

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,522

DISTRICT COURT OF APPEAL

THIRD DISTRICT - NO. 86-1248

THE STATE OF FLORIDA,

Petitioner,

vs.

HECTOR SALLATO,

Respondent.

APR 15 1987  
COURT  
Deputy Clerk

\* \* \* \* \*

ON PETITION FOR DISCRETIONARY REVIEW

\* \* \* \* \*

RESPONSE BRIEF OF RESPONDENT ON MERITS

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## INTRODUCTION

Petitioner, the State of Florida, was the Appellant in the Third District Court of Appeal of Florida and the prosecution in the trial court. The Respondent, Hector Sallato, was the Appellee in the Third District Court of Appeal and the Defendant in the trial court. The parties will be referred to as they stand before this Court. The symbol "R" will be used to designate the Record on Appeal and the symbol "TR" will be used to designate the transcript of the lower court proceedings. The Appendix to this brief contains a copy of the Appellee's Brief in the Third District Court of Appeal. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent, Hector Sallato accepts the Petitioner's Statements of the Case and Facts.

ISSUE ON APPEAL

WHETHER TRIAL COUNSEL'S FAILURE TO CORRECTLY ADVISE THE ALIEN RESPONDENT OF THE COLLATERAL CONSEQUENCE OF DEPORTATION AFTER THE RESPONDENT AFFIRMATIVELY ASKED ABOUT THOSE CONSEQUENCES RENDERED THE RESPONDENT'S GUILTY PLEA INVOLUNTARY?

SUMMARY OF THE ARGUMENT

The trial court was correct in granting the Defendant's Motion to Vacate Plea for the reasons specified in his written order as well as the involuntary nature of the negotiated plea.

## ARGUMENT

TRIAL COUNSEL'S FAILURE TO CORRECTLY ADVISE  
THE ALIEN RESPONDENT OF THE COLLATERAL  
CONSEQUENCE OF DEPORTATION AFTER THE  
RESPONDENT AFFIRMATIVELY ASKED ABOUT THOSE  
CONSEQUENCES MADE THE DEFENDANT'S PLEA  
INVOLUNTARY PURSUANT TO THE FRCrP 3.172.

The Respondent would incorporate by reference his argument contained in the Brief of Appellee filed in the Third District Court of Appeal. (See Appendix)

Furthermore, Respondent would note that the trial court based the Order Vacating Plea on the Defendant's Motion to Vacate Plea which relied on FRCrP 3.850 (R.7).

The reason why this case differs from State vs. Ginebra, 12 F.L.W. 322 (Fla. July 2, 1987) is that Mr. Sallato affirmatively asked and received a legal response to his question regarding the possibility of deportation and that Mr. Sallato relied on that response in making his decision not to go to trial (See R.2-4). How could Mr. Sallato's plea be deemed knowingly, intelligently, and voluntarily made if he was misinformed and improperly advised of the deportation consequences of his plea and solely as a result of the Defendant's attorney's improper advice the Defendant plead guilty? (See Appendix-Brief of Appellee)

Therefore, it is the Respondent's position that the facts of this case differ from those in State vs. Ginebra, supra,

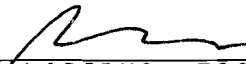


and that the opinion of the Third District Court of Appeal should be affirmed.

CONCLUSION

Based upon the foregoing facts and reasons, the Third District Court of Appeal was correct in affirming the decision if the trial court granting the Respondent's Motion to Vacate Plea.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE BRIEF OF RESPONDENT ON MERITS was furnished by hand-delivery (U.S. mail) to Debora J. Turner, Assistant Attorney General, Department of Legal Affairs, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33125, this 21 day of September, 1987.

  
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BENNET LAPIDUS, ESQUIRE