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Massachusetts Appeals Court (unpublished)

Commonwealth v. Nelson E. Rosario, 2012 Mass. App. Unpub. LEXIS 1235 (Mass. App. Ct. Dec. 6, 2012)

The defendant appealed the denial of his motion for new trial under *Padilla*.¹ In an unpublished opinion, the Massachusetts Appeals Court agreed with the trial judge that proof of deficient performance was met, but overturned the finding regarding prejudice.

Elaborating upon the three ways of showing prejudice as set out in *Commonwealth v. Clarke*, the court relied upon the third method: special circumstances. The court held that because the defendant had been in the U.S. since he was three, because he was a legal permanent resident, and because he had below average intelligence causing him to rely on his family, he had established sufficient “special circumstances” to meet the prejudice requirement. The Appeals Court found that, with proper advice about the immigration consequences, it would have been rational for the defendant to reject the plea offer and take his chances at trial; therefore, the defendant’s motion for a new trial was granted.

Practice Tip

This case highlights the importance of including as much detail as possible to support the argument that there are special circumstances that would have caused your client to risk trial rather than accept a plea. This method of establishing prejudice does not require the defendant to show also that he had a strong defense or that the case was triable, as is required for traditional motions for ineffective assistance of counsel pursuant to *Strickland* and *Saferian* (and under the first method in *Clarke*). If sufficiently set forth, prejudice in a *Padilla* motion can be established exclusively by a showing of “special circumstances.”

¹ No facts were set forth in the decision.