IN THE SUPREME COURT OF FLORIDA

Case No. 01-1344
Lower Case No. 4D00-3610

STATE OF FLORIDA,

Petitioner,

-vs-

PETER B. SERAPHIN, ETC.,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, FOURTH DISTRICT

PETITIONER'S BRIEF ON THE MERITS

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INTRODUCTION

The Petitioner, THE STATE OF FLORIDA, was the PROSECUTION below, and the Respondent, PETER B. SERAPHIN was the DEFENDANT below. In this brief, the parties will be referred to as they stood in the proceedings below.

STATEMENT OF THE CASE AND FACTS

Defendant was charged with Robbery with a deadly weapon. (Ex. A). On May 31, 1996, defendant entered a guilty plea to the above charge. The Court accepted defendant's plea and adjudicated him guilty, and sentenced defendant to six years in prison followed by three years probation. Defendant filed a post conviction motion and appealed the lower court's summary denial of his motion. In his motion defendant alleged that his trial attorney erred in not advising him of the defense of voluntary intoxication. The Fourth District Court of Appeal reversed and remanded for an evidentiary hearing or further record attachments refuting defendant's claims, mandate issued on March 6, 1998.

Subsequently, on November 30, 1998, the Immigration and Naturalization Service (INS) placed a detainer on defendant. Defendant completed and served his sentence. Defendant was served with a notice of removal proceedings under the Immigration and Naturalization Act, Section 237(a)(2)(A)(iii), on January 26, 1999. (Ex. B). On or about May 2, 2000, defendant filed a motion for post-conviction relief in the trial court to withdraw his plea. (Ex. C). In support of his motion, defendant alleged that the trial court violated rule 3.172(c)(8) of the Florida Rules of Criminal Procedure by failing to advise him of the possible immigration consequences of entering the plea. Defendant also raised an ineffective assistance claim that his trial counsel

informed him that there would be no immigration consequences since he was receiving a county jail sentence. Id. However, at the plea colloquy the trial court asked defendant, "[i]s everybody here a U. S. citizen?" and defendant replied, "[y]es, sir." (Ex. B, p.23). The court made no further inquiry into the subject of citizenship and deportation. Id.

The State filed a response to defendant's motion for post-conviction relief alleging that defendant suffered no prejudice as a result of his plea and that the trial counsel did not misadvise defendant and that an evidentiary hearing was needed. The trial court dismissed defendant's motion for post conviction relief.

Defendant timely filed a notice of appeal to the Fourth District Court of Appeal. An order to show cause was issued to the State. The State of Florida filed its response asserting that appellant's motion was moot. Also, the State argued that the motion was insufficient and that the trial court nor the appellate court could conclude that the error was prejudicial in this case. The Fourth District Court of Appeal reversed the order rejecting the State's argument regarding mootness and held that the motion was sufficient as the threat of deportation was adequate to show prejudice and reversed and remanded for the trial court to consider the motion. (Ex. D). The court recognized conflict with State v. Rajee, 745 So.2d 469 (Fla. 5th DCA 1999) and Johnson v. State, 760 So.2d 922 (Fla. 2d DCA 2000). (Ex. E). These cases hold that a

mistaken belief that one is a United States citizen is not sufficient to establish prejudice because the prejudice suffered related to one's own lack of knowledge about one's own citizenship and not of a failure of the trial court to give an individual correct legal information.

Thereafter, the State filed a petition for discretionary review based upon this conflict. This Court ordered the State to file a brief on the merits. The State's brief follows.

POINT ON APPEAL

THE THREAT OF DEPORTATION IS NOT A SUFFICIENT SHOWING OF PREJUDICE TO ALLOW THE WITHDRAWAL OF ONE'S PLEA UNDER 3.172(c)(8) WHERE THE RECORD INDICATES THAT THE DEFENDANT ANSWERED AFFIRMATIVELY DURING THE PLEA COLLOQUY THAT HE WAS A UNITED STATES CITIZEN, DUE TO EITHER HIS OWN LACK OF KNOWLEDGE REGARDING OR MISREPRESENTATION ABOUT HIS CITIZENSHIP.

SUMMARY OF ARGUMENT

A per se rule is not used in evaluating a violation of Rule 3.172(c). Rule 3.172(i) provides that any variance from the procedures required by this rule shall not render the plea void unless there has been a showing of prejudice. This Court has held that a defendant must prove prejudice in order to obtain relief from a trial judge's failure to inform him of the possible deportation consequences of a guilty plea and has not adopted a per se rule.

The State would assert that because defendant answered in the affirmative during the plea colloquy that he was a United States citizen he did not prove or allege sufficient prejudice to allow the withdrawal of his plea. Defendant has failed to show that he was prejudiced by the trial court's error. He cannot show that he is entitled to relief as a matter of a law where it is not clear that he would not have entered the plea even if he was properly advised. Additionally, because the defendant invited the error he now complains of he is not entitled to any relief.

Therefore, the State respectfully asks this Court to hold that a Motion for post-conviction relief filed by an alien who knowingly misled the trial court into believing he was a United States citizen does not set forth prima facie showing of entitlement to relief when he alleges that the trial court misled or failed to advised him as to effect of his plea on his immigration status and

the trial court may dismiss the motion as facially insufficient.

ARGUMENT

THE THREAT OF DEPORTATION IS NOT A SUFFICIENT SHOWING OF PREJUDICE TO ALLOW THE WITHDRAWAL OF ONE'S PLEA UNDER 3.172(c)(8) WHERE THE RECORD INDICATES THAT THE DEFENDANT ANSWERED AFFIRMATIVELY DURING THE PLEA COLLOQUY THAT HE WAS A UNITED STATES CITIZEN, DUE TO EITHER HIS OWN LACK OF KNOWLEDGE REGARDING OR MISREPRESENTATION ABOUT HIS CITIZENSHIP.

Florida Rule of Criminal Procedure 3.172 imposes requirements on what information the courts must convey and determine before they accept a plea. Rule 3.172(c)(8), requires a trial court accepting a plea of guilty or nolo contendere to inform a defendant that if he or she is not a United States citizen, the plea may subject him or her to deportation. The Fourth District has held that compliance with rule 3.172(c)(8) is mandatory.

> Although we recognize conflicting case law from out sister courts, see State v. Rajaee, 745 So.2d 469 (Fla. 5th 1999) and Johnson v. State, 760 So.2d 992, (Fla. 2d DCA 2000), we have consistently held that the trial court's compliance with rule 3.172(c)(8) is mandatory." See, Sanders v. State, 685 So.2d 1385 (Fla. 4th DCA 1997).

Seraphin v. State, 785 So.2d 608 (Fla. 4th DCA 2001). In Sanders, infra, the Fourth District held that failure to comply with rule 3.172(c)(8) that required reversal, even if a defendant responded falsely to a court's limited inquiry regarding citizenship because compliance with the rule was mandatory.

The State contends that to interpret the statute as requiring mandatory compliance, gives no meaning to the prejudice requirement

of Rule 3.172(i). Even if the Court does not follow the requirements of Rule 3.172(c), the rule provides for and has an error provision. This provision states:

> (i) Prejudice. Failure to follow any of the procedures in this rule shall not render a plea void absent a showing of prejudice.

Therefore, any variance from the procedures required by this rule shall not render the plea void unless there has been a showing of prejudice.

In fact, this court has not used a per se rule in evaluating a violation of Rule 3.172(c). In Wuornos v. State, 676 So.2d 966 (Fla. 1995), the defendant had pled guilty to first-degree murder, waived a penalty phase jury, and waived presentation of mitigating evidence. She was sentenced to death. The supreme court found that the trial court had failed to notify the defendant of a variety of factors required by Rule 3.172(c) yet denied Ms. Wuornos relief finding no prejudice.

Judge Schack recognized this in his concurring opinion in State v. Luders, 731 So.2d 163, 164 (Fla. 4th DCA 1999), reversed, 768 So.2d 440 (Fla. 2000) when he stated that:

> While it is true that Rule 3.172(c) contains mandatory language and trial judges should comply with it, the per se rule of reversal fails to give true meaning to the prejudice requirement of Rule 3.172(i). . . . To the extent that *Perriello* and *Marriott* impose a per se rule where a trial court fails to advise a defendant of potential immigration consequences, I suggest they go further than necessary, provide a windfall to defendants, and place an unnecessary burden on the trial courts.

In reviewing the above case, this Court in State v. Luders, 768 So.2d 440 (Fla. 2000), was confronted with the question of whether a defendant is entitled to withdraw his plea where although it is clear that trial court failed to advise him of the immigration consequences of entering his plea, where there was evidence that his attorney advised him of the deportation consequences prior to his plea. Despite the fact that **the trial court did not conform with the rule**, this Court, relying on Peart, held that the defendant was not prejudiced by the trial court's failure to advise him of the immigration consequences of entering his plea because his defense counsel advised him thereof and he decided to accept the risk. Id. at 441. Therefore, because defendant was not prejudiced by the trial court's error, he was not entitled to relief. Id. Thus, under the first prong, the general rule that a defendant is entitled to withdraw his plea where the trial court fails to advise him of the immigration consequences is not applicable where the defendant was not prejudiced, i.e. where his attorney advised him thereof.

Additionally, in the recent case of State v. Gonzalez, 26 Fla. L. Weekly D1239 (Fla. 3d DCA May 16, 2001), the Third District held that a defendant was not prejudiced by trial court's failure to specifically inform him that his plea may subject him to deportation, where the plea agreement form signed by the defendant provided this information, and the agreement indicated that the

defendant had read and discussed the agreement with his attorney. Further, the court found that the trial court properly established during the plea colloquy that defendant's plea was entered into freely and voluntarily. also, see, *e.g.* Davis v. State, 763 So.2d 519, 522 (Fla. 5th DCA 2000)(Held that Davis failed to demonstrate any prejudice because of the trial court's failure to strictly follow the colloquy set forth in Florida Rule of Criminal Procedure 3.172, and in the absence of an allegation of prejudice or manifest injustice to the defendant, the trial court's failure to adhere to said rule is an insufficient basis for reversal citing to Wuornos v. State, 676 So.2d 966 (Fla. 1995).

In addition, to this Court and other decisions render by Florida state courts, Federal courts have recognized that a defendant must suffer or allege the requisite prejudice in order to make a sufficient showing to allow the withdrawal of one's plea. For example, in U.S. v. Gonzalez, 202 F.3d 20, 25 (C.A.1 (N.H.) 2000), Gonzalez argued that his plea was defective under Federal Rule 11 because his counsel failed to advise him of the plea's immigration consequences and therefore he was entitled to withdraw his plea. The Court disagreed stating that "[e]ven if Gonzalez could demonstrate ineffective assistance of counsel, he cannot show the necessary prejudice. He had previously been convicted of crimes in the state of New Hampshire which exposed him to immigration consequences identical to those resulting from his

federal conviction." Also, in Alansi v. State, 1997 WL 757394 (Minn Ct. App. 1997)(unpublished available on Westlaw), appellant asserted that he would not have pled guilty had he known he would be subject to deportation. The Court held that appellant had not presented any evidence to show that the result of the proceeding would have been different had he known; additionally, appellant had held himself out to be a United States citizen. As such, the court held that "the trial court correctly found that appellant's allegations lacked any factual or evidentiary basis and were conclusory. Accordingly, the trial court properly denied appellant's motion for an evidentiary hearing."

Thus, it is evident that courts recognize that a trial court's failure to follow the rule 3.172 does not always necessitate reversal and withdrawal of a guilty plea. Rule 3.172(c)(8) is not a blanket rule requiring per se reversal for any and all defendants not properly advised by the trial court of their plea consequences. See, St. Preux v. State, 769 So.2d 1116, 1117, n.1 (Fla. 2d DCA 2000)(recognizing that a defendant is not entitled to relief as a matter of law; even though defendant has been ordered deported, it is possible for the State to prove that he was not prejudiced by the rule 3.172(c)(8) violation).

It is the State's contention that the perfunctory granting of relief for a deportable defendant not advised of the deportation consequences, gives no teeth to the third prong of the prejudice

test. If defendants are automatically allowed to withdraw their pleas without first showing prejudice that is applicable to the surrounding facts and circumstances of their case, the prejudice requirement would be void of any significance.

In Peart v. State, 756 So.2d 42 (Fla. 2000), this Court held that although defendants no longer need prove the likelihood of acquittal at trial to warrant relief, a defendant must show that he or she was prejudiced by the error. Id. at 46-47. The Court then determined based on established precedent, that in order to show prejudice pursuant to a rule 3.172(c)(8) violation, defendants had to establish that they did not know that the plea might result in deportation, that they were "threatened" with deportation because of the plea, and that had they known of the possible consequence they would not have entered the plea. Id. Finally, defendants must additionally show that had they known of the possible consequence, they would not have nevertheless entered the plea.

Under this test, defendant must make some affirmative showing. He cannot simply allege that the trial court did not advise him and that he was deported. He must show that he would not have entered the plea if he was aware of the deportation consequences. In this case, defendant responded that he was an American citizen, thus, he cannot show that as a matter of law he is entitled to relief where he led the court to believe that rule 3.172 did not apply to him because he was an American citizen. Secondly, he cannot show that

he would not have entered the plea if the trial court did properly advised him. As such, this is case is a classic example of why the legislature included a provision such as 3.172(i). At bar, the defendant only demonstrated that his plea colloquy did not comply with the requirements under rule 3.172(c). And, deficiencies in plea colloquy will not alone sustain collateral attack upon plea and conviction, absent facially sufficient, sworn allegations of involuntariness. James v. State, 696 So.2d 1194, 1195 (Fla. 2d DCA 1997).

As Judge Levy correctly pointed out in his dissent in Elharda v, State, 775 So.2d 321, 323-24 (Fla. 3d DCA 2000), "Elharda has failed to demonstrate that he was prejudiced or that he would have done anything different, such as reject the plea offer, if the admonition had been given."[1] Judge Levy went on to say that under those circumstances, "even if the trial court had given Elharda the admonition that his plea may subject him to deportation, there is no doubt that Elharda would still have accepted the plea." Id. at 324. He concluded by saying that Elharda could not "show any prejudice that would require vacating his sentence because, even if the trial court had given the admonition, Elharda would still have accepted the plea and would still be facing deportation." Id.

It is the State's strong contention that a finding of

[1]In *Elharda*, the Defendant mistakenly believed that he was a citizen of the United States at the time of the plea.

prejudice cannot be demonstrated in cases where the defendant would have still accepted the plea despite the proper admonition. The rationale of Johnson v. State, 760 So.2d 992 (Fla. 2nd DCA 2000), is persuasive where the Second District Court of Appeal held that it could not say as a matter of law that the trial court's failure to advise the defendant of the possibility of deportation was prejudicial to the defendant even though the defendant was then facing deportation. The Second District reasoned that where the defendant actually believed that he was in fact a United States Citizen, there is no reason to think that the trial court's warning of the possibility of deportation would have affected his decision to enter the plea. Id. at 993. Relying on State v. Rajaee, 745 So.2d 469 (Fla. 5th DCA 1999) review denied 763 So.2d 1044 (Fla. 2000), the court opined, "[a]ny prejudice he would have sustained in that circumstance would relate to his own lack of knowledge about his citizenship, and not to a failure of the trial court to give him correct legal advice. Johnson at 993.

At bar, defendant's motion for post conviction relief is conclusory and not factually specific to what transpired below. Defendant held himself to be a United States citizen. Even, if the trial court had warned the defendant of the risk of deportation when he believed he was a United States citizen, there is no reason to think that the warning would have altered his decision. Moreover, any prejudice he would have sustained in that

circumstance would relate to his own lack of knowledge about his own citizenship, and not to a failure of the trial court to give him correct legal information. See, State v. Rajaee, infra, (holding defendant's mistaken belief he was American citizen did not entitle him to withdraw plea); Johnson v. State, infra, (Court could not conclude as a matter of law, that the error was prejudicial in this case because it is not clear that Mr. Johnson realized at the time of the plea hearing that he was British.)

Defendant's allegations that he suffered prejudiced lack any factual or evidentiary basis in light of his plea. Defendant has simply used a boilerplate phrase; prejudice is established based upon the surrounding circumstances and facts of each case and defendant has failed to met that burden here. Whether or not the defendant deliberately deceived the trial court by affirming that he was an American citizen, he still has the burden to prove that he would not have entered the plea had he known of the deportation consequences. Defendant is not absolved of this burden simply because the trial court did not inform him of the immigration consequences. He does not make a sufficient showing of prejudice because even if he were properly advised of the deportation consequences he still would be unaware of the consequences of his plea because he was under the belief that he was a citizen and deportation would not be applicable, nor can it be said that he would not have plead guilty even if he had been advised of

deportation consequences because of his belief. Clearly, in this case had he been was mistaken it still would have not changed his plea.

But, secondly, and more importantly it is evident from the record that the defendant deliberately deceived the trial court by affirming that he was an American citizen. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Anti-Terrorism and Effective Death Penalty Act of 1996 subject non-citizens to automatic deportation if they have an aggravated felony conviction, even where such conviction pre-dates the effective dates of the acts.

Appellant affirmatively lied. In his second claim in his post conviction motion appellant swears under oath that prior to entering his plea that his trial counsel advised him that there would be no immigration consequences. Obviously if trial counsel in fact warned him of the consequences it is logical to conclude two things; 1.) defendant plead guilty knowing full well he could be deported and 2.) he knew he was not a United States citizen otherwise why would counsel advise him of potential deportation consequences? This evidences that under oath he knowingly and affirmatively misrepresented to the Court that he was a United States citizen. Appellant has served his sentence and allowing him to withdraw his sentence would allow him to circumvent federal law by remaining in the States, as the State would more than likely be

barred from re-prosecution on double jeopardy grounds. A defendant is not entitled to relief where he invited any error he complains of now. Where a mistake or misunderstanding in entering a plea is attributable to the defendant, it is not error for the court to refuse to allow withdrawal of it. Johnson v. State, 648 So.2d 263 (Fla. 5th DCA 1994); see also, Rajaee, 745 So.2d at 470 ("a mistake of some fact solely within the knowledge or control of the defendant has not been approved as a basis of withdrawing a plea."). It is a well settled principle of jurisprudence that a defendant is not entitled to benefit from a mistake which he invited. A party may not invite an error in the trial court and then take advantage of that error on appeal. See generally Czubak v. State, 570 So.2d 925, 928 (Fla.1990); Norton v. State, 709 So.2d 87, 94 (Fla. 1997); Terry v. State, 668 So.2d 954, 962 (Fla. 1996); Pope v. State, 441 So.2d 1073, 1076 (Fla. 1983); see *also* Sullivan v. State, 303 So.2d 632, 635, 636 (Fla. 1974); Pierre v. State, 730 So.2d 84 (Fla. 3d DCA 1999); Ashley v. State, 642 So.2d 837, 838 (Fla. 3d DCA 1994).

In the instant case, defendant created the very error of which he now complains. At the time of the plea, the trial court asked defendant was he a U.S. citizen. The court in asking defendant about his legal status evidences that the lower court was well aware of mandate pursuant to Rule 3.172, had defendant answered frankly that he was not an American citizen, the trial court would

have informed him of the deportation consequences. However, when the defendant responded that he was a U.S. citizen, knowing that in fact he was not, the court reasonably concluded that any admonition would have been inconsequential as the warning would not have applied to defendant. Rule 3.172(c) provides that a "trial judge should, when determining voluntariness, place the defendant under oath". As such the Court is entitled to accept a defendant's statements under oath at a plea allocution as true. Thus, although defendant intentionally led the court to believe that he was an American citizen, he must not benefit from any action taken by the court based on his own misleading response. This Court and other courts have consistently held that a party cannot invite error at the trial level then be heard to complain about it on appeal. See, Gupton v. Village Key & Saw Shop, Inc., 656 So.2d 475, 478 (Fla. 1995)(defining the invited error rule as follows: "a party cannot successfully complain about an error for which he or she is responsible or of rulings that he or she has invited the trial court to make.").

Also, the State would point out that the defendant has completed his sentence. Defendant's failure to pursue remedies available to him under immigration laws and prior to his completion of his sentence has unduly prejudice the State. Defendant was served with notification of his removal proceedings back on January 26, 1999; however, he did not contest his plea until over a year

later. Defendant has completed his sentence and the State has no recourse. Usually, when a defendant successfully challenges a plea and is permitted to withdraw a plea which was entered as a result of a plea bargain, the bargain is "abrogated" and the defendant must "accept all of the consequences which the plea originally sought to avoid." Fairweather v. State, 505 So.2d 653, 655 (Fla. 2d DCA 1987) (quoting, Commonwealth v. Ward, 493 Pa. 115, 124-125, 425 A.2d 401, 406, cert. denied, 451 U.S. 974, 101 S.Ct. 2055, 68 L.Ed.2d 354 (1981)). However, in the instance case, petitioner has waited to withdraw his plea until he completed serving his time for the crime to which he plead. In the instant case defendant's withdrawal of that plea would prevent the State from exercising a subsequent trial on the merits as that would subject defendant to double jeopardy. The constitutional prohibition against double jeopardy prevents a second prosecution for the same criminal offense after acquittal or after conviction, and it prevents multiple punishments for the same criminal offense. See, U.S. Const., amend. V ("[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb...."); Fla. Const. art. I, § 9 ("No person shall be ... twice put in jeopardy for the same offense, ..."); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969); overruled on other grounds, Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989); State v. Wilson, 680 So.2d 411 (Fla. 1996).

Defendant has been released from prison and has completely served his sentence.

To permit the defendant to profit by manipulation of the rules would certainly unfairly frustrate a substantial interest of the state. Therefore, this claim is barred by the doctrine of laches. State v. Taylor, 722 So.2d 890 (Fla. 4th DCA 1998); State v. Elise, 727 So.2d 1030 (Fla. 4th DCA 1999); Boudali v. State, 731 So.2d 166(Fla. 4th DCA 1999).

Allowing the withdrawal of the plea would give the State no recourse given the probable inability to resume prosecution after he has service his complete sentence. The declared policy of this state is to encourage plea negotiations and agreements. Fla.R.Crim.P. 3.171(a). Numerous cases have held that a defendant may withdraw his plea where the facts establish that the prosecution has violated the terms and conditions of a plea agreement. However, this principle works both ways if the declared policy of rule 3.171(a) is to be effective. Otherwise, the state would be hesitant to enter into plea agreements with an accused if the state were subject to losing the benefit of the bargain. This Court has noted that a bargained guilty plea is in large part similar to a contract between society and the accused, entered into on the basis of a perceived "mutuality of advantage." Brown v. State, 367 So.2d 616, 622 (Fla. 1979). Having reneged on his portion of the bargained-for agreement, appellant should be

estopped from seeking to void the plea. See, Novaton v. State, 610 So.2d 726 (Fla. 3d DCA 1992), aff'd, 634 So.2d 607 (Fla.1994); State v. Frazier, 697 So.2d 944 (Fla. 3d DCA 1997)(holding that rules of contract law apply to plea agreements); Madrigal v. State, 545 So.2d 392, 395 n. 2 (Fla. 3d DCA 1989)(bargained-for pleas are similar to private contracts). Appellant cannot receive the benefit of the original plea and then, once he has violated the agreement can not be hard to complain of it. See, e.g., Bashlor v. State, 586 So.2d 488, 489 (Fla. 1st DCA 1991), rev. denied, 598 So.2d 75 (Fla. 1982)(Absent some jurisdictional flaw, Florida Courts have repeatedly held that sentences imposed in violation of statutory requirements, which are to the benefit of the defendant and to which he has agreed, may not be challenged after the defendant has accepted the benefits flowing from the plea but has failed to carry out the conditions imposed on him). The underlying rationale for estopping a defendant from raising such is that he should not be encouraged nor allowed to take advantage, on appeal or on collateral attack, of an error he initiated or induced.

Further, the agreement appellant entered into is not void as against public policy and is enforceable. " A contract is not void, as against public policy, unless it is injurious to the interests of the public, or contravenes some established interest of society." Edwards v. Miami Transit Co., 150 Fla. 315, 7 So.2d 440, 442 (1942) (quoting Atlantic Coast Line R. Co. v. Beazley, 54

Fla. 311, 45 So. 761, 762 (1907)). Therefore, in determining whether contractual provisions violate public policy, courts have also considered this directive:

> Courts ... should [proceed with] extreme caution when called upon to declare transactions as contrary to public policy and should refuse to strike down contracts involving private relationships on this ground, unless it is made clearly to appear that there has been some great prejudice to the dominant public interest sufficient to overthrow the fundamental policy of the right to freedom of contract between parties sui juris.

Pizza U.S.A. of Pompano Inc. v. R/S Assocs. of Fla., 665 So.2d 237, 239 (Fla. 4th DCA 1995) (quoting Bituminous Casualty Corp. v. Williams, 154 Fla. 191, 197, 17 So.2d 98, 101-02 (1944)). Clearly, there has been no great prejudice to the dominant public interest sufficient to overthrow the fundamental policy of the right to freedom of contract between the parties. Appellant misrepresented to a state court under oath that he was a citizen of the United States, knowing that he was not. He now alleges under oath in his post conviction proceeding motion that his attorney erroneously advised him of deportation consequences prior to his entering the plea. He serves his entire sentence so that the State of Florida has no remedy for his breach of the plea agreement, and then wishes to set aside the agreement so he can circumvent federal deportation laws in order to remain in the territorial jurisdiction of the United States. Clearly, it is against public policy to allow defendant to fraudulently inducing this State to enter into plea agreement by misrepresenting an essential term and then seek to

void the contract on the basis that the State did not inform him of the consequences of his plea as to the misrepresented term.

"Society has a strong interest in the finality of guilty pleas," and allowing withdrawal of pleas not only "undermines confidence in the integrity of our judicial procedures," but also "increases the volume of judicial work, and delays and impairs the orderly administration of justice." United States v. Sweeney, 878 F.2d 68, 70 (2d Cir. 1989)(per curiam)(internal quotation marks and alterations omitted); see also United States v. Burnett, 671 F.2d 709, 712 (2d Cir. 1982).

Defendant's post-sentence motion to withdraw his guilty plea has failed to allege facts detailed under these circumstances sufficient enough to establish prejudice.[2] The motion for post-conviction relief was not facially sufficient were the facts in the motion did not allege a legal basis for relief. A Motion for post-conviction relief filed by an alien who misled the trial court into believing he was a United States citizen does not set forth prima facie showing of entitlement to relief when he alleges that the trial court misled or failed to advised him as to effect of his plea on his immigration status.

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[2] According to the Department of Corrections Inmate Release Information Detail, defendant's detainer on INS was placed on him on November, 30, 1998, two years prior to receiving the notice of the removal proceedings. www.dc.state.fl.us/

CONCLUSION

Based upon the arguments and authorities cited herein, the petitioner respectfully requests this Court reverse the Fourth District's opinion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner was mailed this ___ day of August 2001, to Richard C. Reinhart, Esq, Attorney for Respondent, 25006 Nanatee Avenue, Bradenton, FL 34205.

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CLAUDINE M. LaFRANCE
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is typed in 12 point Courier New Font.

_____
CLAUDINE LaFRANCE
Assistant Attorney General