

SUPREME COURT OF GEORGIA

State v. Addaquay

302 Ga. 412 (2017) · Decided October 30, 2017

SUMMARY

The Supreme Court of Georgia reversed a habeas court’s grant of relief to Thomas Addaquay, who claimed that plea counsel misadvised him about the immigration consequences of his guilty plea. The court held that Addaquay failed to establish that his conviction for criminal damage to property in the second degree made him deportable under the applicable federal removal provisions. The court also rejected his claim concerning the effect of the plea on a future citizenship or naturalization application.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Chief Justice; All the Justices
JURISDICTION	Georgia
DECIDED	October 30, 2017
DISPOSITION	reversed
PROCEDURAL POSTURE	The State appealed the habeas court's order granting post-conviction relief to Addaquay on his claim that plea counsel was constitutionally ineffective in advising him about the immigration consequences of his guilty plea.
STANDARD OF REVIEW	Whether an offense makes a noncitizen deportable is a question of law reviewed de novo. Ineffective-assistance claims in connection with guilty pleas require proof of deficient performance and a reasonable probability that, absent the deficiency, the defendant would have proceeded to trial.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	State v. Thomas Addaquay

TOPICS

- immigration
- habeas corpus
- ineffective assistance
- removal proceedings
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Addaquay proved that his guilty plea made him deportable under the federal removal statute.
2. Whether plea counsel rendered constitutionally ineffective assistance by advising Addaquay that the plea would not make him deportable.
3. Whether the Sixth Amendment right to effective assistance of counsel extends to advice concerning the effect of a guilty plea on a future citizenship or naturalization application.
4. Whether the inability to renew or replace a green card established that Addaquay was deportable or had lost lawful permanent resident status.

HOLDINGS

1. Addaquay failed to establish deportability under the aggravated-felony provision because, even assuming the conviction was a crime of violence, the sentence actually imposed was less than one year.
2. Addaquay failed to prove that he was deportable under the crime-involving-moral-turpitude provision because he offered evidence only of a 1995 admission, which was not within five years of the 2002 offense.
3. The alleged inability to renew or replace Addaquay's green card did not establish deportability or terminate his lawful permanent resident status.
4. The Sixth Amendment claim was meritless insofar as it relied on misinformation about the effect of the plea on a future citizenship or naturalization application because the court declined to extend Padilla to that context.

KEY QUOTATIONS

“where ‘the law is clear that deportation is mandatory . . . , an attorney has a duty to accurately advise his client of that fact,’” (at 414)

“We therefore conclude that this claim of ineffective assistance of counsel is without merit.” (at 418)

FACTUAL BACKGROUND

Addaquay, a lawful permanent resident since at least 1995, pleaded guilty to Georgia criminal damage to property in the second degree for conduct occurring in 2002. Although the offense was a felony, he was sentenced as for a misdemeanor to 11 months and 29 days on probation. He claimed plea counsel told him the conviction would not affect his immigration status or make him deportable, while the habeas court found that the plea rendered him deportable and that he would have gone to trial absent counsel's advice.

PROCEDURAL HISTORY

Addaquay pleaded guilty in 2012 to criminal damage to property in the second degree and was sentenced as for a misdemeanor to 11 months and 29 days on probation. He filed a state habeas petition in 2015, and after a 2016 hearing the habeas court found that counsel had deficiently advised him that the plea would not affect his

immigration status and that he would not be deportable. The Supreme Court of Georgia reversed the habeas court's order.

DISPOSITION

reversed

CASES CITED

- United States v. Sonmez, 777 F.3d 684, 686 n.1 (4th Cir. 2015)
- Ramirez-Chacon v. Holder, 397 F. App'x 179, 182 n.1 (6th Cir. 2010)
- Frazier v. Mathis, 286 Ga. 647, 648 (690 S.E.2d 840) (2010)
- Burt v. Titlow, 571 U.S. 12, 22-23 (2013)
- Padilla v. Kentucky, 559 U.S. 356, 360, 364, 366, 368-369 (2010)
- Encarnacion v. State, 295 Ga. 660, 661 (763 S.E.2d 463) (2014)
- Ildefonso-Candelario v. Attorney General of the United States, 866 F.3d 102, 104 (3d Cir. 2017)
- United States v. Garza-Mendez, 735 F.3d 1284, 1287 (11th Cir. 2013)
- United States v. Gonzalez-Coronado, 419 F.3d 1090, 1093 (10th Cir. 2005)
- Matter of Alyazji, 25 I. & N. Dec. 397, 406-408 (B.I.A. 2011)
- Sijapati v. Boente, 848 F.3d 210, 218 (4th Cir. 2017)
- Savoury v. United States Attorney General, 449 F.3d 1307, 1314 (11th Cir. 2006)
- Escoffery v. United States, 2013 U.S. Dist. LEXIS 160160, *4 (E.D.N.C. Nov. 8, 2013)
- United States v. Escoffery, 572 F. App'x 213 (4th Cir. 2014)

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