

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2013

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CLAUDIA VERGARA CASTANO,

Appellant,

v.

Case No. 5D10-2032

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed January 25, 2013.

3.850 Appeal from the Circuit
Court for Orange County,
Jenifer Davis, Judge.

H. Manuel Hernandez of H. Manuel
Hernandez, P.A., Longwood, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General, Daytona
Beach, for Appellee.

ON REMAND

JACOBUS, J.

We reconsider this matter on remand from the Florida Supreme Court following its decision in Castano v. State, 37 Fla. L. Weekly S740 (Fla. Nov. 21, 2012), which quashed our decision in Castano v. State, 65 So. 3d 546 (Fla. 5th DCA 2011). The Florida Supreme Court has now confirmed that Padilla v. Kentucky, 130 S. Ct. 1473,

1483 (2010), is not retroactive, but has nonetheless held that this is a case to which Padilla applies.

The offense committed by Castano is an offense which clearly subjects her to deportation. See 8 U.S.C. § 1227(a)(2)(E)(i) ("Any alien who at any time after admission is convicted of a crime of . . . child neglect . . . is deportable."); 8 U.S.C. § 1229b(b)(1) (providing that attorney general can cancel removal under certain circumstances, but not if alien had been convicted under 8 U.S.C. § 1227(a)(2)). Because the deportation consequences were clear, we agree with Castano that the standard deportation warning she was given during the plea colloquy fails to satisfy Padilla's requirement that she be given clear advice regarding the deportation consequence. 130 S.Ct. at 1483. The deportation warning during the plea colloquy was also insufficient to cure the prejudice arising from her counsel's failure to comply with the requirements of Padilla. Hernandez v. State, 37 Fla. L. Weekly S730 (Fla. Nov. 21, 2012); Oropesa v. State, 37 Fla. L. Weekly D2805 (Fla. 2d DCA Dec. 5, 2012). Thus, we reverse and remand with instructions to reconsider Castano's motion.

REVERSED and REMANDED WITH INSTRUCTIONS.

LAWSON and BERGER, JJ., concur.