

Florida Attorney Magdalena Cuprys publishes the first article in her instructional series

Magdalena Cuprys, Esq. addresses and explains the problem of immigration consequences that may unintentionally result from a plea of guilty or nolo contendere

MIAMI, FLORIDA, UNITED STATES, September 6, 2018 /EINPresswire.com/ -- In the first article of her series of Instructional Articles, [Florida Attorney Magdalena Cuprys](#) comments on the issue of immigration consequences resulting from criminal pleas of guilty or nolo contendere, and how to challenge such guilty pleas subsequently in court.

[Attorney Cuprys](#) recently prevailed in a case in the Circuit Court of the Eleventh Judicial Circuit of Florida where she moved to vacate a judgment and sentence. She bases her comments on that case.



Magdalena Cuprys, Immigration Lawyer in Florida

The facts of the case are as follows: The Defendant A.P.B., a Cuban citizen and resident of the U.S. since 2002, plead guilty in trial court to marihuana-related offenses, including selling and possession with intent. Apparently A.P.B.'s home was burglarized, and when police came to investigate, they found he was growing 26 marijuana plants inside the house. He had no prior criminal history. At the time, A.P.B. was represented by a different attorney who apparently did not inform the Defendant of any adverse immigration consequences that would result if he plead guilty. In fact, it seems that the prior attorney informed A.P.B. that there would be no adverse immigration consequences because he was a U.S. resident. It seems the attorney also failed to inform A.P.B. that a diversion program ("Drug Court") would be available to him after which any charges would be dismissed if successfully completed. A.P.B. plead guilty in 2009 and was promptly arrested by officers of the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), and put into removal (deportation) proceedings.

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With my instructional series of legal articles, I hope to share my daily hands-on experience with other practitioners who face similar legal challenges.”
*Magdalena Cuprys,
Immigration Lawyer*

Based on these facts, Attorney Magdalena Cuprys filed a Motion to vacate A.P.B.'s guilty plea and sentence, and alleging "ineffective assistance of counsel" by the prior attorney. According to A.P.B.'s affidavit, he relied on his attorney's advice that there would be no adverse immigration consequences.

The key cases in this regard, under these particular circumstances, are *Padilla v. Kentucky*, 130 S.Ct. 1473, 559 U.S. 356 (2010) (as for federal law), and *Julien v. State*, 917 So. 2d 213 (Fla. 4 DCA 2005) (as for Florida state law).

According to the Supreme Court's opinion in *Padilla*, a criminal defense attorneys must advise noncitizen clients about the deportation risks of a guilty plea. The case extended the Supreme Court's prior decisions on criminal defendants' Sixth Amendment right to counsel to immigration consequences. See Wikipedia, https://en.wikipedia.org/wiki/Padilla_v._Kentucky.

The duties of Counsel recognized in *Padilla* are broad. After *Padilla*, if the law is unambiguous, attorneys must advise their criminal clients that deportation will result from a conviction. Also, if the immigration consequences of a conviction are unclear or uncertain, attorneys must advise that deportation "may" result. Finally, attorneys must give their clients some advice about deportation: counsel cannot remain silent about immigration. *Id.*

Let's look at couple of the key sections of the *Padilla* Opinion. The Court summarized the facts and holding as follows:

"Petitioner *Padilla*, a lawful permanent resident of the United States for over 40 years, faces deportation after pleading guilty to drug distribution charges in Kentucky. In postconviction proceedings, he claims that his counsel not only failed to advise him of this consequence before he entered the plea, but also told him not to worry about deportation since he had lived in this country so long. He alleges that he would have gone to trial had he not received this incorrect advice. The Kentucky Supreme Court denied *Padilla* postconviction relief on the ground that the Sixth Amendment's effective assistance-of-counsel guarantee does not protect defendants from erroneous deportation advice because deportation is merely a "collateral" consequence of a conviction.

Held: Because counsel must inform a client whether his plea carries a risk of deportation, *Padilla* has sufficiently alleged that his counsel was constitutionally deficient. Whether he is entitled to relief depends on whether he has been prejudiced, a matter not addressed here. Pp. 2-18."

The Court recognized that changes to immigration law have dramatically raised the stakes of a noncitizen's criminal conviction. While once there was only a narrow class of deportable offenses

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The Law Firm Cuprys & Associates is a full service, dynamic, and trustworthy law firm that specializes in immigration matters. The law firm is uniquely qualified to manage the most contentious and unusual immigration needs. Swift resolution of immigration-related issues is integral to a client's ability to conduct business or reach their personal goals in the United States. Located in Miami and Clewiston, the firm's offices provide corporate and individual clients of foreign nationality with temporary work permits for the U.S., green card petitions, criminal waivers and representation in removal proceedings cases. With over a decade of experience, the law firm provides clients with the confidence that their cases will be handled by an expert who understands their needs and how to obtain their goals. Although the majority of the law firm's clients live in Florida, it represents people from all over the United States and several foreign countries.

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and judges wielded broad discretionary authority to prevent deportation, immigration law changes have expanded the class of deportable offenses and limited judges' ability to alleviate deportation's harsh consequences. Because the drastic measure of deportation or removal is now virtually inevitable for a vast number of noncitizens convicted of crimes, the importance of accurate legal advice for noncitizens accused of crimes has never been more important. Thus, as a matter of federal law, deportation is an integral part of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes. See the Court's summary of the case.

The Supreme Court then concluded that:

"It is our responsibility under the Constitution to ensure that no criminal defendant—whether a citizen or not—is left to the 'mercies of incompetent counsel.' Richardson, 397 U.S., at 771, 90 S.Ct. 1441. To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a risk of deportation. Our longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less. Taking as true the basis for his motion for postconviction relief, we have little difficulty concluding that Padilla has sufficiently alleged that his counsel was constitutionally deficient. Whether Padilla is entitled to relief will depend on whether he can demonstrate prejudice as a result thereof, a question we do not reach because it was not passed on below. ..."

This "ineffective assistance of counsel" argument can then be further supported with state law. In this case (Florida), Attorney Cuprys supplemented the federal law argument with *Julien v. State*. In the rather brief opinion of *Julien v. State*, the Court ruled that an attorney provided ineffective assistance of counsel for failing to inform his client of the option to apply for the pre-trial diversion program. That case is similar to the current set of facts as to A.P.B. in that the Drug Court program (just like a pre-trial diversion program) offers an alternative to pleading guilty.

The basic facts are that Maxime Julien was arrested for shoplifting some shoes from Burdines Department Store. A first-time offender, pled guilty to grand theft and was placed on probation. As a result of his plea, the United States commenced removal proceedings to rescind his

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Services

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permanent residence status and remove him to Haiti. Julien filed a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850, alleging ineffective assistance of counsel. In his amended motion for postconviction relief, Julien alleged that his attorney was ineffective in failing to inform him of his option to apply for the Pretrial Intervention Program (PTI), and in failing to investigate his claim that he should have been charged with misdemeanor petit theft instead of felony grand theft because the value of the stolen merchandise was under \$300.

The Court notes that "Florida Rule of Criminal Procedure 3.171(c)(2)(B) places a responsibility upon defense counsel to advise a defendant of all plea offers and "all pertinent matters bearing on the choice of which plea to enter and the particulars attendant upon each plea and the likely results thereof, as well as any possible alternatives that may be open to the defendant." (Emphasis supplied). As the criminal law expert explained, the PTI program is a "possible alternative" available to a first-time offender. For a first-time offender facing immigration consequences, the program is critical. A defendant derives a "tremendous" benefit by having his charge dismissed after completing the program. Considering these factors, we conclude that defense counsel's failure to inform appellant of this possible alternative constituted a deficient performance. See *Jones v. State*, 832 So.2d 207 (Fla. 1st DCA 2002) (holding that movant for post-conviction relief, who alleged that his counsel was ineffective in allowing him to plead to felony driving while license is suspended or revoked (DWLSR) without advising him of statutory avenue for leniency available to certain DWLSR defendants, made a facially sufficient allegation warranting further post-conviction proceedings); *Cottle v. State*, 733 So.2d 963, 967 (Fla.1999)(noting that Florida courts, along with other state and federal courts, recognize ineffective assistance claims based on counsel's failure to convey a plea)."

Based on these arguments presented by Attorney Cuprys, the Court granted the Motion on August 31, 2018, ordering that the Defendant's plea, conviction, judgment and sentence be vacated.

The underlying case is State of Florida vs. A.P.B., Case No. F08-0035564 (August 31, 2018).

The complete comment will be published on the Legal Blog of Magdalena Cuprys at <https://magdalenacuprysblog.blogspot.com/>

About Attorney Magdalena Cuprys, Florida

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References

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