

IN THE SUPREME COURT OF FLORIDA

CLAUDIA VERGARA CASTANO,

Petitioner,

v.

CASE NO. SC11-1571

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

CASES:

*Castano v. State*,  
65 So. 3d 546 (Fla. 5<sup>th</sup> DCA 2011) . . . . . *ibid.*

*Flores v. State*,  
57 So. 3d 218 (Fla. 4<sup>th</sup> DCA 2010) . . . . . 1

*Hernandez v. State*,  
61 So. 3d 1144 (Fla. 3d DCA 2011) . . . . . *ibid.*

*Reaves v. State*,  
485 So. 2d 829 (Fla. 1986) . . . . . 4

OTHER:

Art. V, § 3(b)(3), Fla. Const . . . . . 4

STATEMENT OF THE CASE AND FACTS

The facts of this case, as set forth in the opinion below, are as follows:

Castano, who owned and operated a day care center out of her home, was charged with child neglect, a third-degree felony, when a child under her care was found wandering in her neighborhood. Castano was represented by counsel and ultimately entered a plea to the charge of child neglect. According to her attorney, her main concern was avoiding a jail sentence. Her attorney also stated that he and Castano discussed the immigration consequences of her plea. Because her attorney was unsure whether she could be deported as a result of pleading to the charge, he suggested Castano consult with an immigration attorney. At the time of her plea, the trial judge informed Castano that "if you're not a U.S. citizen you can be deported as a result of this plea." Castano indicated she understood, and answered "Yes."

*Castano v. State*, 65 So. 3d 546, 547 (Fla. 5<sup>th</sup> DCA 2011).

The Petitioner filed a motion for postconviction relief, alleging that her trial counsel was ineffective for failing to apprise her of the immigration consequences of the plea. *Id.* On appeal from the trial court's denial of that motion, the Fifth District Court of Appeal rejected her argument that her attorney was obligated to advise her that mandatory deportation could be a consequence of her plea. *Id.*

The lower court aligned itself with the decision of the Fourth District Court of Appeal in *Flores v. State*, 57 So. 3d 218 (Fla. 4<sup>th</sup> DCA 2010), which held that any prejudice from counsel's misadvice regarding the immigration consequences of a plea is cured when the trial court gives a deportation warning

during the plea colloquy. *Castano*, 65 So. 3d at 547-48. In so holding, the court certified that this decision conflicted with the decision of the Third District Court of Appeal in *Hernandez v. State*, 61 So. 3d 1144 (Fla. 3d DCA 2011). *Castano*, 65 So. 3d at 548.

The court went on to state that the decision relied on by Petitioner, *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), should not be applied retroactively. *Castano*, 65 So. 3d at 548. The court recognized, however, that this was a question of great public importance, and certified this question to this Court. *Id.*

SUMMARY OF ARGUMENT

The district court's decision does not conflict with any other Florida case. This Court should not exercise its jurisdiction here.

ARGUMENT

THE LOWER COURT'S DECISION DOES NOT CONFLICT  
WITH OTHER FLORIDA CASES.

This Court has jurisdiction under article V, section (3)(b)(3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. This Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

Here, the Petitioner contends that the lower court's decision conflicts with *Hernandez v. State*, 61 So. 3d 1144 (Fla. 3d DCA 2011). There, the court held that when the immigration consequences of a defendant's plea are "truly clear," a general warning regarding those consequences is not sufficient under *Padilla*. *Id.* at 1147-48. Here, the Petitioner's counsel submitted that she "may" be subject to mandatory deportation because of her plea. *Castano*, 65 So. 3d at 547. Petitioner does not fall under the rule espoused by the court in *Hernandez*, then, as there is no indication that the deportation consequences here are, as required by that opinion, "truly clear."

Further, the two cases are also factually distinguishable. In *Hernandez*, the warning given during the plea colloquy

regarding deportation was different than the warning given here. There, the court informed the defendant that if he was not a U.S. citizen, the government "could use these charges against you in deportation proceedings." 61 So. 3d at 1146. Here, in contrast, the Petitioner was told more strongly that if she was not a U.S. citizen, "you can be deported as a result of this plea." *Castano*, 65 So. 3d at 547.

Trial counsel's advice to the respective defendants was also different in the two cases. In *Hernandez*, counsel stated that he warned his client only that a plea could or may affect his immigration status, and he did not refer him to an immigration attorney. 61 So. 3d at 1146. Here, in contrast, counsel stated that they did discuss the immigration consequences of Petitioner's plea, and he told her that she should consult with an immigration attorney. *Castano*, 65 So. 3d at 547.

While the lower court certified conflict with *Hernandez*, then, the State submits that such certification was not warranted, as the cases are distinguishable. Accordingly, this Court should not exercise jurisdiction here.

The lower court also certified as a question of great public importance the issue of whether *Padilla* applies retroactively. *Castano*, 65 So. 3d at 548. The State notes that the brief discussion of this issue is dicta, as the court had



already held that *Padilla* did not apply here. *Id.* While this Court has jurisdiction to address this certified question, then, the State submits that this issue would be more appropriately resolved in a case where the resolution of that issue is actually necessary - that is, a case where *Padilla's* holding actually applies to the facts.

CONCLUSION

Based on the arguments and authorities presented herein, the Respondent respectfully requests this Honorable Court decline to exercise jurisdiction.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished by U.S. mail to H. Manuel Hernandez, counsel for Petitioner, P.O. Box 916692, Longwood, Florida 32791, this \_\_\_ day of October, 2011.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

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