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Washington Supremes Address Effective Representation for Noncitizens:

State v. Sandoval

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On March 17, 2011, the Washington Supreme Court decided *State v. Sandoval*. Applying the U.S. Supreme Court's decision in *Padilla v. Kentucky*, the Court vacated defendant's conviction on the basis that he had received ineffective assistance of counsel regarding the immigration consequences of his conviction. The Court found that not only did defense counsel's performance fall below an objective standard of reasonableness, but that the defendant had met his burden to establish prejudice, thus meeting both requirements under the *Strickland v. Washington* test.

As always, the most effective and efficient way to ensure that you have the immigration analysis to effectively represent a noncitizen client is to contact Jonathan Moore (jonathan@defensenet.org) or Ann Benson (abenson@defensenet.org) at WDA's Immigration Project, or consult the short practice advisories on the WDA website are available to provide individual case assistance to defenders representing noncitizen clients.

As always, Ann and Jonathan welcome your input and suggestions on how we can more effectively assist you in representing noncitizen clients.

Key Points from State v. Sandoval

- **Issue Presented Was Narrowly Construed** - The Court narrowly construed the issue presented to focus on the specific advice defense counsel gave to his client regarding deportation consequences. The Court did not address effective assistance on immigration issues in regard to other aspects of defense representation (namely, plea negotiations). Nor did the court address issues related to the impact of charges/pleas/convictions on the ability of a noncitizen to obtain discretionary relief from removal. The U.S. Supreme Court addressed both issues in *Padilla*, which remains the foundation for determining effective assistance of counsel regarding immigration consequences. See WDA's Immigration Project *Padilla* practice advisories on the WDA website.
- **Clear vs. Unclear Risk of Deportation** - The *Sandoval* Court held, as in *Padilla*, that (regardless of the "clarity") defense counsel has an affirmative duty to provide accurate advice to a client regarding the deportation consequences of a charge/plea. In doing so, counsel must identify relevant provisions of the immigration statute and research relevant caselaw interpreting them. The degree/type of advice that will be required to the client will depend on whether counsel determines whether the risk of deportation is "clear" or "unclear".
NOTE: It is not possible to craft a simple list of "clear" crimes that trigger deportation since

such determinations are fact-specific. Again, the best way to determine this is to access WDA resources.

- Boilerplate Advisal Language in Plea Form Does Not Meet Defense Counsel's 6th Amendment Duty - WAPA had argued as the State's amicus counsel that deportation warnings provided (usually as boilerplate language in the plea form) under RCW 10.40.200 was sufficient to meet defense counsel's 6th amendment duties as outline in *Padilla*. The Court flatly rejected this position.
- Deportation Consequences Will Be Factored Into *Strickland's* Prejudice Analysis - The U.S. Supreme Court in *Padilla* did not reach the prejudice prong of the *Strickland* test. The *Sandoval* Court found that "given the severity of the deportation consequence" it would have been rational for defendant (a lawful permanent resident) to risk conviction at trial (and a sentence of 78-102 months vs. the 6 month sentence he got).