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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

[REDACTED]

SID # N/A

Case No. C120898CV

Petitioner/Plaintiff,

GENERAL JUDGMENT

vs.

STATE OF OREGON,

Respondent/Defendant.

The above-entitled matter came before the Court for a hearing/trial on October 23, 2012 on Plaintiff's Petition for Post-conviction Relief.

PETITIONER

RESPONDENT

- Appeared in person or by telephone/video
- Did not appear
- Attorney: B. Coary

- Appeared in person or by telephone/video
- Did not appear
- Attorney: J. Ring

NOW, THEREFORE, IT IS HEREBY ADJUDGED THAT:

1. The Plaintiff's Petition for Post-conviction Relief is:

- Allowed;
- Denied;

1a. Per ORS 138.525, the Petition is dismissed as meritless, and this judgment is therefore not appealable.

Based upon the following findings and conclusions:

A. Petitioner never asked pet where he was born or if he was a citizen (Result would be different if pet had been asked and lied)

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2 citizens are.

3 C. Even without Padilla case, it is inadequate for
4 an att. not to ask so that att. & chert. can at
5 least discuss "may be deported" and see what
6 importance that might have in negotiations &
7 sentencing. Only in plea petition was any
8 immigration issue mentioned, and that is
9 "maybe" language.

10 D. Att. has an obligation to ask. That should
11 be a standard interview question. How can
12 att. meet constitutional obligation to
13 advise if don't ask.

14 E. Plea pet says "may" be deported. Under
15 Padilla case (which this chert. pet. is
16 retroactive, since it is not new law) that
17 isn't sufficient.

18 F. Att. appears to know something about
19 immigration consequences and may
20 have given correct advice if had
21 necessary info.

22 G. This case was triable - motion to suppress
23 and several defenses available. Since
24 removal is so much more chaotic a
25 penalty than any peniten. sentence, court
26 believes pet. would have sought the
27

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3 case to avoid removal. He has been in the
4 US since age 3. His father is a citizen,
5 his child was born here.
6

7 Attorney's failure to ask critical questions
8 was constitutionally inadequate
9 representation both with fact and
10 in light of Padilla case.
11

12 Pet was prejudiced when he gave up
13 his right to present a plausible
14 defense and accepted the plea
15 bargain, making him subject to
16 mandatory removal
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18 Past conviction relief is granted. Pet's
19 plea is vacated and the case is
20 returned to the trial court for trial.
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B. Pet had no reason to believe it was a problem -
no reason or duty to tell att. This case
involves less than 1oz of mj - only to

C. ICE is this so important

D. Att says he assumed pet was a citizen -
spoke English well, family here in US for


E. a long time, no prior ICE holds (best since
pet legal resident, ICE had no authority to
hold). These are stereotypes of who non-

2. This matter involves a Federal State Constitutional issue(s). All
questions were presented and decided.

3a. This judgment shall constitute a final general judgment for purposes of appellate review
and for purposes of res judicata.

3b. This judgment is a limited judgment; the final general judgment shall be prepared and
submitted by _____ within _____ days of the above-mentioned hearing
date, or in any case, no later than _____.

DATED: 10/23/12


Linda Bergman
Senior Judge