

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR MIAMI-
DADE COUNTY

CASE NO: F90-8451
JUDGE: I. REYES

THE STATE OF FLORIDA,
Plaintiff,

Vs.

MARIO ALEJO
Defendant

_____ /

**MOTION TO VACATE NO CONTEST PLEA AND SENTENCE PURSUANT TO
RULE 3.800**

COMES NOW, the Defendant, Mario ALEJO, by and through the undersigned attorney, and pursuant to Florida Rule of Criminal Procedure 3.850 and respectfully requests this Honorable Court to set aside the no contest plea and sentence rendered in this matter on November 20, 2000.

As grounds in support of this motion the Defendant would state the following:

JURISDICTION

1. The Defendant is presently facing deportation proceedings due to the plea on this case. State v. Green, 2006WL 3025732 (Fla. Oct. 26, 2006), Peart v. State, 756 So2d 42 (Fla. 2000), State v. Woods, 750 So.2d 592 (Fla.1999). In Peart v. State, 756 So2d 42 (Fla.2000), the Florida Supreme Court determined that Florida Rule of Criminal Procedure 3.850 has supplanted the writ of Error Coram Nobis.
2. On February 28, 1990, the Defendant Mario Alejo, was arrested and subsequently charged through information with Grand Theft, Resisting Arrest, Petit Theft, and Fraudulent Credit Card Use.
3. The Defendant, Mario Alejo, entered a plea to the information. The Defendant was then sentenced to Credit Timed Served. The Court withheld

adjudication. The plea colloquy conducted by the court failed to orally inform Mr. Alejo that the plea he was entering could subject him to deportation. The plea colloquy consists of the Court performing no inquiry of the defendant.

4. Because Mr. Alejo was never informed by the Court that deportation was possible, as required by the Florida Rules of Criminal Procedure, he was led to believe and did then believe that deportation or threat of deportation was not a consequence of him taking the plea.
5. The Defendant, Mario Alejo, was noticed to appear for Deportation/Removal hearing on April 12, 2007. The trial has been set for January 15, 2008 at 9:00 a.m.
6. Mr. Alejo has been a Lawful Permanent Resident (holds a “green card”) since 1969.
7. He never became a United States Citizen because he was unaware that he could ever be deported.

GROUNDS

1. In April, 2006, approximately 17 years after having accepted the offer in this case, Mr. Alejo was served with the Notice to Appear (“NTA”), the charging document in immigration court. That is when he learned that he would face deportation as a result of entering a plea in this case. Mr. Alejo had never believed, based on the plea colloquy that he could actually be deported because he had never been told that by the Court at the time of entering the plea.
2. Mr. Alejo now realizes that this plea of convenience is now placing him in deportation proceedings.
3. Mr. Alejo was not aware and was never informed by the Court, as required by Florida Rule of Criminal Procedure 3.172(c)(8) that one of the consequences of the entry of the plea could be deportation or possibility of deportation. Had Mr. Alejo been properly advised of the immigration consequences of entering a plea in this case pursuant to the requirements of Florida Rules of Criminal Procedure, he would never have entered a plea and would have demanded a trial by jury.
4. The Supreme Court of Florida recently held in Green v. State, 2006WL 3025732 at 9 (Fla. Oct. 26, 2006), that ‘henceforth, it is the fact that the plea subjects the defendant to deportation, rather than specific threat of deportation, that establishes prejudice for the failure to inform the defendant in accord with Rule 3.172(c)(8).’ Therefore, under the new uniform standard adopted by the Supreme Court in State v. Green, a defendant has standing to vacate the plea that was entered without the proper immigration warnings by submitting either paperwork from the

- Department of Homeland Security verifying the plea may subject him to deportation or an affidavit or expert testimony from an immigration attorney that states the defendant may be subject to deportation based on the plea in this case. Mr. Alejo has submitted from the Immigration Court (see attached), as he is actually in deportation proceedings currently. In receding from the holding in Peart v. State, 756 So2d 42 (Fla.2000), the Supreme Court has erased various disparities that have occurred in various Circuits and established this new, uniform standard. The Court in State v. Green also held that individuals whose cases are already final would have two years from the date of the Green opinion to file a Motion to Vacate under the new rules pronounced by the Court. Mr. Alejo clearly falls within these criteria recently established by the Supreme Court.
5. Mr. Alejo has resided in the United States for almost 40 years. He has two United States Citizen children and his wife is also a citizen of the U.S. Had he known that this plea would have subjected him to be permanently deported, and thus, separated from loved ones, he would not have entered this plea.
 6. Procedurally, Mr. Alejo has not appealed the conviction nor filed any previous Rule 3.850 or other post-conviction claim for relief proceedings. There have not been any other petitions, applications, motion, etc...with respect to this judgment in this court. The Defendant has not filed any petitions, applications, motions, etc., with respect to this judgment in any other court, and there is no petition, application, appeal, motion, etc..now pending in any court, either state or federal, as to the judgment under attack.

This application is timely under, and meets the requirements set forth in Green v. State, 2006 WL 3025732 (Fla. Oct. 26, 2006).

WHEREFORE, the Defendant, Mario Alejo, respectfully requests this Honorable Court to grant his Motion to Vacate No Contest Plea and Sentence Pursuant to Rule 3.800 and set aside the conviction and sentence in this case and grant the Defendant a new trial.

I DO CERTIFY that a copy of this Motion to Vacate Plea and Sentence Pursuant to Rule 3.800 has been mailed/faxed to the Office of the State Attorney, Clerk of Courts, and the chambers of the Honorable Israel Reyes, Miami, Florida, on _____, July, 2007.

Respectfully submitted,

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