

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

JACQUELINE RODRIQUES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-4725

[April 30, 2008]

PER CURIAM.

We affirm the summary denial of the appellant's motion to vacate plea, but we do so without prejudice.

Appellant claimed her plea entered on March 23, 2003 was involuntary, in part due to a failure of the court to give any immigration warning as to the consequences of the plea. The lower court attempted to refute the allegation by attaching the preprinted change of plea form, without more. This does not conclusively prove that appellant understood the consequences. *See Hen Lin Lu v. State*, 683 So. 2d 1110 (Fla. 4th DCA 1996). Had the motion been legally sufficient, we would have been compelled to reverse.

However, the motion fails to meet the specific pleading requirements of *State v. Green*, 944 So. 2d 208 (Fla. 2006), insomuch as it fails to make any allegation as to how the appellant could prove the warnings were not given and fails to make any allegation that the appellant is deportable solely due to the conviction challenged herein. Absent such specific allegations in the sworn motion, the pleading is legally insufficient and should have been dismissed without prejudice, as there remains time under *Green* for a timely motion. Because time remains under *Green*, we do not command appellant to file an amended motion within any given period of time, though we note the time constraints under *Green* will apply.

SHAHOOD, C.J., POLEN and FARMER, JJ., concur.

* * *

Appeal of order denying rule 3.850 appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Edward A. Garrison, Judge; L.T. Case No. 2002CF013702AXX.

Patrick J. Curry, Fort Lauderdale, for appellant.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing