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1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **Opinion Number:** _____

3 **Filing Date: April 26, 2012**

4 **NO. 32,876**

5 **SAMAIDA GONZALEZ,**

6 Petitioner,

7 v.

8 **STATE OF NEW MEXICO,**

9 Respondent.

10 **ORIGINAL PROCEEDING ON CERTIORARI**

11 **Sheri A. Raphaelson, District Judge**

12 Victoria Ferrara

13 Santa Fe, NM

14 for Petitioner

15 Gary K. King, Attorney General

16 William H. Lazar, Assistant Attorney General

1 Santa Fe, NM

2 for Respondent

3 **DISPOSITIONAL ORDER OF REVERSAL**

4 **Per Curiam.**

5 {1} The above-entitled and numbered appeal was transferred to this Court by the
6 Court of Appeals, and we accepted jurisdiction. Each member of the Court, having
7 read the briefs of the parties, heard oral argument, and otherwise having been fully
8 informed on the issues and applicable law as raised and briefed by the parties; and

9 {2} Each Justice having concurred that there is no reasonable likelihood that a
10 Decision or Opinion would affect the disposition of this appeal or advance the law
11 of the State; therefore,

12 **IT IS ADJUDGED THAT:**

13 {3} On May 15, 2006, Samaida Gonzalez (Appellant) plead guilty to two counts
14 of false imprisonment in violation of NMSA 1978, Section 30-4-3 (1963), and one
15 count of impersonating a peace officer in violation of NMSA 1978, Section 30-27-
16 2.1(A)(2) (1999). Appellant received a conditional discharge and was placed on
17 probation for four years. On December 22, 2008, an Order for Early Discharge From
18 Probation was entered and Appellant's charges were dismissed.

19 {4} About two years later, on September 17, 2010, Appellant filed a motion to
20 withdraw her guilty plea after an immigration attorney advised Appellant that she
21 was not eligible for naturalization because her 2006 guilty plea qualified as a criminal

1 conviction for immigration purposes. The basis of Appellant’s motion to withdraw
2 her guilty plea was ineffective assistance of counsel, alleging that her public defender
3 failed to adequately advise her about the immigration consequences of her guilty
4 plea. Appellant’s motion specifically stated that “while she [understood] English and
5 her employer read the plea agreement to her, it was preferred [that] an interpreter be
6 present.” Appellant’s motion also stated that while the lack of a Spanish interpreter
7 “[did] not present a Sixth Amendment issue, it raise[d] the question whether
8 [Appellant’s] plea was made knowingly.”

9 {5} Following an evidentiary hearing, Appellant’s motion to withdraw her guilty
10 plea was denied. The district court found that the public defender properly advised
11 Appellant of the immigration consequences before she entered her May 15, 2006,
12 guilty plea. Appellant appealed to the Court of Appeals. The Court of Appeals
13 transferred this case to this Court. We exercise jurisdiction over this matter pursuant
14 to NMSA 1978, Section 34-5-8(B) (1983). (“The supreme court may provide for the
15 transfer of any action or decision enumerated in this section from the court of appeals
16 to the supreme court in addition to the transfers provided for in Section 34-5-10 and
17 Subsection C of Section 34-5-14 NMSA 1978.”)

18 {6} To establish ineffective assistance of counsel arising out of a plea agreement
19 “a defendant must show: (1) counsel's performance was deficient, and (2) the
20 deficient performance prejudiced the defense.” *State v. Hunter*, 2006-NMSC-043,
21 ¶ 12, 140 N.M. 406, 143 P.3d 168 (internal quotation marks and citation omitted).

1 The overarching issue in this case is whether the lack of a Spanish interpreter at
2 Appellant’s plea hearing was ineffective assistance of counsel. At the evidentiary
3 hearing, the district court limited the presentation of evidence to “the allegation that
4 defense counsel . . . did not advise of the defendant of immigration consequences of
5 pleading guilty to false imprisonment” The district court found that Appellant
6 was properly advised, and thus, no ineffective assistance of counsel existed in this
7 case. The district court never addressed whether the lack of a Spanish interpreter at
8 Appellant’s plea hearing was an ineffective assistance of counsel. Rather, the district
9 court focused only on whether the public defender properly advised Appellant of the
10 immigration consequences when he stated that Appellant’s guilty plea may result in
11 her deportation.

12 {7} Because the record was not properly developed as to whether the lack of a
13 Spanish interpreter at Appellant’s plea hearing was ineffective assistance of counsel,
14 we reverse and remand to the district court to allow Appellant to amend her motion
15 to withdraw her guilty plea to include a claim of ineffective assistance of counsel
16 based on the lack of a Spanish interpreter. On remand, the district court shall conduct
17 an evidentiary hearing to determine whether the public defender rendered ineffective
18 assistance of counsel when he failed to secure a Spanish interpreter for Appellant at
19 her plea hearing.

20 {8} **IT IS SO ORDERED.**

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PETRA JIMENEZ MAES, Chief Justice

1 **WE CONCUR:**

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PATRICIO M. SERNA, Justice

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RICHARD C. BOSSON, Justice

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EDWARD L. CHÁVEZ, Justice

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CHARLES W. DANIELS, Justice