

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

Filed October 2, 2007

FREDDY QUEZADA

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STATE OF RHODE ISLAND

P.M. No. 07-2802
(Related Case P2 01-1164A)

DECISION

LANPHEAR, J. Mr. Quezada has applied to the Court for Post Conviction Relief pursuant to R.I.G.L § 10-9.1. The State consented to post conviction relief. The Court has carefully considered the documentation submitted by the parties and conducted an independent review of transcript, case file and the statutory law.

Travel and Facts

Freddy Quezada was arrested for possession of marijuana with intent to deliver, and delivery of a controlled substance, on January 12, 2001. On August 9, 2001 Mr. Quezada pled nolo contendere and received a four year suspended sentence. Though Mr. Quezada was sentenced by a learned and distinguished member of this Court, a review of the transcript indicates that he was not provided with an immigration warning during the plea colloquy.

An immigration warning, so-called, is the statutorily required warning informing defendants that a plea may affect their immigration rights. It is mandated by R.I.G.L. § 12-12-22 and was in effect at the time of Mr. Quezada’s plea. The statute reads, in part:

“If the court fails to so inform the defendant as required by this section, and the defendant later shows that his plea and conviction may have immigration consequences, the defendant shall be entitled, upon a proper petition for post-conviction relief, to have the plea vacated. ...” R.I.G.L. § 12-12-22 (c).

See also Machado v. State, 839 A.2d 509, 513 (R.I. 2003)

The defendant has not clearly demonstrated immigration consequences but the Court is aware that he has received an adverse decision from the Board of Immigration Appeals from its other files. See Quezada v. Rhode Island, P.M. 06-3937, Decision of January 10, 2007, page 4. Accordingly, Mr. Quezada has met his burden for post conviction relief.

By agreement, the plea and sentence of August 9, 2001 are vacated, and the matter is returned to the court for trial. The Court will enter the Consent Order. Promptly upon issuance of this Decision the clerk shall schedule this matter before the Daily Criminal Calendar for Providence County for Determination of Attorney, resetting of bail, and other scheduling matters as the Court may deem appropriate.