

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 12/13/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

STATE OF ARIZONA,) No. 1 CA-CR 11-0205 PRPC
)
Respondent,) DEPARTMENT A
)
v.) Yuma County
) Superior Court
HECTOR GONZALEZ RODRIGUEZ,) No. S1400CR200801430
)
Petitioner.) **DECISION ORDER**
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)
)
)
_____)

Petitioner Hector Gonzalez Rodriguez petitions this court for review from the summary dismissal of his petition for post-conviction relief. Presiding Judge John C. Gemmill, and Judges Margaret H. Downie and Diane M. Johnsen have considered this petition for review and, for the reasons stated, grant review and relief.

Rodriguez pleaded guilty to possession of drug paraphernalia, a class 6 felony, and the trial court placed him on two years' probation. (I. 35.) At the conclusion of the sentencing proceedings, the court provided Rodriguez with a written "Notice of Rights." Among other information, that notice informed Rodriguez of his right to file an "of-right" petition for post-conviction relief pursuant to Rule 32 of the

Arizona Rules of Criminal Procedure. The notice further informed Rodriguez that he must file a notice of post-conviction relief within ninety days after the entry of judgment and warned him of the consequences of the failure to do so. The notice further informed Rodriguez he could obtain a form for the notice of post-conviction relief from the court, the jail or the prison and informed him where to file the form once completed. (I. 38.)

Rodriguez filed his first notice of post-conviction relief fifty-one days after the ninety-day deadline expired. (I. 40.) Rodriguez argued in his notice and in a subsequent motion for reconsideration that the failure to file a timely notice was not his fault. Rodriguez argued that after the trial court placed him on probation, federal authorities took him into custody for deportation proceedings. Rodriguez claimed no one informed him he could be deported if convicted in this matter and it was only then he believed he had a valid claim for post-conviction relief.¹ The federal facilities, however, did not have the form

¹ The transcripts of the change of plea and sentencing hearings are not contained in the record. Therefore, it is unknown whether the trial court warned Rodriguez of the possibility of deportation as required by Arizona Rule of Criminal Procedure 17.2(f). We also note that the Supreme Court

for a notice of post-conviction relief. Rodriguez sought the help of his immigration counsel, who told Rodriguez and his family to seek the help of his original trial counsel. Rodriguez argued that his family then made several attempts to seek the help of Rodriguez's trial counsel who, they claim, either could not or would not help them. Rodriguez claimed he and his family eventually gave up trying to seek the help of his trial counsel and retained Rodriguez's current counsel, who immediately filed the notice of post-conviction relief at issue. (I. 40, 44.) The trial court summarily dismissed the notice as untimely. (I. 43.) The trial court reexamined the matter pursuant to Rodriguez's motion for reconsideration but denied the motion. (I. 45.)

We grant review and relief. While Rodriguez's notice of post-conviction relief was not timely, Rule 32.1(f) expressly provides that any person convicted of a criminal offense may seek post-conviction relief on the ground that "[t]he

issued the decision in *Padilla v. Kentucky* approximately one week before Rodriguez entered his guilty plea. In *Padilla*, the Supreme Court held that the failure to inform a pleading defendant of the possibility of deportation following a guilty plea constitutes ineffective assistance of counsel. *Padilla v. Kentucky*, __ U.S. __, 130 S.Ct. 1473, 1486 (2010).

