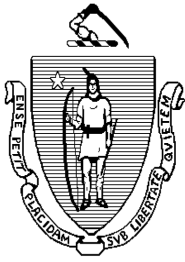

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Immigration Case Notes for Massachusetts Criminal Defense Attorneys
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Massachusetts Appeals Court (unpublished)

The appeals court issued two note-worthy unpublished decisions that address post-conviction motions under *Padilla*:

***Commonwealth v. Lamotte*,** 2013 Mass. App. Unpub. LEXIS 1091 (Nov. 14, 2013)

In April 2011, Mr. Lamotte pled guilty to possession of a class B substance with intent to distribute, possession of class B (subsequent offense), and knowingly being present at a place where heroin was kept. The Commonwealth dismissed a school zone charge. The appeals court affirmed the denial of his motion to withdraw the guilty pleas, agreeing with the trial court that the defendant has failed to establish prejudice.[1]

According to the appeals court, Mr. Lamotte had failed to offer any "evidence" that an alternative plea was available, where the Commonwealth had agreed to dismiss the school zone charge (and the mandatory sentence that came with it). The appeals court similarly found that the defendant had failed to demonstrate that he placed particular emphasis on immigration consequences. The fact that he had six children in the U.S. was insufficient, where there were no details regarding his relationship with those children or where the children resided. The appeals court further found that the fact that Mr. Lamotte proceeded with the plea despite the judge's warnings under M.G.L. ch. 278 § 29D suggested that he did not put special emphasis on immigration consequences. Finally, Mr. Lamotte failed to assert any substantial defense to the charges.

Practice Tip

This case is another reminder of the importance of preparing a detailed affidavit outlining the specific facts regarding your client's ties to the U.S. Where family ties are important, it may not be enough to simply list family members in the U.S. An affidavit should (if possible) describe why those relationships are important. Counsel should also be prepared to offer into evidence why the client proceeded with the

[1] This case had been previously remanded for an evidentiary hearing on Mr. Lamotte's motion to vacate by the court of appeals in 2013 Mass. App. Unpub. LEXIS 626 (June 5, 2013).

plea despite the general alien warnings provided by the judge (for example, those generic warnings are given to every defendant – U.S. citizens included – and perhaps the client did not think they applied to him, especially where the defense attorney failed to provide any specific immigration advice).

Commonwealth v. Guerrero-Ramirez, 2013 Mass. App. Unpub. LEXIS 1079 (Nov. 8, 2013)

In July 2008, Mr. Guerrero-Ramirez admitted to sufficient facts on the charge of distribution of a class A substance and the Commonwealth dismissed a school zone violation. Following an evidentiary hearing on the motion to vacate plea, the trial judge found that trial counsel did not tell the defendant that he would be deported if he admitted to sufficient facts and that the judicial warnings similarly did not advise him "that deportation was a mandatory consequence." Instead, after the plea a Spanish-speaking probation officer told the defendant that the plea would lead to his deportation, at which point the defendant refused to sign the terms of his probation contract because he wanted to withdraw his plea. That same day, the probation department brought Mr. Guerrero-Ramirez back before the judge for a probation surrender hearing and the defendant "reluctantly" signed the terms of the contract. He later filed the instant motion to vacate, which was allowed by the trial court. The court of appeals affirmed the allowance, finding that the defendant had established both deficient performance and prejudice.

The appeals court concluded that trial counsel had provided deficient performance (it is unclear from the decision what, if anything, trial counsel told the defendant about the immigration consequences of the plea) and that the defendant had established special circumstances such that he placed particular emphasis on the immigration consequences of the plea – "namely the defendant's admission to the United States as a teenager, and the presence of his parents, sister, and then two year old child." As further proof, the court relied upon the fact that the defendant had attempted to withdraw his plea as soon as he learned of the immigration consequences. The appeals court rejected the Commonwealth's suggestion that the warnings under M.G.L. 278, § 29D cured any prejudice, because "the warnings did not inform the defendant that he 'would' be deported, only that he might be." The appeals court concluded that the trial judge did not abuse her discretion when she "found that the defendant, who was at the time of the plea nineteen years old with no prior plea history or knowledge of plea negotiations, would not have tendered his plea had he known of the consequences."

Practice Tip

This case is another example of the importance of alleging specific facts in support of prejudice. In addition, it provides further authority for the principle outlined in *Commonwealth v. Clarke*, 460 Mass. 30, 49 n.20 (2011), that warnings under M.G.L. 278, § 29D do not cure deficient performance by defense counsel and while potentially relevant to showing prejudice the fact of that warnings were given need not defeat an ineffective assistance claim under *Padilla*.