

IN THE SUPREME COURT
STATE OF FLORIDA

CASE No. SC96,794

DAVID HERNANDEZ RODRIGUEZ,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

REPLY BRIEF ON THE MERITS
OF
DAVID HERNANDEZ RODRIGUEZ

ON DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

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ISSUES PRESENTED FOR REVIEW

I. Whether a defendant now facing deportation for a conviction based on a nolo contendere plea who was never advised that plea could lead to deportation shows prejudice to permit withdrawal of his plea and vacation of his conviction?

II. Where trial court denies defendant’s motion to withdraw plea and vacate conviction solely due to now-quashed District Court of Appeal decision, must the trial court’s denial and District Court of Appeal affirmance thereof also be quashed?

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Counsel certifies the size and style of type used in this brief is 12 point Courier New, not proportionately spaced.

SUMMARY OF ARGUMENT

The State of Florida concedes that the issue before this Court "is not completely without merit". Br. Of State, 2, 7. A Defendant, like David Rodriguez, who accepted a nolo contendere plea in 1990, and who was not advised that plea may result in deportation, may move to set aside that plea and vacate conviction.

In the interest of judicial economy, and to prevent unnecessary litigation in the trial court, this Court ought to quash the District Court of Appeal decision, as well as the trial court order dated May 8, 1998 (which rescinded the trial court's April 15, 1998 Order vacating conviction).

ARGUMENT

I. A DEFENDANT FACING DEPORTATION FOR A
CONVICTION WHO PLED NOLO CONTENDERE BUT WAS
NEVER ADVISED HIS PLEA COULD LEAD TO
DEPORTATION MAY MOVE TO WITHDRAW PLEA AND
VACATE HIS CONVICTION

This issue was adequately addressed in Petitioner's Initial Brief on the Merits, and was not contradicted by the State of Florida.

Accordingly, it is now clear that a defendant like David Rodriguez who was not advised when he pled nolo contendere that he may be deported as a result, may seek to have his plea set aside

and conviction vacated, in light of this Court's decision in *Peart v. State*, 25 Fla. L. Weekly S271 (Fla. Apr. 13, 2000).

II. WHERE A TRIAL COURT DENIES DEFENDANT'S MOTION TO WITHDRAW NOLO CONTENDERE PLEA AND VACATE CONVICTION BASED ONLY ON A NOW-QUASHED DECISION, THAT DENIAL AND DISTRICT COURT OF APPEAL AFFIRMANCE MUST ALSO BE QUASHED

This issue was adequately addressed in Petitioner's Initial Brief on the merits and was not contested by the State of Florida.

Accordingly, since the only basis for the Second District's affirmance of the trial court rescission of its order vacating David Rodriguez's conviction was *Peart v. State*, 705 So.2d 1059 (Fla. 3d DCA 1998) which this Court has quashed, the trial court rescission and the Second District's affirmance thereof, *Rodriguez v. State*, 742 So.2d 422 (Fla. 2d DCA 1999), ought to be quashed as well.

CONCLUSION

For all these reasons and those in David Rodriguez's Initial Brief on the Merits, to avoid unnecessary litigation in the interest of judicial economy, David Rodriguez requests that this Court:

1. Quash the decision of the Second District, *Rodriguez v. State*, 742 So.2d 422 (Fla. 2d DCA 1999); and
2. Quash the May 8, 1998 Order of the trial court, with

directions to reinstate the April 15, 1998 Order of the trial court withdrawing plea and vacating conviction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing, and a DOS formatted 3-1/2" diskette containing the brief in the WordPerfect 8.0 format were caused to be mailed to the Clerk of the Supreme Court of Florida, and that a true and correct copy of the foregoing was caused to be mailed this 19th day of June, 2000, to: WILLIAM I. MUNSEY, JR., ESQ., OFFICE OF THE FLORIDA ATTORNEY GENERAL, CRIMINAL APPEALS SECTION, 2002 N LOIS AVE #700, TAMPA FL 33607-2366.

NEIL D. KOLNER, ESQ.