

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Mercado

474 Mass. 80 (2016) · No. SJC-11964 · Decided April 6, 2016

SUMMARY

The Massachusetts Supreme Judicial Court held that the retroactive application of counsel's duty to advise noncitizen defendants about immigration consequences extends to guilty pleas entered after the effective date of AEDPA, April 24, 1996, and before the effective date of IIRIRA, April 1, 1997. The court vacated the denial of the defendant's motion for a new trial and remanded for findings regarding deficient advice and whether the defendant would have rejected the plea.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cordy, J.; Gants, C.J.; Spina, J.; Botsford, J.; Duffly, J.; Lenk, J.; Hines, J.
JURISDICTION	Massachusetts
DECIDED	April 6, 2016
DOCKET	SJC-11964
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant sought direct appellate review of the denial of his motion for a new trial challenging his guilty plea on ineffective-assistance grounds based on counsel's failure to advise him adequately about immigration consequences.
STANDARD OF REVIEW	The court reviewed the denial of the motion for a new trial and the application of the retroactivity rule de novo; factual and credibility determinations concerning counsel's performance and prejudice were left to the motion judge.
PRECEDENTIAL VALUE	Published decision of the Massachusetts Supreme Judicial Court; binding precedent in Massachusetts.
PARTIES	Manuel Antonio Mercado v. Commonwealth

TOPICS

- plea bargaining
- ineffective assistance
- post-conviction relief
- criminal immigration
- criminal procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

immigration

constitutional law

QUESTIONS PRESENTED

1. Whether the Massachusetts retroactivity rule requiring effective advice to noncitizen defendants concerning the immigration consequences of a guilty plea applies to a conviction entered after AEDPA's effective date but before IIRIRA's effective date.
2. Whether the motion judge properly denied Mercado's motion for a new trial without making findings resolving the conflicting testimony concerning counsel's advice, language assistance, and the potential suppression defense.

HOLDINGS

1. The retroactivity of the Padilla-based duty under Massachusetts law extends to convictions entered on or after April 24, 1996, the effective date of AEDPA, including convictions entered before April 1, 1997, the effective date of IIRIRA, when AEDPA had eliminated previously available protections or discretionary waivers for the relevant controlled-substance offense.
2. The denial of Mercado's motion for a new trial must be vacated and the matter remanded because the motion judge made no findings after an evidentiary hearing involving material credibility disputes.

KEY QUOTATIONS

“To prove the latter proposition, the defendant bears the substantial burden of showing that (1) he had an available, substantial ground of defence . . . that would have been pursued if he had been correctly advised of the dire immigration consequences attendant to accepting the plea bargain; (2) there is a reasonable probability that a different plea bargain (absent such consequences) could have been negotiated at the time; or (3) the presence of special circumstances that support the conclusion that he placed, or would have placed, particular emphasis on immigration consequences in deciding whether to plead guilty”

FACTUAL BACKGROUND

Mercado, a noncitizen from the Dominican Republic who primarily spoke Spanish, pleaded guilty on February 7, 1997, to possession of heroin, a class A substance. He later received notice that the Department of Homeland Security sought to remove him based on that conviction and was ordered deported. At the motion hearing, Mercado and his former attorney gave conflicting testimony about whether counsel advised him regarding immigration consequences, whether an interpreter was used, and whether he consented to the search that produced the heroin.

PROCEDURAL HISTORY

Mercado pleaded guilty in the Boston Municipal Court to possession of a class A controlled substance and received a suspended sentence. After receiving a notice to appear in removal proceedings, he filed a motion for a new trial in 2015. Following an evidentiary hearing at which Mercado and plea counsel gave conflicting testimony, the motion judge denied the motion without making findings. The Supreme Judicial Court granted

direct appellate review, clarified the applicable retroactivity period, vacated the denial, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The motion judge must conduct further proceedings consistent with the opinion, including making findings based on the existing evidentiary record or holding a further evidentiary hearing. The judge must resolve the credibility disputes and determine whether counsel's performance was deficient and whether Mercado was prejudiced.

CASES CITED

- Commonwealth v. Sylvain, 466 Mass. 422, 423-424 (2013), S.C., 473 Mass. 832 (2016)
- Commonwealth v. Clarke, 460 Mass. 30, 31, 41, 47-48 (2011)
- Padilla v. Kentucky, 559 U.S. 356, 360, 363-364, 372 (2010)
- Chaidez v. United States, 133 S. Ct. 1103, 1105 (2013)
- Immigration & Naturalization Service v. St. Cyr, 533 U.S. 289, 297 (2001)
- Hill v. Lockhart, 474 U.S. 52, 59 (1985)

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