

Supreme Court of Florida

No. SC99-39

RICARDO PEREZ,
Petitioner,

vs.

MICHAEL W. MOORE, Secretary,
Florida Department of Corrections,
Respondent.

[September 7, 2000]

PER CURIAM.

We have for review Perez v. Moore, No. 99-2196 (Fla. 3d DCA Nov. 9, 1999)(unpublished order denying relief), which cites solely to Peart v. State, 705 So. 2d 1059 (Fla. 3d DCA 1998). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

This Court recently held in Peart v. State, 756 So. 2d 42 (Fla. 2000), that a defendant may obtain postconviction relief if he or she was not advised of the immigration consequences of a plea and was prejudiced by the lack of advice. See id.

at 46. Because petitioner has not expressly alleged that he is threatened with deportation pursuant to his plea, he has failed to establish a basis for relief under Peart.

The district court's decision to deny relief is therefore approved as being consistent with our decision in Peart. The instant decision is without prejudice for petitioner to file a proper claim for relief pursuant to Peart, within thirty (30) days of the issuance of the mandate in this case.¹

It is so ordered.

SHAW, ANSTEAD, PARIENTE and LEWIS, JJ., concur.
HARDING, J., concurs in result only.
WELLS, C.J., and QUINCE, J., dissent.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal -
Direct Conflict

Third District - Case No. 3D99-2196

(Miami-Dade County)

Ricardo Perez, pro se, Chipley, Florida,

for Petitioner

¹ See Reid v. State, 745 So. 2d 363, 364 (Fla. 4th DCA 1999)(affirming the denial of an insufficiently pled postconviction motion for relief without prejudice to appellant's right to refile a motion that complies with pleading requirements).

Robert A. Butterworth, Attorney General, Michael J. Neimand, Assistant Attorney General, Bureau Chief Criminal Appeals, and Christine E. Zahralban and Fredericka Sands, Assistant Attorneys General, Miami, Florida,

for Respondent