of relief from deportation, it would be completely rational for an individual in Mr. Garcia's
15 position to risk a longer jail sentence to preserve his statutory eligibility for relief from deportation
16 in immigration court. Notably, the form of relief considered by the Supreme Court in St. Cyr,
17 relief under former Immigration and Nationality Act § 212(c), was similar in many respects to
18 cancellation of removal for non-permanent residents and required a showing of unusual or
19 outstanding countervailing equities. See Matter of Marin, 16 I&N Dec. 581, 585 (1978) (applicant
20 for relief under § 212(c) must provide evidence of good moral character and unusual or
21 outstanding equities where there is prior criminal history).

22
23 The State goes to great lengths to distinguish Mr. Garcia's case from Lee. But, Mr.
24 Garcia's case was similar in many respects to Lee. Like the defendant in Lee, Mr. Garcia had
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1 come to the United States as a child, attended school in the United States, and had nothing to
2 return to in Mexico. See Lee, 137 S. Ct. at 1962. Mr. Garcia also had an infant United States
3 citizen daughter with his longtime girlfriend, who was also a United States citizen. While it is
4 true that Mr. Garcia did not have lawful permanent resident status, he would have been eligible to
5 apply for cancellation of removal for non-permanent residents based on his relationship with his
6 minor United States citizen daughter. In light of the importance of discretionary relief to non-
7 citizens in Mr. Garcia's position, there seems to be little doubt that preservation of relief in
8 deportation proceedings, in the form of cancellation of removal, would have been of vital
9 importance to Mr. Garcia in deciding whether or not to go to trial in this case.¹

10 The State also suggests that Mr. Garcia cannot establish prejudice because unlike Lee there
11 is no evidence in the record that Mr. Garcia asked his attorney or the court about the immigration
12 consequences of his conviction. But, the Supreme Court did not impose any such requirement in
13 Lee and in fact rejected any per se rule for determining prejudice. Rather the Court instructed
14 trial courts to look to the totality of the evidence surrounding the defendant's plea when
15 determining whether the defendant has shown prejudice. See id. at 1966. Such evidence includes
16 the defendant's ties to the United States, and lack of ties to his home country at the time of the
17 plea. Id. at 1968.

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21 ¹ The State asserts that preserving the ability to adjust status would not have been an important
22 consideration for Mr. Garcia because he was not eligible for that relief at the time he pleaded
23 guilty in this case. However, an individual married to a United States citizen is eligible for an
24 immediate relative visa under the Immigration and Nationality Act, and can leave the United
25 States to be readmitted immediately as a permanent resident based on such a visa. See 8 U.S.C.
1151(b)(2)(A)(i). Again, at the time he pleaded guilty in this case, Mr. Garcia had an infant child
with his longtime United States citizen girlfriend (who he is currently married to). Thus, ability
to adjust status in the future through marriage would have been an important consideration for
Mr. Garcia. Because Mr. Garcia's conviction in this case makes him inadmissible to the United
States, he is currently unable to take advantage of the immediate relative visa process.

1 Moreover, the State’s reasoning turns the Padilla standard on its head. It is the duty of
2 criminal defense counsel to educate his or her client about the immigration consequences of a
3 guilty plea. As the Supreme Court stated in Padilla, “it is quintessentially the duty of criminal
4 defense counsel to provide her client with available advice about an issue like deportation and the
5 failure to do so “clearly satisfies the first prong of the Strickland analysis.” Padilla, 559 U.S. at
6 371. In light of this fact, Mr. Garcia should not be faulted for failing to ask counsel additional
7 questions about his immigration status. If counsel, who was trained in the law, did not recognize
8 the immigration implications of Mr. Garcia’s plea and failed to explain the immigration
9 consequences of Mr. Garcia’s plea to him, Mr. Garcia, who was 22 years old at the time of his
10 plea could not be expected to flag the issue of immigration consequences for counsel.

11 Nor is Mr. Garcia’s claim any weaker because he was read a boilerplate immigration
12 warning at the time of his plea. Our state Supreme Court has explained time and time again that
13 counsel’s deficient advice about immigration consequences cannot be saved by the RCW
14 10.40.200 advisement in a plea statement. See Sandoval, 171 Wn.2d at 173. As the Supreme
15 Court explained in In re Personal Restraint of Tsai, 183 Wn.2d 91 (2015), the RCW 10.40.200
16 advisement found in guilty plea forms used by Washington courts is not the advice required by
17 Padilla. See Tsai, 183 Wn.2d at 101 (“The warning statement is not, itself, the required advice . .
18 . .”). Counsel has a duty to research the actual immigration consequences of his or her client’s
19 guilty plea and properly advise the client of what those consequences are. Id. at 105. In light of
20 the state Supreme Court’s clear precedents on this issue, the State should not be permitted to rely
21 on the presence of the boilerplate advisement to establish the absence of prejudice. While some
22 litigants, like the defendant in Lee may be brave and knowledgeable enough to raise additional
23 questions about immigration consequences during a plea colloquy, defendants should not be
24
25

1 faulted for failing to do so. See Marroquinn v. U.S., 480 Fed. Appx. 294, 301 – 302 (5th Cir.
2 2012) (J. Dennis, concurring) (“It seems obvious that no last minute, one-size-fits-all judicial
3 warning can adequately serve as a surrogate for effective counsel during the plea bargaining
4 process. It is simply too little, too late.”).

5 Finally, the State asserts that Mr. Garcia cannot show prejudice because he already had
6 two drug convictions that already subjected him to inadmissibility and barred him from applying
7 for cancellation of removal under the immigration laws. However, there is no showing that Mr.
8 Garcia had been put on notice of the immigration consequences of those convictions prior to
9 pleading guilty in this case. Indeed, if Mr. Garcia’s original attorney in this case had correctly
10 advised him about the immigration consequences that being convicted of a drug offense would
11 have had on his ability to remain in this country he could have taken steps to obtain relief from
12 his two prior convictions much earlier. In fact, if an evidentiary hearing is granted, the testimony
13 will show that Mr. Garcia is currently seeking to pursue relief from his two prior drug possession
14 convictions in addition to the conviction in the instant case.

15
16 The lack of benefits that Mr. Garcia obtained from the plea bargain in this case is additional
17 evidence that Mr. Garcia would have likely proceeded to trial in a “Hail Mary” effort to save his
18 immigration status despite his prior convictions, and the strength of the State’s case. See Lee, 137
19 S. Ct. at 1967. As evidenced by the judgment and sentence in this case, Mr. Garcia’s standard
20 sentencing range was 0 to 6 months. Mr. Garcia was sentenced to 110 days in custody under the
21 plea agreement. Any benefits that Mr. Garcia gained by pleading guilty were greatly outweighed
22 by the immigration consequences of his conviction.

23 As the Supreme Court explained in Lee, Mr. Garcia does not need to establish that
24 everyone in his position would have decided to proceed to trial to demonstrate prejudice, he
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1 merely needs to establish that it would have been irrational to do so. See Lee 137 S. Ct. at 1969.
2 Here, while not all criminal defendants would have risked extra time in custody in the hope of
3 saving their ability to apply for cancellation of removal in immigration court it would not have
4 been irrational for someone in Mr. Garcia's position to do so considering the circumstances of his
5 case.

6 **III. Mr. Garcia is Entitled to Withdraw his Guilty Plea Even Without a Showing**
7 **of Prejudice.**

8 Even aside from his eligibility for relief under Padilla, Mr. Garcia is entitled to relief from his
9 conviction under RCW 10.40.200. Importantly, under RCW 10.40.200, a defendant is entitled to
10 withdraw his guilty plea without a showing of prejudice. RCW 10.40.200(2) provides:

11 Prior to the acceptance of a plea of guilty to any offense punishable
12 as a crime under state law . . . the court shall determine that the
13 defendant has been advised of the following potential consequences
14 of conviction for a defendant who is not a citizen of the United
15 States: Deportation, exclusion from admission to the United States,
16 or denial of naturalization pursuant to the laws of the United States.
17 A defendant signing a guilty plea statement containing the
18 advisement required by this subsection shall be presumed to have
19 received the required advisement. *If, after September 1, 1983, the*
20 *defendant has not been advised as required by this section and the*
defendant shows that conviction of the offense to which defendant
pleaded guilty may have the consequences for the defendant of
deportation, exclusion from admission to the United States, or denial
of naturalization pursuant to the laws of the United States, the court,
on the defendant's motion, shall vacate the judgment and permit the
defendant to withdraw the plea of guilty and enter a plea of not
guilty. Absent a written acknowledgement, the defendant shall be
presumed not to have received the required advisement.

21 RCW 10.40.200(2) (emphasis added). In Tsai our Supreme Court made clear that counsel's duty
22 under RCW 10.40.200 is not limited to reading the standard plea warning found in the defendant's
23 plea form, but that a defendant must receive advice about the specific immigration consequences
24 of his conviction. See Tsai, 183 Wn.2d at 101. RCW 10.40.200's plain language gives noncitizen
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1 defendants the unequivocal right to advice regarding immigration consequences and necessarily
2 imposes a correlative duty on defense counsel to ensure that advice is provided. . . . In many cases
3 defense counsel’s failure to fulfill his or her statutory duty may be due to an unreasonable failure
4 to research or apply RCW 10.40.200.” Tsai, 183 Wn.2d at 101 – 102. Here there is no dispute
5 that counsel failed to discharge her duty under RCW 10.40.200 by failing to research and apply
6 that statute to the facts of Mr. Garcia’s case. Consequently, Mr. Garcia is entitled to have his
7 guilty plea withdrawn under the plain language of the statute.

8 The plain language of RCW 10.40.200 does not require a showing of prejudice. Instead
9 the statute commands that where a violation is shown, the “court, on the defendant’s motion, *shall*
10 vacate the judgment and sentence and permit the defendant to withdraw the plea of guilty.” RCW
11 10.40.200 (emphasis added). Further, courts construing RCW 10.40.200 have permitted
12 withdrawal of a guilty plea by a noncitizen defendant upon a showing that the defendant did not
13 receive immigration advice without a showing of prejudice. See State v. Littlefair, 112 Wn.2d
14 749, 769 (2002) (“In summary, RCW 10.40.200 gave Littlefair a statutory right, independent of
15 any constitutional right, to be advised of the deportation consequences of his plea. He was not
16 advised due to a series of miscues by his attorney and the trial court. Thus, we vacate the plea
17 and sentence and remand for further proceedings.”). Because Mr. Garcia has established a
18 violation of RCW 10.40.200, he is entitled to relief from his conviction without a showing of
19 prejudice.
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21
22 **IV. Mr. Garcia’s Claim under RCW 10.40.200 is not Time-Barred.**

23 The State may argue that Mr. Garcia’s claim under RCW 10.40.200 is time-barred because
24 the statute has been on the books since 1983, and Mr. Garcia could have moved for relief at an
25 earlier time. However, the change in law effected by Padilla has also effected a change in law in

1 the construction and application of RCW 10.40.200, and therefore claims under RCW 10.40.200
2 that would have been precluded prior to the issuance of the Supreme Court’s decision in Padilla
3 should be exempt from the one-year time limit on collateral attacks under RCW 10.73.100(6) just
4 as claims of ineffective assistance of counsel based on Padilla are.

5 A decision constitutes a “significant change in the law” for purposes of RCW 10.73.100(6)
6 when it “has effectively overturned a prior appellate decision that was originally determinative of
7 a material issue.” See In re Personal Restraint of Greening, 141 Wn.2d 687, 697, 9 P.3d 206
8 (2000). “One test to determine whether an appellate decision represents a significant change in
9 law is whether the defendant could have argued this issue before publication of the decision.” In
10 re Personal Restraint of Stoudmire, 145 Wn.2d 258, 264, 5 P.3d 1240 (2001).

11 Division I recently considered what constitutes a change in the law for purposes of RCW
12 10.73.100(6). In State v. Orantes, 197 Wn. App. 737 (2017), the Court held that a significant
13 material change in law occurs within the meaning of RCW 10.73.100(6) where courts would have
14 rejected a litigant’s claim prior to the change in case law. See id. at 739. Under this standard, it
15 is clear that the change in law effected by Padilla also effected a change in the construction and
16 application of RCW 10.40.200.

17 Prior to Padilla courts in Washington uniformly rejected claims under RCW 10.40.200
18 where the boilerplate advisement was read to the defendant and no other immigration advice was
19 given. In State v. Martinez-Leon, 174 Wn. App. 753 (2013), which was later overruled by Tsai,
20 Division II of the Court of Appeals that a reading of the boilerplate immigration advisement was
21 sufficient to satisfy the requirements of RCW 10.40.200 before Padilla was decided. See id. at
22 762 (“Although Martinez-Leon’s defense counsel did not specifically advise him that a 365-day
23 sentence on his assault conviction would result in definite deportation under United States
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1 immigration laws, such an obligation was not required before Padilla.”). Similarly, in State v.
2 Jamison, 105 Wn. App. 572 (2001), Division I of the Court of Appeals held that a simple warning
3 that a guilty plea will affect one’s ability to be in the United States is sufficient to satisfy the
4 requirements of RCW 10.40.20. See id. at 594 (finding that defendant was properly warned under
5 RCW 10.40.200 where the statement of defendant contained a standard advisement and
6 prosecutor asked “Do you understand that if you are not a citizen . . . that this guilty plea will
7 affect your ability to be in the United States?”).

8 These cases were expressly overruled by Padilla and Tsai, which held that merely advising
9 a defendant in general terms of the possible immigration consequences is not enough where the
10 immigration consequences of a conviction are clear. Specifically, in Tsai, the state Supreme Court
11 held that the boilerplate advisement found in Washington State plea statements was not itself the
12 advice required by RCW 10.40.200 and that the statute gives noncitizens the “unequivocal right
13 to advice regarding immigration consequences” and requires defense counsel to research and
14 apply RCW 10.40.200 to his or her client’s case. See Tsai, 183 Wn. 2d at 101 (“That warning
15 statement is not, itself, the required advice.”). In so holding, the court expressly overruled
16 Jamison and other cases holding that a general advisement about immigration consequences was
17 sufficient to satisfy RCW 10.40.200. See id. at 106 – 07. (“Padilla superseded the theory
18 underlying these decisions—that ‘anything short of an affirmative misrepresentation by counsel
19 of the plea’s deportation consequences could not support the plea’s withdrawal. . . . This was a
20 significant change in Washington law.”).

21
22 Consequently, because the change in law effected by Padilla also effected a change in law
23 in the construction and application of RCW 10.40.200, litigants whose cases became final before
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25

1 Padilla was decided may raise claims under RCW 10.40.200 after the expiration of the one year
2 time limit on collateral attacks.

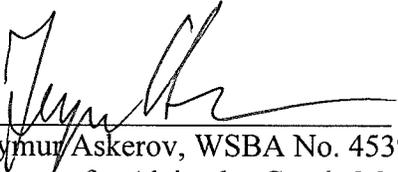
3 **V. Conclusion**

4 Based on the foregoing reasons and the reasons set forth in Mr. Garcia's initial motion,
5 the Court should set an evidentiary hearing in this matter.

6
7 DATED this 27th day of November, 2018.

8 Respectfully submitted,

9 BLACK LAW, PLLC

10
11 

12 Teymur Askerov, WSBA No. 45391
13 Attorney for Alejandro Garcia Mendoza

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, along with any attachments, was served on the below-noted date, via electronic mail, upon the parties required to be served in this action:

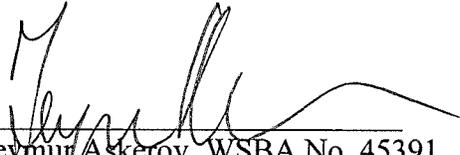
Seth Fine
Snohomish County Prosecuting Attorney's Office
3000 Rockefeller Avenue
M/S 504
Everett, WA 98201

sfine@co.snohomish.wa.us

DATED this 27th day of November, 2018.

Respectfully submitted,

BLACK LAW, PLLC



Teymur Askerov, WSBA No. 45391
Attorney for Alejandro Garcia Mendoza

APPENDIX F

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

GARCIA-MENDOZA, ALEJANDRO,

Defendant.

No. 06-1-02314-0

STATE'S MOTION TO TRANSFER
MOTION FOR RELIEF FROM
JUDGMENT

I. MOTION

The State of Washington moves for an order transferring the defendant's Motion for Relief from Judgment to the Court of Appeals, for consideration as a personal restraint petition. This motion is based on CrR 7.8(c)(2) and the following memorandum.

II. FACTS

The facts surrounding the defendant's crimes are set out in the Affidavit of Probable Cause (Docket no. 2). In his plea agreement, the defendant agreed that this Affidavit could be considered in deciding whether there was a factual basis for the plea. Docket no. 31 at 7 ¶ 12. Nothing in the defendant's current motion contradicts anything in the Affidavit.

According to the Affidavit, on June 19, 2006, Officer Goldman of the Marysville Police saw a car parked in a grocery store parking lot. On running the license plate, he

learned that there was a felony arrest warrant associated with the car. Officer Goldman waited for the driver to leave the store. When the driver did, Officer Goldman contacted him. Docket no. 2 at 1.

Officer Goldman explained what he was doing and asked for identification. The driver said that he had no identification, but he identified himself as Alex Garcia. That name also matched a wanted person. Eventually, Officer Goldman identified the driver as the defendant, Alejandro Garcia-Mendoza. There was likewise an outstanding DOC escape warrant for the defendant. Id. at 1-2.

Officer Goldman arrested the defendant pursuant to the warrant. On searching him incident to that arrest, the officer found a small baggie of a white substance and another baggie with a crystal type substance. The two baggies were tested at the Washington State Patrol Crime Laboratory. One of them contained 1.9 grams of cocaine. Another contained .3 grams of methamphetamine. Id. at 2.

On September 19, 2006, an information was filed charging the defendant with possession of cocaine. Docket no. 1. On October 23, he was arraigned and released on his own recognizance. Docket no. 11. On December 21, he failed to appear for an omnibus hearing. The court authorized a bench warrant. Docket no. 17. The defendant appeared on January 8, 2007. The court quashed the warrant and re-set the omnibus hearing for February 22. Docket no. 19, 20. The defendant again failed to appear on that date. He appeared on February 26, at which time the court authorized destruction of the warrant. Docket no. 23. The court set bail, which the defendant posted. Docket no. 24, 26.

On March 27, the defendant pleaded guilty. Docket no. 31. In return for the plea, the prosecutor agreed not to file two bail jumping counts. Id., Plea Agreement at 2 ¶ 8. In the plea agreement, the defendant agreed that the prosecutor's understanding of his criminal history was accurate. Id. at 1 ¶ 5. That Understanding showed two prior convictions for "VUCSA-Possession," in 2004 and 2005. Id., Appendix A. The plea statement included the standard warning that a guilty plea could be grounds for deportation, exclusion from admission, or denial of naturalization. Docket no. 31 at 4 ¶ 6(r).

The defendant was sentenced on July 18, 2007. The court imposed 110 days confinement. Docket no. 44.

The defendant now seeks to withdraw his guilty plea. He claims that he was not advised of immigration consequences of his plea. According to his declaration, "I would have refused to plead guilty if I had known the serious consequences of doing so." Declaration of Alejandro Garcia Mendoza at 3 ¶ 20 (hereinafter cited as "Def. Dec."). He has, however, provided no evidence that he expressed any concern for immigration consequences at the time of his plea. There is no explanation of how he might have believed that he could avoid conviction. Nor does he mention his two prior felony drug convictions.

III. ISSUE

Should this case be transferred to the Court of Appeals for consideration as a personal restraint petition?

IV. ARGUMENT

The defendant has moved to withdraw his guilty plea. When such a motion is filed after judgment, it is governed by CrR 7.8. CrR 42.(f). Such Motions can be either resolved by this court on the merits or transferred to the Court of Appeals. The standards governing this choice are set out in CrR 7.8(c)(2):

The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

The court should engage in a "meaningful analysis" of these requirements. In re Ruiz-Sanabria, 184 Wn.2d 632, 362 P.3d 758 (2015). If the requirements for transfer are satisfied, the court may not decide the motion – even if the motion is clearly unfounded. State v. Smith, 144 Wn. App. 860, 184 P.3d 666 (2008).

Under this rule, this court should resolve three issues: (1) Is the motion barred by RCW 10.73.090? (2) Has the defendant made a substantial showing that he or she is entitled to relief? (3) Will resolution of the motion require a factual hearing?

A. THE DEFENDANT'S MOTION IS NOT TIME BARRED.

RCW 10.73.090(1) sets a time limit on motions to vacate judgments and other forms of "collateral attack." Such a motion must be filed within one year after the judgment becomes final. Since the judgment in the present case was not appealed, it became final on July 19, 2007, the day it was filed. RCW 10.73.090(3)(a). A motion filed in 2018 is well outside the time limit.

The statute contains an exception, however, for a motion that is based on a significant change in the law, if the court determines that the change is retroactively

STATE'S MOT. TO TRANSFER--4

applicable. RCW 10.73.100(6). The Supreme Court has already determined that a “significant change in the law” resulted from Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). As a result, the time limit does not apply to motions based on Padilla, if the conviction became final prior to that decision. In re Tsai, 183 Wn.2d 91, 351 P.3d 138 (2015). Under Tsai, the defendant’s motion is not time barred.

B. THE DEFENDANT HAS NOT MADE A SUBSTANTIAL SHOWING OF ENTITLEMENT TO RELIEF.

The defendant claims that his guilty plea resulted from ineffective assistance of counsel. The duties of defense counsel including providing advice concerning immigration consequences of a guilty plea. Failure to provide such advice can constitute ineffective assistance. Padilla v. Kentucky, 559 U.S. at 365-66. To establish ineffectiveness, the defendant must satisfy a two-part standard. First, he must show that counsel’s performance was deficient. Second, he must show that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). These standards apply equally to claims that defense counsel provided inadequate advice concerning immigration consequences. Padilla, 559 U.S. at 366; State v. Sandoval, 171 Wn.2d 163, 169 ¶ 9, 249 P.3d 1015 (2011). The defendant has failed to make either of these showings.

1. The Defendant Has Not Shown That Counsel’s Performance Was Deficient.

Criminal law practitioners are not required to be specialists in immigration law. Padilla, 559 U.S. at 369.

If the applicable immigration law is truly clear that an offense is deportable, the defense attorney must correctly advise the defendant that pleading guilty to a particular charge would lead to deportation. If the law is not succinct and straightforward, counsel must provide only a general warning that pending criminal charges may carry a risk of adverse immigration consequences. In other words, even if immigration law does not reveal

clearly whether the offense is deportable, competent counsel informs the defendant that deportation is at least possible, along with exclusion, ineligibility for citizenship, and any other adverse immigration consequences.

Sandoval, 171 Wn.2d at 170 ¶ 11 (citations omitted).

In the present case, the defendant was warned that a guilty plea could result in deportation, exclusion from admission, or denial of naturalization. Docket no. 31 at 4 ¶ 6(r). The defendant has acknowledged that he was aware of these consequences. Def. Dec. at 3 ¶ 19. Unless the law is “succinct and straightforward” as to additional consequences, this advice was adequate.

The defendant points out that immigration law sets out some specific consequences for a drug conviction. See 8 U.S.C. § 1229b(b)(1)(C) (alien with drug conviction is ineligible for cancellation of removal). These consequences are, however, triggered by a *single* conviction. At the time of the defendant’s guilty plea in the present case, he already had two drug convictions. He was therefore already subject to those consequences. He has not shown that the third conviction had any *additional* consequences.

Even if the third conviction might have had some potential consequences, there is no showing that those consequences were “succinct and clear.” As a result, general advice concerning possible immigration consequences was sufficient. The defendant received that advice. He has therefore not shown that defense counsel’s performance was deficient. Absent any showing of deficient performance, the defendant is not entitled to relief.

2. The Defendant Has Not Shown That Any Deficient Performance Resulted In Prejudice.

The defendant has also failed to show prejudice. In the context of a guilty plea, “the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The defendant must also show that such a decision would have been rational under the circumstances. Padilla, 559 U.S. at 372; Sandoval, 171 Wn.2d at 175 ¶ 19.

To establish prejudice, the defendant cannot rely solely on his own assertions.

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has special force with respect to convictions based on guilty pleas. Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant’s expressed preferences.

Lee v. United States, ___ U.S. ___, 137 S.Ct. 1958, 1967, 198 L.Ed.2d 476 (2017) (citations omitted).

The determination of prejudice should take into account the strength of the state’s case.

A defendant without any viable defense will be highly likely to lose at trial. And a defendant facing such long odds will rarely be able to show prejudice from accepting a guilty plea that offers him a better resolution than would be likely after trial. But that is not because the prejudice inquiry in this context looks to the probability of a conviction for its own sake. It is instead because defendants obviously weigh their prospects at trial in deciding whether to accept a plea. Where a defendant has no plausible chance of an acquittal at trial, it is highly likely that he will accept a plea if the Government offers one.

Lee, 137 S.Ct. at 1966 (citation omitted).

In Lee, the court held that the contemporaneous evidence satisfied this standard, notwithstanding the lack of any viable defense at trial. Lee, 137 S. Ct. at 1967. The defendant there was a lawful permanent resident. Prior to pleading guilty, he had repeatedly asked his attorney whether there was any risk of deportation. The attorney incorrectly assured him that there was none. Id. at 1963. Again at the plea colloquy, when the court referred to a possibility of deportation, the defendant said that this possibility *would* affect his decision. He proceeded with the plea only after his attorney assured him that the judge's statement was a "standard warning." Id. at 1968. Under these "unusual circumstances," the court held that the defendant had "adequately demonstrated a reasonable probability that he would have rejected the plea had he known that it would lead to mandatory deportation." Id. at 1967. The court further held that such a decision would have been rational under the circumstances. Id. at 1968-69.

Here, as in Lee, the State's case was extremely strong. The drugs were found on the defendant's person in a search incident to arrest. The State was also in a position to add additional charges. Had the defendant refused to plead guilty, the probable result would have been conviction on at least the drug charges, and possibly other charges as well. A conviction after trial would, of course, have resulted in the same immigration consequences as a guilty plea.

Unlike the situation in Lee, there is no evidence that the defendant here would have made a near-hopeless gamble had he been advised of additional consequences. To begin with, the immigration consequences were much more remote than those in Lee. In Lee, the defendant was a lawful permanent resident. Absent a criminal conviction, he could remain in the United States forever. Here, in contrast, there is no

evidence that the defendant had any lawful status. He was subject to deportation at any time that immigration officials decided to commence proceedings. Furthermore, the defendant here already had two drug convictions. To the extent that those convictions resulted in negative consequences, he was already subjected to those consequences.

In Lee, the defendant repeatedly asked whether he could be deported. He was repeatedly assured that he could not be. Here, the defendant was warned that he *could* be deported. There is no evidence that he made any further inquiries into that possibility. So far as the contemporaneous evidence shows, that possibility was of no concern to him — perhaps because he had lived with that possibility every day for many years.

The defendant claims that he would not have pleaded guilty if he had known that it would bar him from applying for cancellation of removal.¹ Def. Dec. at 3 ¶18. Even apart from his prior convictions, there is no showing that the defendant had any reasonable expectation of obtaining that remedy. Cancellation of removal is governed by 8 U.S.C. § 1229b(b)(1).

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien--

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

¹ The defendant's motion also mentions the possibility of adjustment of status. Defendant's Motion to Withdraw Guilty Plea at 6. His declaration, however, does not claim that the possibility of that remedy would have had any effect on his decision. To be eligible for adjustment of status, an alien must have lawfully entered the United States (or fall into certain other specified categories). An immigrant visa must also be immediately available to him. 8 U.S.C. § 1255(a). The defendant has not claimed that he could satisfy either of these requirements.

(C) has not been convicted of [a drug offense or certain other crimes]; and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

Several things are clear from this statute. First, the remedy is purely discretionary. See Vidinski v. Lynch, 840 F.3d 912, 915 (7th Cir. 2016). Second, a person is disqualified if he does not have “good moral character” — even if that lack of character did not result in any criminal conviction. See Sumbundu v. Holder, 602 F.3d 47 (2nd Cir. 2010). Even if the defendant had not been convicted, the facts underlying this arrest—including him lying about his identity—may have caused immigration authorities to conclude that he lacked good moral character. Third, the person must establish “exceptional and extremely unusual hardship” to a family member who is a U.S. citizen. Deportation of a family member is always a hardship, but that is not enough to support cancellation of removal. See Montanez-Gonzalez v. Holder, 780 F.3d 720, 722-23 (6th Cir. 2015).

Here, the defendant was apparently unmarried at the time of his conviction. He did have an infant daughter. She appears to have been his only family member who was a U.S. citizen. The defendant claims that his wife and daughter “rely on me heavily for financial and emotional support.” Def. Dec. at 3 ¶ 5. The same, however, is true in most families. There is no showing that in 2006, the defendant had any reason to believe that he could establish that his deportation would result in “exceptional and extremely unusual hardship” to his daughter.

To establish prejudice under these circumstances, the defendant must show that if he had been given additional information, he would have risked conviction on additional charges and additional jail time, with no realistic hope of a favorable outcome.

He must make this showing from contemporaneous evidence, not mere post hoc assertions. The evidence shows that (1) the defendant knew that his conviction could result in adverse immigration consequences, but he made no further inquiries into those consequences; (2) he was also already subject to the same consequences because of prior convictions; and (3) even absent any convictions, he had no reason to believe that he could or would obtain a favorable exercise of discretion from immigration authorities. Because there is no adequate showing of prejudice, the defendant is not entitled to relief.

C. THE DEFENDANT IS NOT ENTITLED TO A FACTUAL HEARING.

Under CrR 7.8(c)(1), a motion to vacate judgment must be "supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based." As discussed above, the defendant's affidavits do not establish sufficient facts to justify relief. As a result, the defendant is not entitled to a factual hearing.

V. CONCLUSION

This motion is not time barred. The defendant has not made a substantial showing of entitlement to relief. There is also no need for a factual hearing. Under CrR 7.8(c)(2), the motion should be transferred to the Court of Appeals for consideration as a personal restraint petition.

Respectfully submitted on November 14, 2018.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

SETH A FINE, WSBA #: 10937
Deputy Prosecuting Attorney

FILED

2006 SEP 19 PH 3: 13

PHIL DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.



CL11409254

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

GARCIA-MENDOZA, ALEJANDRO

Defendant.

No. 08-1-02314-0

INFORMATION

Aliases:

Other co-defendants in this case:

Comes now JANICE E. ELLIS, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, her Information, in the name and by the authority of the State of Washington, charges and accuses the above-named defendant(s) with the following crime(s) committed in the State of Washington:

POSSESSION OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, on or about the 19th day of June, 2006, did unlawfully possess a controlled substance, to-wit: cocaine; proscribed by RCW 69.50.4013, a felony.

JANICE E. ELLIS
PROSECUTING ATTORNEY

MKGehlsen + 31817
MICHELLE K. GEHLSSEN, #31817
Deputy Prosecuting Attorney

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.....
Address: 6624 130TH AVE NE #U104 KIRKLAND WA 98033
HT: 5'8 DOB: 11/26/1984 SID: WA21608777
WT: 140 SEX: M FBI: 330285AC2
EYES: Brown RACE: White DOC: 872848
HAIR: Black DOL: GARCIA*167Q6, WA
ORIGINATING AGENCY: MARYSVILLE POLICE DEPARTMENT AGENCY CASE#: 0603077
.....

FILED

2006 SEP 19 PM 3:13

WILL DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.



SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

GARCIA-MENDOZA, ALEJANDRO

Defendant.

No. 06-1-02314-0

AFFIDAVIT OF PROBABLE CAUSE

Aliases:

Other co-defendants in this case:

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity, that criminal charges have been filed against the above-named defendant(s) in this cause, and that I believe probable cause exists for the arrest of the defendant(s) on the charges because of the following facts and circumstances:

According to reports and witness statements submitted by the Marysville Police Department the following criminal activity took place in Snohomish County, Washington. Affiant has no knowledge of these events independent of the reports and statements submitted, except as noted.

On June 19, 2006 Officer Goldman was traveling west on 84th Street adjacent to Hunter's Grocery Store when he observed a silver in color Toyota Camry 4-door parked at the Grocery Store. The driver's window on the Camry was all the way down. Officer Goldman found this suspicious as he has found numerous dumped stolen vehicles in that parking lot. The officer checked the plate of the car and a felony warrant escape hit showed for a Nava, Jose Antonio.

The officer drove into the parking area in full uniform and in a marked patrol car and waited for the driver to exit the store. Approximately 5 minutes later a male Hispanic exited the store and reached for the driver's side door. The officer contacted the male Hispanic and explained that he had found numerous stolen vehicles in the parking lot, that he received a felony hit connected with the license plate on the Toyota, and the hit showed a felony warrant was on a Hispanic male. The officer then requested the male Hispanic's identification. The male Hispanic stated that he did not have any identification but gave

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the name of Alex Garcia (dob 12/26/84). The name that the male Hispanic gave showed several aka hits to include one for an escaped felon from the Department of Corrections.

As the officer was trying to figure out who the male Hispanic was, the male Hispanic was on the phone with his brother. The male Hispanic's brother was then dropped off at the grocery store. The officer told the male Hispanic's brother what was going on. The brother then gave the male Hispanic's name (Alejandro Garcia-Mendoza) and remembered that his brother's birthday was November 26th or 28th. This name revealed an escape warrant from the Department of Corrections. The male Hispanic defendant was placed into custody. The defendant was searched incident to arrest. These items were found on the defendant:

1. A plastic container containing a small baggie of a white substance, small baggie with a crystal type substance, and some paper with a blue/green type substance. (Later, one of the bags was tested at the Washington State Patrol Crime Laboratory. The results of the bag were 1.9 grams of white powder found to be cocaine. Another bag was tested and the results were 0.3 grams of white crystalline material found to contain methamphetamine).
2. A baggie with a green vegetable substance.
3. A glass smoking device with burnt residue.
4. Marlboro Cigarette pack with a roach and a small baggie with residue.
5. A marijuana cigarette was found inside a mock bullet.

On the way back from jail, the defendant inquired whether he was going to be charged with possession or distribution because this was his second drug charge.

Based on the foregoing, probable cause exists to charge the defendant with one count of Possession of a Controlled Substance - cocaine.

The Prosecutor's understanding of the defendant's criminal history shows convictions for:

<u>CRIME</u>	<u>DATE OF CONVICTION</u>	<u>PLACE OF CONVICTION</u>	<u>Incarceration/Probation DISPOSITION</u>
ADULT FELONIES:			
VUCSA - Possession (C)	7/14/04	King County 04-1-10232-1	30 Days Confinement (240 Hrs Comm Service) 12 Mos Comm Custody
VUCSA - Possession (C)	8/31/05	King County 04-1-14287-0	20 Days Confinement 12 Mos Comm Custody

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



MICHELLE K. GEHLSSEN, #31817
Deputy Prosecuting Attorney

DATED this 11th day of September, 2006 at the Snohomish County Prosecutor's Office.

FILED

07 MAR 27 PM 4: 52

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.



CL11553063

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

GARCIA-MENDOZA, ALEJANDRO

Defendant.

No. 08-1-02314-0

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

1. My true name is ALEJANDRO GARCIA-MENDOZA.

2. My age is 22

3. I went through the 12th grade. + 1 year college

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

- (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is BRYAN R. COSSETTE. *Rachel Forde*
- (b) I am charged with the crime(s) of Count 1 Possession of a Controlled Substance, RCW 69.50.4013.

The elements of the crime(s) are: That the defendant, 1) in Snohomish County, Washington, 2) on or about the 29th day of June, 2006, 3) did unlawfully possess a controlled substance, to-wit: cocaine.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
- (b) The right to remain silent before and during trial, and I need not testify against myself.
- (c) The right at trial to hear and question witnesses who testify against me.
- (d) The right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
- (f) The right to appeal a determination of guilty after a trial.

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6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	STANDARD RANGE <u>ACTUAL CONFINEMENT</u> (not including enhancement)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancement)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crime committed prior to July 1, 2000, see paragraph 6(d))	MAXIMUM TERM AND FINE
1	0-8 Months		0-8 Months	12 Months	5 Years, \$10,000

* (F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, See RCW 46.61.520 (JP) Juvenile Present.

(b) The standard range(s) shown above are based on the prosecuting attorney's understanding of my criminal history.. Criminal history includes prior adult and juvenile convictions, whether in this state, in federal court, or elsewhere. Even so, my plea of guilty to the crime(s) is binding on me. I cannot change my mind if additional history is discovered even though the maximum sentence, the standard sentence range, and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without possibility of parole is required by law.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) I understand that the prosecutor's understanding of my criminal history is tentative in nature, and that it will be the Judge who ultimately determines my correct score. If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, or if it is determined that the prosecutor's scoring is incorrect, both the standard sentence and the prosecuting attorney's recommendations may increase.

(e) In addition to sentencing me to confinement, the judge will order me to pay \$ 500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and costs of incarceration. The judge may also place me on community supervision, community placement, or community custody, impose restrictions on my activities, and order me to perform community restitution.

(f) The prosecuting attorney will make the recommendation to the judge as stated on the attached plea agreement form.

(g) Persons other than the prosecutor may make sentence recommendations which could differ from the prosecutor's recommendation. The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

NOTIFICATIONS RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

~~(h) Three Strikes Law. The crime of _____ is a "most serious offense" as defined by RCW 9A.04A.030(25). If I am a "persistent offender," as defined by RCW 9A.04A.030(20), the~~

court must sentence me to life imprisonment without possibility of parole, or early release, regardless of the maximum penalty stated above. I am a "persistent offender" if (a) before I committed this crime, I had two convictions for "most serious offenses," either in this state, federal court, a court martial or elsewhere and (b) one of my prior convictions for a "most serious offense" occurred before I committed the other "most serious offense."

(i) Two Strikes Law. If a current offense is (A) rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation; (C) an attempt to commit any of the aforementioned crimes and I have at least one prior conviction for one of the aforementioned crimes in this state, in federal court, in a court martial, or elsewhere, the current crime I am charged with carries a mandatory sentence of life imprisonment without possibility of parole or early release, regardless of any other stated maximum penalty. The prior conviction must have occurred before commission of the current offense.

(j) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without possibility of parole (the "Three Strikes" or "Two Strikes" Law) as described in paragraph 8(h) or 8(i) above. The law does not allow any reduction of this sentence.

(k) The crime(s) of _____ has a (special firearm allegation) (deadly weapon enhancement) which carries an additional penalty of _____ years of total confinement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements. The law does not allow any reduction of this sentence.

(l) The crime of Possession of a Controlled Substance (Cocaine) carries a mandatory minimum fine of \$1,000.

(m) Counts _____ and _____ are two or more serious violent offenses arising from separate and distinct criminal conduct, and the sentences for these counts will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(n) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(b)(h).

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8) Serious Violent Offenses	36 to 48 months or up to the period of earned release, whichever is longer 24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.505	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(8)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(o) The judge may sentence me as a First-Time Offender instead of imposing a sentence within the standard range if I qualify under RCW 9.94A.030(23). This sentence could include as much as 90 days confinement, and (if the crime was committed prior to July 1, 2000), up to two years community supervision, or (if the crime was committed on or after July 1, 2000) up to two years of community custody, plus all of the conditions described in paragraph 8(e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a described course of study or occupational training.

~~(p) If this crime involved a motor vehicle or was a felony in the commission of which a motor vehicle was used, my driver's license of privilege to drive will be revoked. If I have a driver's license, I must now surrender it to the judge.~~

~~(q) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.~~

(r) 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, or denial of naturalization pursuant to the laws of the United States.

(s) I will be required to provide a biological sample for purposes of DNA identification analysis. Unless expressly waived by the Court, I will be required to pay a biological testing fee in the amount of \$100.

~~(t) Because this crime involves a sex offense as defined by RCW 9A.44.130(9)(a), or a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Sex Offender Registration Requirement" attachment.~~

~~(t-1) If I qualify under RCW 9.94A.120(8), the judge may suspend execution of the standard range term of the confinement under the Special Sex Offender Sentencing Alternative (SSOSA). The judge may impose up to six months total confinement. If the judge suspends execution of the standard range of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater. I will be ordered to participate in sex offender treatment, and I will be subject to all of the conditions described in paragraph 8 (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of sentence occurs during community custody, or the judge finds that I fail to make satisfactory progress in treatment, the judge may revoke the suspended sentence.~~

(u)(i) If the crime charged herein is a felony or one of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment in the second degree, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040), or

(ii) If I have previously been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless my right to possess a firearm has been restored as provided in RCW 9.41.047,

(iii) or if I am under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If I am free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010, I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court. The Clerk shall forward a copy of the defendant's driver's license, identicard or comparable identification to the department of licensing along with the date of conviction).

(v) Applicable to all felonies: I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record, and I must immediately surrender any concealed pistol license. RCW 9.41.040, 9.41.047. All offenders sentenced to terms involving community custody, community supervision, community placement, or community restitution may not own, use, or possess firearms or ammunition. RCW 9.94A.120(18).

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court.)

(w) If the court finds that a chemical dependency has contributed to my offense, the court may, as a condition of the sentence and subject to available resources, order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I have been convicted and reasonably necessary or beneficial to me and the community in rehabilitating me. If this crime is a violation of the uniform controlled substances act under chapter 69.50 RCW the court, unless specifically waived, shall order the Department of Corrections to complete a chemical dependency screening report before imposing sentence.

(w-1) If I qualify under RCW 9.94A.505, the judge may sentence me under the Special Drug Offender Sentencing Alternative (DOSA). This sentence includes total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions of paragraph 6(e). During confinement I would be required to undergo a comprehensive substance abuse assessment and to participate in treatment. Community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status will also be imposed. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars a month to offset the cost of monitoring and require other conditions, including affirmative conditions. If the Department of Corrections finds that I violated a condition of sentence, or I fail to complete the DOSA program, or I am administratively terminated from the program, the Department of Corrections will reclassify me to serve the balance of the original sentence of total confinement within the standard range.

(w-2) A conviction for a violation of the state drug laws will affect eligibility for various federal benefits and programs and state programs funded by the federal government including, but not limited to, food stamps, welfare, and education.

~~(x) If this crime is a felony sexual offense or if the court determines that I may be a mentally ill person as defined in RCW 71.24.025, even if I have not established that at the time of the crime I lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the Department of Corrections to complete a presentence report before imposing sentence.~~

~~(y) If this is a crime of domestic violence and if I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program.~~

~~(z) If this crime involves the manufacture, delivery, or possession with intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed. RCW 69.50.401(a)(ii).~~

~~(z)(i) The special allegation that there was a person under age 18 on the premises when the defendant committed (a) manufacture of methamphetamine or (b) possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine, carries a mandatory sentence enhancement of twenty-four months total confinement.~~

~~(aa) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(a).~~

~~(bb) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9A.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions of the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will be imposed for each firearm unlawfully possessed.~~

~~(cc) No payment of public assistance will be made to a convict during the period of confinement/incarceration. RCW 74.08.290.~~

7. I plead guilty to the crime(s) of Count 1 Possession of a Controlled Substance, as charged in the Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

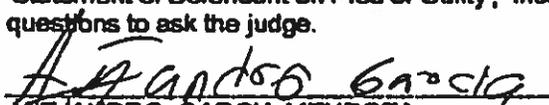
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

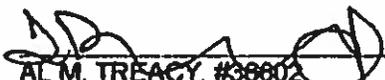
On or about 6/29/06 in Snohomish County, WA, I did unlawfully possess a controlled substance, to wit: cocaine.

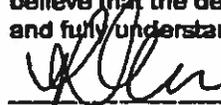
12. I am aware that an Affidavit of Probable Cause has been filed in this case. The court may consider this Affidavit in deciding whether there is a factual basis for my plea.

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


ALEJANDRO GARCIA-MENDOZA
DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.


AL M. TREACY, #38802
DEPUTY PROSECUTING ATTORNEY


BRYAN R. COSSETTE, #34039
DEFENDANT'S LAWYER

Rachel Forde #37604

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check appropriate box):

- (a) The defendant had previously read the entire statement above (including attachments/appendices) and that the defendant understood it in full.
 (b) The defendant's lawyer had previously read to him or her the entire document above (including attachments/appendices) and that the defendant understood it in full; or
 (c) An interpreter had previously read to the defendant the entire statement above (including attachments/appendices) and that the defendant understood it in full.

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.

Dated this 27th day of March, 2007.


JUDGE

INTERPRETER'S STATEMENT

I am a certified interpreter or I am fluent in the _____ language and have been found qualified by the court to interpret in the aforementioned language which the defendant understands. I have translated this entire document, including attachments/appendices, for the defendant from English into the aforementioned language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document, including attachments/appendices.

I certify under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Dated: _____

Located: _____

Interpreter

PLEA AGREEMENT
(SENTENCING REFORM ACT)

Defendant ALEJANDRO GARCIA-MENDOZA
ON PLEA TO: AS CHARGED -

CAUSE NO.: 08-1-02314-0

Special Finding/Verdict of possession of deadly weapon on Count(s) _____
(RCW 9.94A.125).

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is indicated above and as follows:

1. DISMISS: Upon disposition of Count(s) _____, the State moves to dismiss Count(s)

2A. REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:

- as set forth in the affidavit(s) of probable cause filed herein
- as set forth in attached Appendix C.

2B. SENTENCING FACTS: Facts to be considered for imposing a standard range sentence are as set forth in the affidavits(s) of probable cause filed herein.

3. RESTITUTION: Pursuant to statute, the defendant agrees to pay restitution as follows:
- in full to victim(s) on charged counts
 - as set forth in attached Appendix C.
4. OTHER: _____

The defendant agrees that a chemical dependency contributed to the commission of this offense and further agrees to cooperate in the preparation of a chemical dependency screening report and allow the results of that report to be submitted to the court and the Prosecuting Attorney prior to sentencing. *Defendant does not agree. - AMT not agreed*

The defendant agrees to undergo an evaluation by Treatment Alternatives to Street Crime and allow the results of that evaluation to be submitted to the court and the Prosecuting Attorney, prior to sentencing.

5. SENTENCE RECOMMENDATION:

The defendant agrees to the foregoing Plea Agreement and that the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix A), and the attached Sentencing Guidelines scoring form(s) (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). Any challenge by the defendant to the criminal history or scoring will constitute a breach of this agreement. The State makes the sentencing recommendation set forth in State's Sentence Recommendation. The sentencing recommendation may increase in severity if any additional convictions are discovered.

The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regard to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Mandatory Minimum Term (RCW 9.94A.120(4) only): _____

Mandatory license revocation RCW 46.20.285.

Ten years jurisdiction and supervision for monetary payments.
RCW 9.94A.120(9).

6. AGREEMENT NOT TO CHALLENGE CONVICTION: The defendant agrees not to challenge the conviction for this crime, whether by moving to withdraw the plea, appealing the conviction, filing a personal restraint petition, or in any other way. If an exceptional sentence is imposed, the defendant may appeal the sentence without violating this agreement.

7. **NON-COMPLIANCE WITH AGREEMENT:** If the defendant fails to appear for sentencing, or if prior to sentencing the defendant commits any new offense or violates any condition of release, the State may recommend a more severe sentence.

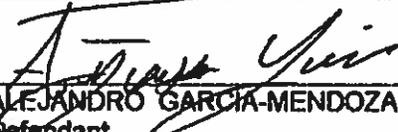
If the defendant violates any other provision of this agreement, the State may either recommend a more severe sentence, file additional or greater charges, or re-file charges that were dismissed. The defendant waives any objection to the filing of additional or greater charges based on pre-charging or pre-trial delay, statutes of limitations, mandatory joinder requirements, or double jeopardy.

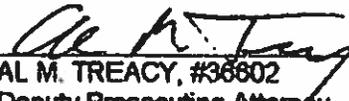
In any event, the defendant will remain bound by the agreement and will not be allowed to withdraw the plea. If the defendant's violation of the agreement constitutes a crime, the defendant may be charged with that crime.

8. **AGREEMENT NOT TO FILE ADDITIONAL CHARGES**

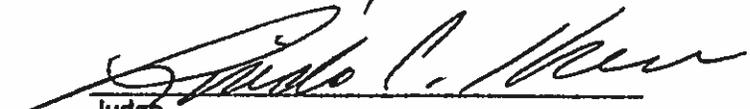
This agreement is limited to cause numbers or crimes specifically referred to in this plea agreement and identified by crime, victim, and police incident number immediately following this paragraph and does not apply to any other matters which may be under investigation, pending, or being handled by any other DPA or agency.

*Not to file 2 BAC Scoping Counts under
this case # KRM Tickets on 12/21/04 &
2/22/07.*


ALEJANDRO GARCIA-MENDOZA
Defendant


AL M. TREACY, #36602
Deputy Prosecuting Attorney


BRYAN R. COSSETTE, #34039
Attorney for Defendant


Judge

*Rachel Firde
#37104*

STATE'S SENTENCE RECOMMENDATION
(SENTENCE OF ONE YEAR OR LESS - SENTENCING REFORM ACT)

DATE: March 16, 2007

DEFENDANT: ALEJANDRO GARCIA-MENDOZA

CAUSE NO: 08-1-02314-0

SENTENCE OPTION

1. OFFENDER STATUS

FIRST TIME OFFENDER - NO WAIVER VIOLENT OFFENDER
 NON-VIOLENT OFFENDER

2. ALTERNATIVE SENTENCE DECISION

a. ALTERNATIVE SENTENCE - TOTAL CONFINEMENT TO BE CONVERTED:

This sentence of partial confinement and/or community restitution is a conversion of _____ months/days of total confinement on Count(s) _____

b. REASONS FOR NOT RECOMMENDING ALTERNATIVE SENTENCE (use only if first time or non-violent offender):

The reasons for not recommending an alternative sentence are as follows:

3. EXCEPTIONAL SENTENCE: This is an exceptional sentence recommendation, and the substantial and compelling reasons for departing from the presumptive sentencing range are set forth on the attached form.

SENTENCE RECOMMENDATION

The State recommends that the sentence of this defendant be as follows:

CONFINEMENT: Defendant serve 110 months/days total/partial confinement on Count _____ with credit for time served as provided under RCW 9A.120(12), Work Release if eligible. Terms to be served concurrently/consecutively.

COMMUNITY RESTITUTION: Defendant perform _____ hours of community restitution (maximum of 240 hours).

COMMUNITY SUPERVISION: Community supervision (one year maximum) of 12 months.

COMMUNITY CUSTODY: Defendant shall be on Community Custody for the length of _____. Community custody shall commence immediately but is tolled during any term of confinement. Defendant shall report no later than the next business day after sentencing, or if in custody, the next business day after release from confinement to the State Department of Corrections and shall comply with all rules, regulations and requirements of that department.

Participate fully and successfully complete community-based sexual deviancy treatment program, including all conditions imposed by the therapist.

No contact with victim(s) _____

No contact with minor children unless supervised by an adult previously approved by the therapist and community corrections officer.

OTHER (crime related prohibitions, treatment, etc.): _____

CHEMICAL DEPENDENCY SCREENING REPORT: If there is a finding a chemical dependency has contributed to the defendant's offense, the state will recommend a chemical dependency screening report be prepared and reserves the right to recommend any affirmative conduct allowed by law.

Defendant does not agree.
NOT Agreed AMT

MONETARY PAYMENTS: The defendant shall make the following monetary payments under the supervision of the Secretary of the Department within 10 years:

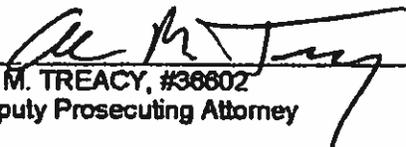
- Restitution as set forth on attached page entitled "Plea Agreement" and Appendix C.
- Mandatory Victim Penalty Assessment
\$100.00 prior to June 6, 1996; \$500.00 on or after June 6, 1996.
- Pay a fine of \$ 1000.00
- Pay probationer assessment pursuant to RCW 9.94A.270.
- Pay costs of extradition.
- Pay court costs and costs of appointed counsel.
- Pay mandatory \$100 state crime lab fee.
- Pay \$100 DNA fee.

The defendant is under ten (10) years jurisdiction to make monetary payments.

PROBATION REVOCATION/MODIFICATION: State recommends revocation/modification of probation or community supervision on Snohomish County Cause Number(s) _____ and recommends that terms be run concurrently/consecutively.

OTHER (crime related prohibitions RCW 9.94A.030(4)(7), etc.)

-
- The defendant shall not possess or consume alcoholic beverages.
 - The defendant shall not possess or consume controlled substances, unless legally prescribed.


AL. M. TREACY, #36802
Deputy Prosecuting Attorney

**APPENDIX A TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

DATE: March 16, 2007 (dhw/gp)
DEFENDANT: GARCIA-MENDOZA, Alejandro (nmi)
DOB: 11/26/84 M/H
SID: WA21608777 FBI: 330285AC2 DOC: 872848

<u>CRIME</u>	<u>DATE OF CONVICTION</u>	<u>PLACE OF CONVICTION</u>	<u>Incarceration/Probation DISPOSITION</u>
ADULT FELONIES:			
VUCSA - Possession (C)	7/14/04	King County 04-1-10232-1	30 Days Confinement (240 Hrs Comm Service) 12 Mos Comm Custody
VUCSA - Possession (C)	8/31/05	King County 04-1-14287-0	20 Days Confinement 12 Mos Comm Custody

ADULT MISDEMEANORS:

None

JUVENILE FELONIES:

None

JUVENILE MISDEMEANORS:

None

OTHER: (NOT COUNTED AS CRIMINAL HISTORY)

16 March 07
Date

Al M. Tracy
Deputy Prosecuting Attorney WSBA# 36602

**APPENDIX A TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)**

DATE: March 16, 2007 (dhw/gp)
DEFENDANT: GARCIA-MENDOZA, Alejandro (nml)
DOB: 11/26/84 M/H
SID: WA21608777 FBI: 330285AC2 DOC: 872848

<u>CRIME</u>	<u>DATE OF CONVICTION</u>	<u>PLACE OF CONVICTION</u>	<u>Incarceration/Probation DISPOSITION</u>
ADULT FELONIES:			
VUCSA - Possession (C)	7/14/04	King County 04-1-10232-1	30 Days Confinement (240 Hrs Comm Service) 12 Mos Comm Custody
VUCSA - Possession (C)	8/31/05	King County 04-1-14287-0	20 Days Confinement 12 Mos Comm Custody

ADULT MISDEMEANORS:

None

JUVENILE FELONIES:

None

JUVENILE MISDEMEANORS:

None

OTHER: (NOT COUNTED AS CRIMINAL HISTORY)

16 March 07
Date

Alle M. [Signature]
Deputy Prosecuting Attorney WSBA# 36602

POSSESSION OF A CONTROLLED SUBSTANCE THAT IS EITHER HEROIN OR
NARCOTICS FROM SCHEDULE I OR II OR FLUNITRAZEPAM (e.g., Cocaine)

(RCW 69.50.4013(2))

CLASS C - NONVIOLENT

3/16/07 (dhw)
9/1/06 (sp)

GARCIA-MENDOZA, Alexander, M1
Offenses occurring after June 30, 2003 (RCW 9.94A.517)

(If sexual motivation finding/verdict, use form on page III-14)

I. OFFENDER SCORING (RCW 9.94A.525(7))

ADULT HISTORY:

Enter number of felony convictions..... 2 x 1 = 2

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions..... 0 x 1 = 0

Enter number of nonviolent felony dispositions 0 x 1/2 = 0

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other felony convictions 0 x 1 = 0

STATUS: Was the offender on community custody on the date the current offense was committed? (if yes), + 1 = 0

Total the last column to get the Offender Score: 2
(Round down to the nearest whole number)

II. DRUG GRID SENTENCE RANGES

Offender Score	0 to 6 months	6+ to 18 months	12+ to 24 months
Standard Range Level I	0 to 6 months	6+ to 18 months	12+ to 24 months

- A. For current offenses occurring after June 30, 2002 but before July 1, 2003, please reference the 2002 sentencing manual for applicable scoring rules. For current offenses occurring prior to July 1, 2002, please reference the 2001 sentencing manual.
- B. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 12 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- C. Add 12 months to the entire standard sentence range with a finding that the offense was committed in a county jail or state correctional facility (RCW 9.94A.533).
- D. A \$1,000 mandatory fine shall be imposed (\$2,000 for a subsequent conviction), unless indigent (RCW 69.50.430).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.
- F. For sentence ranges for anticipatory drug offenses, see page III-269.
 - Statutory maximum sentence is 60 months (five years) (RCW 9A.20.021).

*The Washington State Court of Appeals ruled that although solicitations to commit violations of 69.50 are not considered drug offenses as defined in 9.94A.030, they do score as a drug offense. See State v. Howell, 102 Wn. App. 288, 6 P.3d 1201 (2000).

**The Supreme Court clarified that solicitations to commit violations of the Uniform Controlled Substances Act (RCW 69.50) are not "drug offenses" and are not subject to the community custody requirement for drug offenses, under RCW 9.94A.715. See In re Hopkins, 137 Wn.2d 897 (1999).

III. SENTENCING OPTIONS - See page III-268

- The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

**APPENDIX C TO PLEA AGREEMENT
SENTENCING MEMORANDUM (REAL FACTS/RESTITUTION)
(SENTENCING REFORM ACT)**

Date: _____
Defendant: **ALEJANDRO GARCIA-MENDOZA**

Cause No.: **08-1-02314-0**

A. [] **REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES:** In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows: _____

B. [] **SENTENCING FACTS:** Facts to be considered for imposing a standard range sentence are as set forth in the affidavit(s) of probable cause filed herein: _____

C. [] **RESTITUTION-CHARGED COUNTS** (Indicate count, police department, police number and victim's name) is as follows: _____

D. [] **RESTITUTION-UNCHARGED CRIMES, RCW 9.94A.140(2)** (Indicated police department, police number and victim's name) is as follows: _____

As conditions of any plea agreement, the defendant must agree to allow the court to consider the above-stated REAL FACTS at sentencing and/or agree to make the above-stated RESTITUTION on uncharged crimes.

AL M. TREACY, #36602

FILED

2007 JUL 19 AM 11:39

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO., WASH.



CL12431324

INELIGIBLE TO CARRY FIREARMS

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

No. 06-1-02314-0

Plaintiff,

JUDGMENT AND SENTENCE

v.

Prison

Jail One Year or Less

GARCIA-MENDOZA, ALEJANDRO

First Time Offender

Special Drug Offender Sentencing Alternative

Defendant.

Clerk's Action Required,

restraining order entered para. 4.3

SID: WA21608777

Clerk's action required

firearms rights revoked, para. 4.3 and 5.6

If no SID, use DOB: 11/26/1984

Clerk's action required, para 5.4, 5.3

Restitution Hearing set, Notice of Withholding.

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 7 June 2007 by plea of:

COUNT	CRIME	RCW	INCIDENT #	DATE OF CRIME
1	Possession of a Controlled Substance	69.50.4013	MAR, 0603077	6/19/06

as charged in the Information.

Additional current offenses are attached in Appendix 2.1.

A special verdict/finding for use of a deadly weapon which was a firearm was returned on Count(s) _____ RCW 9.94A.602, 9.41.010, 9.94A.533.

A special verdict/finding for use of deadly weapon which was not a firearm was returned on Count(s) _____ RCW 9.94A.602, 9.94A.533

A special verdict/finding of sexual motivation was returned on Count(s) _____ RCW 9.94A.835.

ORIGINAL

1cc jail ps

44
mm

- [] A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public transit stop shelter.; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- [] A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ RCW 9.94A.605, RCW 69.50.401(a), RCW 69.50.440.
- [] The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030(45)
- [] This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- [] The court finds that the offender has a chemical dependency which contributed to the offense and imposes as a condition of sentence that defendant shall participate in the rehabilitative program/affirmative conduct:

_____. RCW 9.94A.607.

- [] The crime charged in Count(s) _____ involve(s) domestic violence.
- [] The offense in Count(s) _____ was committed in a county jail or state correctional facility. RCW 9.94A, 533(5)
- [] The court finds that in Count _____ a motor vehicle was used in the commission of this felony. The Department of Licensing shall revoke the defendant's driver's license. RCW 46.20.285.
- [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J		TYPE OF CRIME
				Adult,	Juv.	
1 VUCSA—Possession	7/14/04	King County, WA		A		C
2 VUCSA—Possession	8/31/05	King County, WA		A		C

- [] Additional criminal history is attached in Appendix 2.2.
- [] The defendant committed a current offense while on community placement or community custody (adds one point to score). RCW 9.94A.525.
- [] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- [] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	2	1	0-6 Months		0-6 Months	5 Years, \$10,000

*Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile Present

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence

above within below the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of an exceptional sentence above the standard range and the court finds that exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentence reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. The jury's interrogatory is attached. The prosecuting attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 The prosecutor's recommendation was 110 months/0 days on Count 1, _____ months/days on Count 2, _____ months/days on Count 3, _____ months/days on Count 4. The prosecutor recommended counts _____ run concurrently/consecutively.

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 The Court DISMISSES Counts _____
- 3.3 The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RMA	\$15/\$25/\$50	Restitution Monitoring Fee	SCC 4.94.010
		The Clerk shall collect this fee before collecting restitution or any other assessed legal financial obligations.	RCW 9.94A.760
PCV	<u>\$500</u>	Victim assessment	RCW 7.68.035
CRC	\$ _____	Court costs, including	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee \$ _____	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/SRF
		Jury demand fee \$ _____	JFR
		Other \$ _____	
PUB	\$962	Fees for court appointed attorney	RCW 9.94A.030
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
		Drug enforcement fund of _____	RCW 9.94A.760
CDF/LDV	\$ _____	Crime lab fee <input type="checkbox"/> deferred due to indigency	RCW 43.43.690
FCD/NTF/SAD/SDI	\$ _____	Extradition costs	RCW 9.94A.505
CLF	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
EXT	\$ _____	Biological Sample Fee (for offenses committed after 7-1-02)	RCW 43.43.7541
	<u>\$100</u>	Domestic Violence Penalty (for offenses committed after 6-4-04, \$100 maximum)	RCW 10.99.080
	\$ _____	Other costs for: _____	
	<u>\$ 600⁰⁰</u>	TOTAL	RCW 9.94A.760

- The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753.
- RESTITUTION. Schedule attached, Appendix 4.1.
- Restitution ordered above shall be paid jointly and severally with:

<u>NAME of other defendant</u>	<u>CAUSE NUMBER</u>	<u>(Victim name)</u>	<u>(Amount-\$)</u>
--------------------------------	---------------------	----------------------	--------------------

RJN _____

- The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, 9.94A.760(9)

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than

\$ 25⁰⁰ per month commencing 30 Days from Release RCW 9.94A.760
All payments shall be made within 30 months of release of confinement;
 Entry of judgment;
 Other _____

- In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at \$50.00 per day unless another rate is specified here _____ RCW 9.94A.760(2)
- The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.
- The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.
- 4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 206, Everett, WA 98201 within one (1) hour of this order to arrange for the test. RCW 70.24.340

DNA TESTING. The defendant shall have a biological sample (offenses committed 7-1-02 and after), blood sample (offenses committed before 7-1-02) drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

- 4.3 The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence). EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.

(Check for any domestic violence crime as defined by RCW 10.99.020(3)): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST. ANY ASSAULT, DRIVE-BY SHOOTING, OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY. RCW 10.99.050.

(Check for any harassment crime as defined by RCW 9A.46.060): VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 9A.46 AND WILL SUBJECT A VIOLATOR TO ARREST. RCW 9A.46.080.

(For Domestic Violence orders only:) The clerk of the court shall forward a copy of this order on or before the next judicial day to the _____ County Sheriff's Office or _____ Police Department (where the protected person above-named lives), which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

- 4.4 OTHER:
- _____
- _____
- _____

4.5 JAIL ONE YEAR OR LESS. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589 Defendant is sentenced to the following term of total confinement in the custody of the county jail:

110 months/days on Count J _____ months/days on Count _____
_____ months/days on Count _____ months/days on Count _____
_____ months/days on Count _____ months/days on Count _____

Actual number of months/days of total confinement ordered is: see Neutral for Days *CKTS*
All counts shall be served concurrently, except for the following which shall be served consecutively: on all bookings on this cause #-

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589
Confinement shall commence immediately unless otherwise set forth here: _____

[] PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:
[] work crew RCW 9.94A.7255 [] home detention RCW 9.94A.731, .190
[] work release RCW 9.94A.731

[] CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

[] ALTERNATIVE CONVERSION. RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community restitution (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

[] (finding required for non-violent offenders only, RCW 9.94A.680)
Alternatives to total confinement were not used because of: _____
[] criminal history
[] failure to appear
[] defendant has served most or all confinement before sentencing.

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505, 9.94A.545 The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.6

COMMUNITY SUPERVISION CUSTODY. RCW 9.94A.505, 9.94A.545 Defendant shall serve 12 months (up to 12 months) in community supervision or community custody. Defendant shall report to the Department of Corrections, 8625 Evergreen Way, Suite 100, Everett, WA 98208 or _____ not later than 72 hours after release from custody and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules, and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

remain in prescribed geographical boundaries specified by: notify the community corrections officer of the community corrections officer change in the defendant's address or employment

Other conditions: "You must participate in chemical dependency assessment & treatment while on supervision"
if upon evaluation by DOC chemical dependency evaluator no treatment is deemed necessary, no treatment is required

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

4.7

OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

4.8

Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.753(4); RCW 9.94A.760 and RCW 9.94A.505(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): n/a
 Defendant waives any right to a restitution hearing within 6 months RCW 9.94A.750.
 A restitution hearing shall be set for _____
The Prosecutor shall provide a copy of the proposed restitution order and supporting affidavit(s) of victim(s) 21 judicial days prior to the date set for said restitution hearing. The defendant's presence at said restitution hearing may be excused only if a copy of the proposed restitution order is signed by both defendant and defense counsel and returned to the Court and Prosecutor no later than 10 judicial days prior to said hearing.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

5.6 **FIREARMS.** You may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

If this is a crime enumerated in RCW 9.41.040 which makes you ineligible to possess a firearm, you must surrender any concealed pistol license at this time, if you have not already done so.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court. The Clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the department of licensing along with the date of conviction

The defendant is ordered to forfeit any firearm he/she owns or possesses no later than _____ to _____ (name of law enforcement agency) RCW 9.41.098.

Cross off if not applicable:

~~5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~_____ If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 3 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this State's Department of Corrections.~~

~~_____ If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.~~

~~_____ If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.~~

~~_____ If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 29A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.~~

~~_____ Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level. If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.~~

~~_____ If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90 day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.~~

~~_____ If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).~~

Cross off if not applicable:

5.8 RIGHT TO APPEAL. If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is IRREVOCABLY WAIVED.

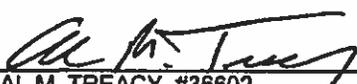
If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

5.9 Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the Indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 18 July 2007.


AL M. TREACY, #36602
Deputy Prosecuting Attorney


BRYAN R. COSSETTE, #34039
Attorney for Defendant

JUDGE 
Print name: Alicia S. Payne

ALEJANDRO GARCIA-MENDOZA
Defendant
Rachel Ford
#3704

Translator signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 06-1-02314-0

I, Pam L. Daniels, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA21608777
(If no SID take fingerprint card for State Patrol)

Date of Birth: 11/26/1984

FBI No. 330285AC2

Local ID No. 424174

PCN No. _____

DOC 872848

Alias name, SSN, DOB: _____

Race: White

Ethnicity:
 Hispanic
 Non-Hispanic

Sex: M

Height: 5'8

Weight: 140

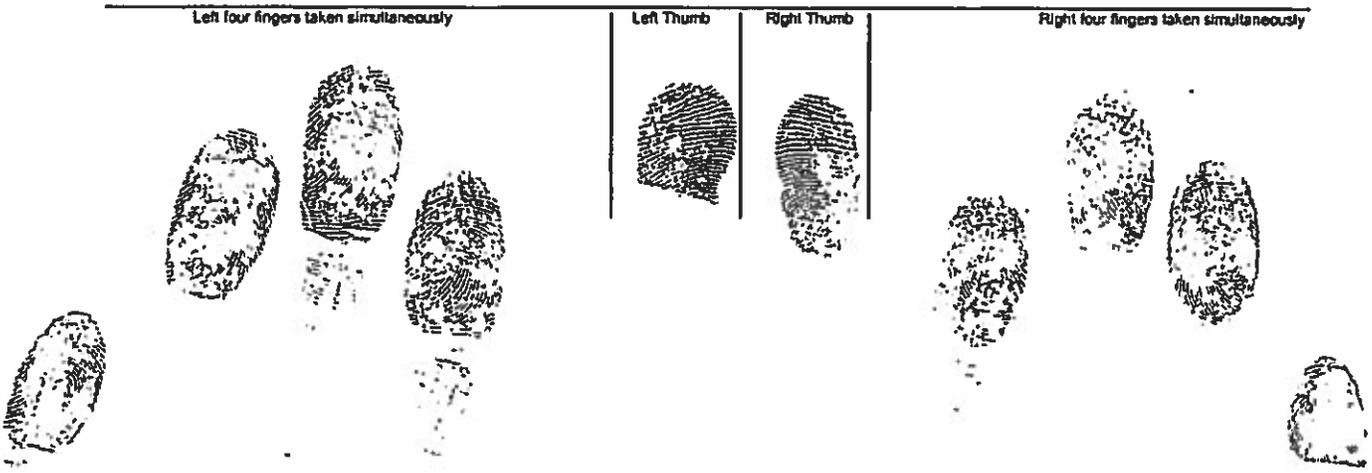
Hair: Black

Eyes: Brown

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints

and signature thereto. Clerk of the Court: [Signature] Deputy Clerk. Dated: 7-18-07

DEFENDANT'S SIGNATURE: [Signature]
ADDRESS: _____



FILED

ORDER OF COMMITMENT

2007 JUL 19 AM 11:39

THE STATE OF WASHINGTON to the Department of Corrections of the County of Snohomish, State of Washington: WHEREAS, ALEJANDRO GARCIA-MENDOZA, has been duly convicted of the crime(s) of Count 1 Possession of a Controlled Substance, as charged in the Information and judgment has been pronounced against the defendant that punishment be by imprisonment in the Snohomish County Department of Corrections for a period of time as specified in the attached certified copy of the Judgment and Sentence. Now, Therefore,

PAM L. DANIELS
CLERK OF THE SUPERIOR COURT
SNOHOMISH CO., WASH.

THIS IS TO COMMAND YOU, the Snohomish County Department of Corrections, to detain the defendant pursuant to the terms of the Judgment and Sentence.

FURTHER, this is to command you that should the Judgment and Sentence authorize release of the defendant to a Work/ Training Release Facility or Program, or to any other program or for some specific purpose, this Order of Commitment shall constitute authority for you to release the defendant for that program or purpose, subject to any additional requirements of that program or purpose.

WITNESS the Honorable Thomas Hume, Judge of the Snohomish County Superior Court and the seal thereof, this 18 day of July, 2007.

Pam L. Daniels
CLERK OF THE SUPERIOR COURT

By: _____
Deputy Clerk

APPENDIX G

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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

ALEJANDRO GARCIA MENDOZA,

Defendant.

Case No. 06-1-02314-0

DEFENDANT’S MOTION TO
WITHDRAW GUILTY PLEA

(Clerk’s Action Required)

MOTION

COMES NOW Defendant, Alejandro Garcia Mendoza (“Mr. Garcia”), by and through undersigned counsel, and moves this Court for relief from the judgment previously entered in this matter. Specifically, Defendant moves the Court to withdraw his plea of guilty and vacate the judgment and sentence in this matter. This motion is based on CrR 7.8(b)(4); CrR 7.8(b)(5); RCW 10.73.100(6); State v. Olivera-Avila, 89 Wn. App. 313, 949 P.2d 824 (1997); Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010); State v. Sandoval, 171 Wn.2d 163, 173, 249 P.3d 1015 (2011); In re Personal Restraint of Tsai, 183 Wn.2d 91 (2015); the following Memorandum of Law; and the attached Declarations of Alejandro Garcia Mendoza and Rachel Forde.

MEMORANDUM

I. Factual and Procedural Background¹

Alejandro Garcia Mendoza is 33 years old. He was born in Mexico City, Mexico, where he lived with his family until he immigrated to the United States in 1998, when he was approximately 13 years old. Mr. Garcia was brought to the United States by his parents who came here in search of a better life and opportunity.

Mr. Garcia has lived in the United States for approximately 20 years. He went to Rose Hill Elementary School and Lake Washington High School in Kirkland, Washington. Mr. Garcia is married and has a twelve-year-old daughter. Mr. Garcia's wife and daughter are United States citizens. Mr. Garcia met his wife in high school. They have been in a romantic relationship since they were sixteen years old. Mr. Garcia has put down roots in Washington State and established a permanent home here.

Mr. Garcia has worked hard to support himself and his family during his time in the United States. For the past seven years Mr. Garcia has owned a painting company. He works long hours to provide for his wife and daughter. Mr. Garcia is actively involved in his daughter's life and spends the majority of his free time with his family. The family attends church services at Overlake Christian Center in Redmond, Washington, where Mr. Garcia grew up.

Mr. Garcia was charged in this matter on September 19, 2006, with one count of possession of a controlled substance. Attorney Rachel Forde was appointed to represent him in the case. On March 27, 2007, Mr. Garcia pleaded guilty to the original charge. Mr. Garcia pleaded guilty on the advice of his lawyer that resolution by way of guilty plea was in his best interest, as

¹ The facts herein are taken from the declaration of Alejandro Garcia Mendoza, dated October 3, 2018, and attached hereto as Exhibit ("Ex.") A.

1 he could potentially face a much harsher sentence if he were to lose at trial. On July 18, 2007, the
2 Honorable Thomas Wynne sentenced Mr. Garcia to 110 days in jail and order Mr. Garcia to pay
3 fines and court costs.

4 Prior to Mr. Garcia's plea, his attorney did not advise him what the immigration
5 consequence of his conviction would be. Specifically, Mr. Garcia's attorney did not advise him
6 that a conviction in this case would make him automatically inadmissible to the United States,
7 preclude him from becoming a lawful permanent resident in the future, and make him ineligible
8 to apply for cancellation of removal, an important form of discretionary relief from deportation,
9 in immigration court.

10 Even though the Statement of Defendant on Plea of Guilty in Mr. Garcia's case contained
11 the standard immigration advisement required by RCW 10.40.200(2), Mr. Garcia's attorney did
12 not tell him how this provision related to his case in particular. At the time that Mr. Garcia entered
13 his plea of guilty, he was not aware that his conviction would actually result in adverse
14 immigration consequences.
15

16 At the time Mr. Garcia pleaded guilty in this case he was completely unaware of the
17 detrimental impact this conviction would have on his immigration status, and thus his life. Mr.
18 Garcia had no idea that he could be stripped of his future in the United States and separated from
19 his family. At the time of his plea, Mr. Garcia had been living in the United States for almost ten
20 years, and had nothing to return to in Mexico. His longtime romantic partner and his infant
21 daughter were living in the United States, as were his parents. He was prepared to do anything
22 within his power to stay in the United States. Had Mr. Garcia been aware of the immigration
23 consequences of his conviction in this case, he would not have pleaded guilty and instead would
24 have gone to trial to challenge the charges against him.
25

1 Mr. Garcia is currently in deportation proceedings and Mr. Garcia's conviction is
2 preventing him from applying for relief from deportation. If Mr. Garcia is unsuccessful in his
3 petition for relief in this matter, he will virtually certainly be deported to Mexico.

4 Mr. Garcia has spent his entire adult life in the United States, and his closest family
5 members reside in this country. Mr. Garcia has not lived in Mexico for many years, has no
6 prospects in that country, and has no means to support himself there. Deportation to Mexico
7 would be devastating for Mr. Garcia and his family. Mr. Garcia wishes only for the opportunity
8 to live his life in peace in the United States with his loved ones.

9 **II. Summary of Argument**

10 When Mr. Garcia entered his plea of guilty, his attorney failed to inform him that doing
11 so would make him automatically inadmissible to the United States, ineligible to become a lawful
12 permanent resident, and bar him from applying for cancellation of removal in immigration court.
13 Had Mr. Garcia known the immigration consequences of his guilty plea in this case, he would
14 have refused to plead guilty. Prior to the United States Supreme Court's decision in Padilla v.
15 Kentucky, the rule in Washington was that immigration consequences were collateral to a guilty
16 plea and therefore that a person could enter a voluntary guilty plea without being advised of any
17 such consequences. However, the Padilla Court significantly changed the law by holding that
18 immigration consequences are not collateral to a guilty plea, and explicitly imposed upon defense
19 attorneys the duty to provide their clients with accurate advice concerning the immigration
20 consequences of a guilty plea. 130 S. Ct. at 1482-83.

21
22 Mr. Garcia was denied the effective assistance of counsel at the time that his plea was
23 entered. Because Mr. Garcia's lawyer did not advise him of the immigration consequences of his
24 conviction, his plea was not knowing and voluntary. Accordingly, the Supreme Court's decision
25

1 in Padilla dictates that Mr. Garcia should be relieved of the judgment in this case pursuant to CrR
2 7.8(b)(5).

3 The Washington State Supreme Court held in In re Personal Restraint of Tsai, that the
4 Supreme Court's holding in Padilla effected a significant change in law that applies retroactively
5 to cases on collateral review and therefore exempts litigants making claims under Padilla from
6 RCW 10.73.090's one-year time bar on collateral attacks. In re Personal Restraint of Tsai, 183
7 Wn.2d at 96. For that reason, Mr. Garcia's claim under Padilla is not time-barred.

8 **III. Mr. Garcia Received Ineffective Assistance of Counsel because Defense**
9 **Counsel Failed to Advise Him of the Immigration Consequences of His Plea.**

10 Both the Washington State Supreme Court and the United States Supreme Court have held
11 that the "Sixth Amendment right to effective assistance of counsel encompasses the plea process."
12 Sandoval, 171 Wn.2d at 168 (citing In re Personal Restraint of Riley, 122 Wn.2d 772, 863 P.2d
13 554 (1993)); McMann v. Richardson, 397 U.S. 759, 90 S. Ct. 1441, 25 L.Ed.2d 763 (1970)). In
14 the context of the plea process, "[c]ounsel's advice can render the defendant's guilty plea
15 involuntary or unintelligent." Sandoval, 171 Wn.2d at 168. In order to "establish the plea was
16 involuntary or unintelligent because of counsel's inadequate advice, the defendant must satisfy
17 the familiar two-part Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674
18 (1984), test. . . ." Id. First, the defendant must establish that counsel's performance was
19 objectively unreasonable, and second, the defendant must establish that counsel's unreasonable
20 performance prejudiced his case. Id.

22 In Padilla v. Kentucky, the United States Supreme Court applied these principles to advice
23 regarding the immigration consequences of a guilty plea. The Supreme Court imposed upon
24 counsel the duty to inform his or her client of the immigration consequences a of a guilty plea,
25 holding that, where the immigration consequences of a guilty plea are clear, counsel has the duty

1 to give a noncitizen client “correct advice” regarding those consequences, but where the
2 immigration consequences of a plea are unclear, counsel “need do no more than advise a
3 noncitizen client that pending criminal charges may carry a risk of adverse immigration
4 consequences.” Id. at 1482. The Washington State Supreme Court recognized Padilla’s holding
5 in State v. Sandoval. 171 Wn.2d at 171.

6 There is no question that the performance of Mr. Garcia’s defense counsel was objectively
7 unreasonable during the plea process in this case. A criminal conviction for violation of any law
8 relating to a controlled substance makes a noncitizen automatically inadmissible to the United
9 states and ineligible to apply for lawful permanent resident status. 8 U.S.C. § 1182(a)(2)(A)(i)(II)
10 (providing that a noncitizen who is convicted of a violation of any law relating to a controlled
11 substance is inadmissible); 8 U.S.C. § 1255(a) (providing that a noncitizen who is inadmissible to
12 the United States is ineligible to adjust to lawful permanent resident status). In addition, Mr.
13 Garcia’s conviction in this case made him automatically ineligible to apply for cancellation of
14 removal for certain non-permanent residents in immigration court, an important form of relief
15 from deportation. See 8 U.S.C. 1229b(b)(1)(C) (providing that an individual who has been
16 convicted of an offense listed in § 1182(a)(2), including a controlled substance offense is
17 ineligible to apply for cancellation of removal).

19 At the time Mr. Garcia pleaded guilty, it was clear that a conviction for possession of a
20 controlled substance would make him inadmissible, prevent him from becoming a lawful
21 permanent resident of this country, and render him ineligible for cancellation of removal. Thus,
22 Mr. Garcia’s counsel had a duty to give him correct advice regarding the immigration
23 consequences of his conviction before advising Mr. Garcia to plead guilty to the charge against
24 him. See Padilla, 130 S. Ct. at 1482. Because Mr. Garcia’s attorney failed to provide him with
25

1 accurate advice about the immigration consequences of his guilty plea when the consequence of
2 deportation was clear, her performance was constitutionally deficient. See id.; Sandoval, 171
3 Wn.2d at 171.

4 Mr. Garcia's assertion that he was not advised about the specific immigration
5 consequences of his conviction in this case is supported by a sworn declaration provided by his
6 prior attorney, Rachel Forde. Prior counsel asserts in her sworn declaration that while she does
7 not recall the advice she gave to Mr. Garcia at the time he pleaded guilty, her regular practice
8 during that period was to advise clients generally that a criminal conviction could carry
9 immigration consequences, consistent with the immigration advisement found in Mr. Garcia's
10 Statement of Defendant on Plea of Guilty. See Ex. B (Declaration of Rachel Forde) at 1 - 2. Of
11 course, the Washington Supreme Court has established that a mere reading of the immigration
12 warning in a plea statement is insufficient to satisfy counsel's duty under Padilla where the
13 immigration consequences of a criminal conviction are clear, as was the case in Mr. Garcia's case.
14 See Sandoval, 171 Wn.2d at 173; Tsai, 183 Wn.2d 101 ("The warning statement is not, itself, the
15 required advice; it merely creates a presumption the defendant has been properly advised.").

17 Furthermore, there is no question that Mr. Garcia was prejudiced by counsel's deficient
18 performance. "In satisfying the prejudice prong, a defendant challenging a guilty plea must show
19 that there is a reasonable probability that, but for counsel's errors, he would not have pleaded
20 guilty and would have insisted on going to trial." Sandoval, 171 Wn.2d at 174-75 (internal
21 quotation marks and citations omitted). Prejudice can also be established where the defendant
22 establishes that but for counsel's errors the outcome of the proceeding would be different. See
23 State v. McFarland, 127 Wn.2d 322, 335 (1995). A reasonable probability exists if the defendant
24 convinces the court that a decision to reject the plea bargain would have been rational under the
25

1 circumstances. Sandoval, 171 Wn2d. at 175. This standard of proof is somewhat lower than the
2 preponderance of the evidence standard. Id.

3 As a result of his guilty plea in this case, Mr. Garcia was permanently barred from
4 becoming a lawful permanent resident of this country and became ineligible to apply for
5 cancellation of removal for non-permanent residents, one of the only forms of relief from
6 deportation available to him. Mr. Garcia asserts that he would not have pleaded guilty had he
7 known the immigration consequences of his conviction, and would have instead taken his chances
8 at trial. This claim is extraordinarily credible in view of the immigration consequences of
9 pleading guilty, which included deportation and return to Mexico.

10 The Washington State Supreme Court has recognized that for noncitizen defendants, the
11 punishment of deportation is just as severe as imprisonment. Sandoval, 171 Wn.2d at 176. This
12 is certainly true in Mr. Garcia's case, as deportation to Mexico would separate him from his family
13 members in the United States and strip him of the bright future ahead of him in this country. Mr.
14 Garcia pleaded guilty based on his attorney's failure to provide him with accurate immigration
15 advice. Had Mr. Garcia received accurate advice about the immigration consequences of his
16 conviction, he would not have pleaded guilty. Mr. Garcia was prejudiced by counsel's deficient
17 performance.

18 Accordingly, because Mr. Garcia was deprived of the effective assistance of counsel
19 during the plea process in this case, the resulting plea was involuntary and he should be permitted
20 to withdraw his guilty plea. See Sandoval, 171 Wn.2d at 168.

21
22 **IV. Mr. Garcia's Plea is Subject to Collateral Attack Pursuant to CrR 7.8(b)(5)**
23 **and (b)(4).**

24 CrR 7.8(b) allows a court to relieve a party from a final judgment for the following
25 reasons:

- 1 (1) Mistakes, inadvertence, surprise, excusable neglect, or irregularity in obtaining a judgment or order;
- 2 (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;
- 3 (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- 4 (4) The judgment is void; or
- 5 (5) Any other reason justifying relief from the operation of the judgment.

6 Ineffective assistance of counsel is a basis for relief from a judgment pursuant to CrRLJ
7 7.8(b)(5). See State v. Martinez, 161 Wn. App. 436, 441 (2011) (ineffective assistance of counsel
8 is a reason to grant relief under CrR 7.8(b)(5)). Consequently, because Mr. Garcia received
9 ineffective assistance of counsel in this case he is entitled to have his conviction vacated under
10 CrR 7.8(b)(5) and withdraw his guilty plea.

11 In the alternative, Mr. Garcia is entitled to relief under CrR 7.8(b)(4). A plea that is
12 involuntary violates due process. Ross, 129 Wn.2d at 284; Barton, 93 Wn. 2d at 304. Such a plea
13 results in a void judgment that is subject to collateral attack pursuant to CrR 7.8(b)(4). State v.
14 Olivera-Avila, 89 Wn.App. 313, 319 (1997). In this case, because Mr. Garcia's plea was
15 involuntary, as it was entered without the effective assistance of counsel, the resulting judgment
16 and sentence is void and he may be relieved from that judgment pursuant to CrR 7.8(b)(4).
17 Olivera-Avila, 89 Wn.App. at 319.⁴

18 **V. Mr. Garcia is Excused from the Time Limit on Collateral Attacks on**
19 **Judgments because *Padilla v. Kentucky* Effected a Significant Change in the**
20 **Law that Applies Retroactively under RCW 10.73.100(6).**

21 Mr. Garcia claim for relief under Padilla is not time-barred, as Padilla effected a significant
22 change in the law material to his case that applies retroactively. RCW 10.73.090 imposes a one-
23 year time limit on collateral attacks on judgments. However, RCW 10.73.100(6) provides that

24 _____
25 ⁴ Mr. Gracia is independently eligible to vacate his conviction pursuant to RCW 10.40.200,
which permits withdrawal of a guilty plea where the defendant was not advised of the
immigration consequences of his guilty plea.

1 the time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based
2 solely on the fact that:

3 There has been a significant change in the law, whether substantive or procedural,
4 which is material to the conviction, sentence, or other order entered in a criminal or
5 civil proceeding instituted by the state or local government, and either the
6 legislature has expressly provided that the change in the law is to be applied
retroactively, or a court, in interpreting a change in law that lacks express legislative
intent regarding retroactive application, determines that sufficient reasons exist to
require retroactive application of the changed legal standard.

7 RCW 10.73.100(6). The Washington State Supreme Court held in In re Personal Restraint of
8 Tsai, that the Supreme Court's holding in Padilla effected a significant change in law that applies
9 retroactively to cases on collateral review and therefore exempts litigants raising claims under
10 Padilla from RCW 10.73.090's one-year time bar on collateral attacks. In re Personal Restraint
11 of Tsai, 183 Wn.2d at 96. Because Padilla effected a significant change in the law that applies
12 retroactively to Mr. Garcia's case, his motion is exempt from RCW 10.73.090's one-year time
13 limit.
14

15 **VI. Conclusion**

16 Based on the foregoing, the Court should vacate the judgment and sentence in this case
17 and permit Mr. Garcia to withdraw his guilty plea.

18 DATED this 15th day of October, 2018.

19 Respectfully submitted,

20 BLACK LAW, PLLC

21 
22 _____
23 Teymur Askerov, WSBA No. 45391
24 Attorney for Alejandro Garcia Mendoza
25

CERTIFICATE OF SERVICE

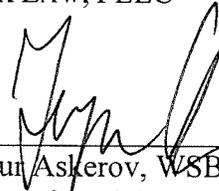
I hereby certify that a copy of the foregoing, along with any attachments, was served on the below-noted date, U.S. mail, upon the parties required to be served in this action:

Snohomish County Prosecuting Attorney's Office
3000 Rockefeller Ave.
Everett, WA 98201

DATED this 15th day of October, 2018.

Respectfully submitted,

BLACK LAW, PLLC



Teymur Askerov, WSBA No. 45391
Attorney for Alejandro Garcia Mendoza

Exhibit A

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SNOHOMISH COUNTY SUPERIOR COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

ALEJANDRO GARCIA MENDOZA,

Defendant.

No. 06-1-02314-0

DECLARATION OF ALEJANDRO
GARCIA MENDOZA

I, Alejandro Garcia Mendoza, declare that I have personal knowledge of the facts herein, am over the age of 18, and am competent to testify. I hereby certify that the following is true and correct to the best of my ability under penalty of perjury.

Background

1. My name is Alejandro Garcia Mendoza. I was born on November 26, 1984, in Mexico City, Mexico.
2. I was brought to the United States by my parents in 1998 when I was approximately 13 years old.
3. I have lived in the United States for approximately 20 years and established a permanent home in Washington. I attended Rose Hill Jr. High and Lake Washington High School in Kirkland.

- 1 4. I am married and have a twelve-year-old daughter. Both my wife and my daughter are
2 United States citizens.
- 3 5. My wife and daughter rely on me heavily for financial and emotional support.
- 4 6. I have worked hard to support myself and my family during the time that I have lived in the
5 United States.
- 6 7. I have worked many different jobs. For the past seven years, I have owned and operated my
7 own painting company.
- 8 8. For many years now, I have done my best to be a productive member of my community and
9 lead a pro-social lifestyle.
- 10 9. I spend all of my free time with my family and am actively involved in my daughter's life.
11 We attend Overlake Christian Church every weekend.
- 12 10. I volunteer at our church regularly and have worked volunteer painting projects at local
13 schools.
- 14 11. I want nothing more than a chance to remain in the United States with my family, so that I
15 can provide for my family and watch my daughter grow.
- 16 12. I know that I have been very lucky to live in safety in the United States, and I want to do
17 everything in my power to take advantage of the opportunity that I have been given.

18
19 Prior Proceedings in this Case

- 20 13. I was charged in this matter on September 19, 2006, with one count of possession of a
21 controlled substance.
- 22 14. Attorney Rachel Forde was appointed to represent me in the case.
- 23 15. On March 27, 2007, I pleaded guilty as charged. On July 18, 2007, I was sentenced to 110
24 days in jail and ordered to pay fines and court costs.
- 25

1 16. I pleaded guilty on the advice of my lawyer that the resolution of my case by guilty plea was
2 in my best interest. She told me that if we were to lose at trial I could potentially face a
3 longer sentence.

4 17. My attorney did not advise me about the immigration consequences that would result from
5 my conviction in this case before I pleaded guilty.

6 18. Specifically, my attorney failed to advise me that my conviction in this case would bar me
7 from applying for cancellation of removal for non-permanent residents in immigration court
8 and becoming a lawful permanent resident in the future.

9 19. I am aware that the Statement of Defendant on Plea of Guilty in this case contains a
10 provision (Paragraph 6(r)) acknowledging that there are potential immigration consequences
11 arising from guilty pleas, but as explained above, my attorney did not explain the
12 immigration consequences of my conviction to me when I pleaded guilty in this case.

13 20. I would have refused to plead guilty if I had known the serious consequences of doing so. I
14 was prepared to do anything within my power to stay in the United States.

15 21. At the time of my plea in this case, I had been living in the United States for approximately
16 10 years. I had not lived in Mexico since I was a child and I had nothing to return to in that
17 country. My entire family was living in the United States, including my partner of seven
18 years, who would later become my wife, and my infant daughter.

19
20 Current Status

21 22. I am currently in deportation proceedings and my conviction in this case is preventing me
22 from applying for relief from deportation.

23 23. If I am unsuccessful in obtaining relief from my conviction in this case, I will almost
24 certainly be deported to Mexico.
25

1 24. I have not lived in Mexico for many years and it will be very difficult for me and my family
2 if I am forced to return there. I will be permanently separated from my wife and daughter,
3 and I will be unable to support my family.

4 25. I will have no place to go and no way to make a living if I am deported. Still worse, I will
5 be exposed to the ongoing violence and lawlessness in Mexico.

6 26. Deportation would be devastating for me and my family, and I am certain to face many
7 hardships if I am deported. I pray for an opportunity to continue to live my life in peace in
8 the United States with my loved ones.

9
10 I certify and declare under penalty of perjury that the foregoing is true and correct.

11
12 SIGNED AND DATED this 03 day of October, 2018 at Kirkland, Washington.

13
14 
Alejandro Garcia Mendoza

Exhibit B

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SNOHOMISH COUNTY SUPERIOR COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

ALEJANDRO GARCIA MENDOZA,

Defendant.

No. 06-1-02314-0

DECLARATION OF RACHEL FORDE

I, RACHEL FORDE, have personal knowledge of the facts herein, am over the age of 18, and am competent to testify. I hereby certify that the following is true and correct to the best of my ability under penalty of perjury.

1. I previously represented the defendant, Alejandro Garcia Mendoza ("Mr. Garcia"), in this matter.
2. I have no independent recollection of Mr. Garcia's case, but have had an opportunity to review some of the pleadings in the court file.
3. I signed Mr. Garcia's Statement of Defendant on Plea of Guilty as counsel.
4. I do not recall the immigration advice that I gave to Mr. Garcia before he pleaded guilty in this case, although I was aware of his immigration status.
5. At the time that Mr. Garcia pleaded guilty in this case, my general practice was to read the standard immigration warning contained in the statement of defendant on plea of guilty with my client.

- 1 6. At some point in my practice, I began contacting the Washington Defender Association's
2 Immigration Project ("WDAIP") for immigration advice when representing non-citizen
3 clients. I would usually contact WDAIP by email.
- 4 7. I have no record of any communications with WDAIP about Mr. Garcia's case.
- 5 8. I have no record or recollection that I gave Mr. Garcia specific advice about the
6 immigration consequences of his guilty plea.
- 7 9. I have no reason to believe that I would have advised Mr. Garcia that his conviction in
8 this case would make him inadmissible to the United States as a matter of law and bar
9 him from becoming a lawful permanent resident.
- 10 10. I have no reason to believe that I would have advised Mr. Garcia that his conviction in
11 this case would prevent him from applying for cancellation of removal for non-
12 permanent residents in immigration court as a matter of law.
- 13 11. I have no reason to believe that Mr. Garcia was aware of the actual immigration
14 consequences of his guilty plea at the time he pleaded guilty in this case.

15
16 I certify and declare under penalty of perjury that the foregoing is true and correct.

17
18 SIGNED AND DATED this 21 day of September, 2018 at Everett,

19 Washington.

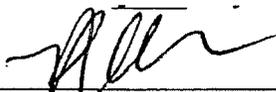
20 
21 _____
Rachel Forde

Exhibit H

RCW 10.40.200

Deportation of aliens upon conviction—Advisement—Legislative intent.

(1) The legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is further the intent of the legislature that at the time of the plea no defendant be required to disclose his or her legal status to the court.

(2) Prior to acceptance of a plea of guilty to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall determine that the defendant has been advised of the following potential consequences of conviction for a defendant who is not a citizen of the United States: Deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. A defendant signing a guilty plea statement containing the advisement required by this subsection shall be presumed to have received the required advisement. If, after September 1, 1983, the defendant has not been advised as required by this section and the defendant shows that conviction of the offense to which the defendant pleaded guilty may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty and enter a plea of not guilty. Absent a written acknowledgment by the defendant of the advisement required by this subsection, the defendant shall be presumed not to have received the required advisement.

(3) With respect to pleas accepted prior to September 1, 1983, it is not the intent of the legislature that a defendant's failure to receive the advisement required by subsection (2) of this section should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid.

[1983 c 199 § 1.]

NOTES:

Notice to courts—Rules—Forms: "The administrative office of the courts shall notify all courts of the requirements contained in RCW 10.40.200. The judicial council shall recommend to the supreme court appropriate court rules to ensure compliance with the requirements of RCW 10.40.200. Until court rules are promulgated, the administrative office of the courts shall develop and distribute forms necessary for the courts to comply with RCW 10.40.200." [2005 c 282 § 21; 1983 c 199 § 2.]

Effective date—1983 c 199 § 1: "Section 1 of this act shall take effect on September 1, 1983." [1983 c 199 § 3.]

APPENDIX I

RCW 10.73.100

Collateral attack—When one year limit not applicable.

The time limit specified in RCW **10.73.090** does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

[**1989 c 395 § 2.**]

BLACK LAW PLLC

December 30, 2019 - 10:50 AM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

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Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Personal Restraint Petition of Alejandro Garcia Mendoza (796216)

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