

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
v.)	ID#: 0804024526
)	
COURTNEY BENNETT,)	
Defendant.)	

Submitted: February 26, 2010
Decided: May 21, 2010

ORDER

**Upon Defendant's Motion for Postconviction Relief –
*SUMMARILY DISMISSED***

1. Defendant, on September 3, 2008, pleaded guilty to carrying a concealed deadly weapon.

2. Although deportation or exclusion from the United States was not discussed during the colloquy, the Truth-in-Sentencing Guilty Plea Form, which Defendant said he had reviewed line-by-line, states:

NON-CITIZENS: Are you aware that conviction of a criminal offense may result in deportation/removal, exclusion from the United States, or denial of naturalization?
 X Yes ___ No

3. The court found Defendant's plea knowing, voluntary and intelligent, and it immediately sentenced Defendant to probation. All Defendant specifically had to do on probation was not drive without a license.

4. Defendant did not file a direct appeal.

5. After Defendant violated probation by driving without a license, he was sentenced to ninety days in prison on July 1, 2009, effective March 24, 2009.

6. Again, Defendant did not file a direct appeal.

7. Defendant attempted to file a motion for postconviction relief in February 2010, protesting that he did not know about the possibility of deportation.

8. The court originally rejected the motion because Defendant failed to comply with Superior Court Criminal Rule 61(b)(1). On the Notice of Noncompliance, the court cautioned Defendant that he was not alleging specific harm and "if you only argue in generalities, your motion will go nowhere." The court also reminded Defendant about the TIS form's warning.

9. On February 22, 2010, Defendant filed a proper motion, which the Prothonotary properly referred.

10. The refiled motion again complains that Defendant's plea counsel was ineffective because he failed to advise Defendant about Defendant's "immigration status." The motion does not allege that Defendant will be deported or

excluded because of the plea. Moreover, despite the court's having brought it to Defendant's attention, Defendant does not address the fact that regardless of whether his lawyer advised him of his immigration status, the TIS form, at the least, warned him that his plea might affect his status. Again, that assumes Defendant is an alien, which he has not alleged. In short, Defendant has not alleged facts supporting relief under *Padilla v. Kentucky*,¹ or any other case.

11. On its own, the court has learned from Department of Correction that the immigration authorities have lodged a detainer against Defendant. The court, however, also has learned that after Defendant finished his sentence here, he was sent to Maryland to serve a sentence there. Accordingly, the court still does not know whether the conviction at issue is causing an immigration problem for Defendant, or whether he is in bigger trouble because of his, as yet unspecified, Maryland conviction. Moreover, as discussed above, Defendant has not explained why the TIS form did not put him on notice about his plea's possible consequences.

12. Defendant also complains that counsel was ineffective because he "failed to appeal my sentence." Again, Defendant has not even tried to explain how he would have won on appeal from either or both of the sentences he received.

13. Finally, Defendant complains: "My attorney did not tell me about

¹--- U.S. ----, 130 S.Ct. 1473, --- L.Ed.2d ---- (2010).

the element of the offense change[?] when you plead guilty to the crime.” That allegation is illegible and incomprehensible. In any event, before accepting his guilty plea, the court reviewed the charge with Defendant, and it gave him fair chance to voice his concerns and ask questions.

14. Defendant also requests appointment of counsel. If Defendant had tried to show that he is facing deportation, the court would have given Defendant’s request more weight. Meanwhile, Defendant has not alleged facts justifying counsel’s appointment, or other relief.

For the foregoing reasons, Defendant’s motion for postconviction relief is **SUMMARILY DISMISSED**. The time for filing a motion for reargument, however, **SHALL** be increased to thirty days from this order’s date.

If Defendant wants the court’s further consideration, including appointment of counsel, he must, in the time provided here, explain how his September 2008 guilty plea will actually lead to his deportation. That includes providing documents showing why he is in prison in Maryland and why the immigration authorities want him. Again, if Defendant is not truly facing deportation because of the Delaware charges, it does not matter now what he was told, or not told, in 2008, because he cannot show actual prejudice. Finally, the court still insists that

Defendant explain how, despite the TIS form's warning, he did not know he might be deported.

IT IS SO ORDERED.

/s Fred S. Silverman

Judge

cc: Prothonotary (Criminal)
Stephen M. Walther, Deputy Attorney General
Courtney R. Bennett, Defendant