

No. 08-651

IN THE
Supreme Court of the United States

JOSE PADILLA,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

JOINT APPENDIX

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TABLE OF APPENDICES

Joint Appendix A

Docket, Hardin District Court,
Commonwealth v. Padilla,
Case No. 01-F-00423 1

Joint Appendix B

Docket, Hardin Circuit Court,
Commonwealth v. Padilla,
Case No. 01-CR-00517..... 6

Joint Appendix C

Docket, Kentucky Court of Appeals,
Padilla v. Commonwealth,
Case No. 2004-CA-001981..... 30

Joint Appendix D

Docket, Supreme Court of Kentucky,
Commonwealth v. Padilla,
Case No. 2006-SC-000321..... 34

Joint Appendix E

Order regarding bond, Hardin District Court,
Commonwealth v. Padilla,
Case No. 01-CR-00517, September 19, 2001 43

Joint Appendix F

Immigration Detainer-Notice of Action,
File No. Axx xxx xxx, U.S. Department of Justice
Immigration and Naturalization Service,
September 20, 2001 44

Joint Appendix G

Indictment, Hardin Circuit Court,
Commonwealth v. Padilla,
Case No. 01-CR-00517,
October 31, 2001 47

Joint Appendix H

Motion to Enter Guilty Plea, Hardin Circuit Court,
Commonwealth v. Padilla,
Case No. 01-CR-00517,
August 22, 2002..... 50

Joint Appendix I

Commonwealth’s Offer on a Plea, Hardin Circuit
Court, *Commonwealth v. Padilla*,
Case No. 01-CR-00517,
August 22, 2002..... 53

Joint Appendix J

Order regarding acceptance of plea, Hardin
Circuit Court, *Commonwealth v. Padilla*,
Case No. 01-CR-00517,
September 6, 2002..... 57

Joint Appendix K

Judgment and Order Imposing Sentence, Hardin
Circuit Court, *Commonwealth v. Padilla*,
Case No. 01-CR-00517,
October 4, 2002..... 61

Joint Appendix L

Acknowledgement/Release, No. 159435-AC, Case
No. A-xx-xxx-xxx, Roederer Correctional Complex,
Kentucky Department of Corrections,
October 10, 2002..... 69

Joint Appendix M

RCr.11.42 Motion, Hardin Circuit Court,
Padilla v. Commonwealth,
Case No. 01-CR-00517, August 13, 2004..... 71

Joint Appendix N

Motion for Evidentiary Hearing and For Personal
Appearance, Hardin Circuit Court,
Padilla v. Commonwealth,
Case No. 01-CR-00517, August 13, 2004..... 75

Joint Appendix O

Affidavit of Jose Padilla,
December 7, 2006 77

Joint Appendix P

Motion to Strike “Brief for Appellant,
Commonwealth of Kentucky,” Supreme Court of
Kentucky, *Commonwealth v. Padilla*,
Case No. 2006-SC-000321,
December 8, 2006 79

Joint Appendix Q

Reply Brief for Appellant Commonwealth of
Kentucky, Supreme Court of Kentucky,
Commonwealth v. Padilla,
Case No. 2006-SC-000321,
May 5, 2007 90

JOINT APPENDIX A
HARDIN DISTRICT COURT

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Case No. 01-F-00423

COMMONWEALTH OF KENTUCKY,
Plaintiff,

v.

JOSE R. PADILLA
Defendant.

CASE DOCKET

DATE	PROCEEDINGS
09/17/2001	Charge Filed CHARGE 1 ORIGINAL ARRSTDT=09/17/01 0423310 - POSSESSION OF MARIJUANA
09/17/2001	Charge Filed CHARGE 2 ORIGINAL 0420750 - USE/POSSESS DRUG PARAPHERN 1ST
09/17/2001	Charge Filed CHARGE 3 ORIGINAL 0423210 - TRAFF MARI; 5+ LBS; 1ST OFFENSE

DATE	PROCEEDINGS
09/17/2001	Charge Filed CHARGE 4 ORIGINAL 0054920 - 392 FedSafeReg Driving Mot Veh
09/17/2001	Charge Filed CHARGE 5 ORIGINAL 0007230 - INCORRECT GROSS WEIGHT ON ID
09/17/2001	Charge Filed CHARGE 6 ORIGINAL 0054920 - 392 FedSafeReg Driving Mot Veh
09/19/2001	Case Filed DISTRICT FELONY 9-26-2001 ALL COUNTS REFER HCGJ. NO BOND. DEFT LODGED. COPY FILE COM' TH ATTY 10-31-01 NTB CGS 4 AND 6. 10-31-01 IND HCGJ CGS 1,2,3,5 01- CR-00517. PAPERS TRANSF. HCC
09/19/2001	Scheduled Event ARRAIGNMENT HON. KIMBERLY WINKENHOFER SHUMATE 09/19/01 at 08:30 am
09/19/2001	Document Filed DRIVING RECORD

DATE	PROCEEDINGS
09/19/2001	Scheduled Event PRELIMINARY HEARING HON. KIMBERLY WINKENHOFER SHUMATE LODGED-NO BOND 09/26/01 at 09:30 am
09/19/2001	Document Filed ORDER OF COMMITMENT
09/19/2001	Document Filed ORDER APPOINTING PUBLIC ADVOCATE
09/19/2001	Document filed ORDER – OTHER JUDGE ORDER AMENDING BOND TO NO BOND
09/26/2001	Document Filed ORDER OF COMMITMENT JUDGE FAXED HCDC
09/26/2001	NOE TO ALL COUNSEL OF REC Method: OTHER
10/31/2001	Charge Disposed CHARGE 1 ORIGINAL INDICTMENT BY GRAND JURY ARRSTDT=09/17/01 0423310 - POSSESSION OF MARIJUANA

DATE	PROCEEDINGS
10/31/2001	Charge Disposed CHARGE 2 ORIGINAL INDICTMENT BY GRAND JURY 0420750 - USE/POSSESS DRUG PARAPHERN 1ST
10/31/2001	Charge Disposed CHARGE 3 ORIGINAL INDICTMENT BY GRAND JURY 0423210 - TRAFF MARI;5+ LBS;1ST OFFENSE
10/31/2001	Charge Disposed CHARGE 4 ORIGINAL NO TRUE BILL RETURNED BY GRAND JRY 0054920 - 392 FedSafeReg Driving Mot Veh
10/31/2001	Charge Disposed CHARGE 5 ORIGINAL INDICTMENT BY GRAND JURY 0007230 - INCORRECT GROSS WEIGHT ON ID
10/31/2001	Charge Disposed CHARGE 6 ORIGINAL NO TRUE BILL RETURNED BY GRAND JRY 0054920 - 392 FedSafeReg Driving Mot Veh

DATE	PROCEEDINGS
10/31/2001	Case Disposed 42 9-26-2001 ALL COUNTS REFER HCGJ. NO BOND. DEFT LODGED. COPY FILE COM' TH ATTY 10-31-01 NTB CGS 4 AND 6. 10-31-01 IND HCGJ CGS 1,2,3,5 01- CR-00517. PAPERS TRANSF. HCC

JOINT APPENDIX B
HARDIN CIRCUIT COURT
DIVISION III

[Certified Copy 10/19/2004]

Case No. 01-CR-00517

COMMONWEALTH OF KENTUCKY,
Plaintiff,

v.

JOSE R. PADILLA
Defendant.

CASE DOCKET

DATE	PROCEEDINGS
10/31/2001	Case Filed CIRCUIT CRIMINAL <i>APPEAL FILED 9-24-04</i>
10/31/2001	Scheduled Event Nov 27 2001 at 3:00 PM ARRAIGNMENT HON. KELLY MARK EASTON <i>BOND \$100,000. IN CUSTODY</i>

DATE	PROCEEDINGS
10/31/2001	Charge Filed 0423310 POSSESSION OF MARIJUANA Citation: 1C5416952-1 Citation Date: 11/19/2001 CHARGE 1 ORIGINAL
10/31/2001	Charge Filed 0420750 USE/POSSESS DRUG PARAPHERNALIA, 1ST OFFENSE Citation: 1C5416952-2 Citation Date: 11/19/2001 CHARGE 2 ORIGINAL
10/31/2001	Document Filed INDICTMENT
10/31/2001	Charge Filed 0423210 TRAFFIC IN MARIJUANA, > 5 LBS - 1ST OFFENSE Citation: 1C5416952-3 Citation Date: 11/19/2001 CHARGE 3 ORIGINAL

DATE	PROCEEDINGS
10/31/2001	Charge Filed 0007230 **OBS** INCORRECT GROSS WEIGHT ON VEHICLE ID CARDS Citation: 1A7567491-1 Citation Date: 11/19/2001 CHARGE 4 ORIGINAL
10/31/2001	Cross Reference DI 01-F-00423 GDJ
11/02/2001	Bail Set \$ 100,000.00 CASH
11/19/2001	Document Filed DISTRICT COURT FILE <i>01-F-00423 EDC</i>
12/12/2001	Document Filed ORDER OF ARRAIGNMENT - NOT GUILTY PLEA <i>DEF PLEA NG - PC 1-22-02 AT</i> <i>1:15PM - PAY PA FEE 50.00 &</i> <i>2.50 DCE - BOND REMAINS THE</i> <i>SAME - COPIES HD CHB</i> <i>COMTH ATTY, Q PEARL, JR</i>

DATE	PROCEEDINGS
12/12/2001	<p>NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER OF ARRAIGNMENT - NOT GUILTY PLEA HAND DELIVERY <i>DEF PLEA NG - PC 1-22-02 AT 1:15PM - PAY PA FEE 50.00 & 2.50 DCE - BOND REMAINS THE SAME -COPIES HD CHB</i> <i>COM'TH ATTY, Q PEARL, JR</i></p>
12/12/2001	<p>Document Filed ORDER FOR DISCOVERY <i>PARTIES GRANT DISCOVERY - COM'TH BY 1-22-02 AND DEF BY 2-19-02 - COPIES HD CHB</i> <i>COM'TH ATTY, Q PEARL, JR</i></p>
12/12/2001	<p>NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER FOR DISCOVERY HAND DELIVERY <i>PARTIES GRANT DISCOVERY - COM'TH BY 1-22-02 AND DEF BY 2-19-02 - COPIES HD CHB</i> <i>COM'TH ATTY, Q PEARL, JR</i></p>

DATE	PROCEEDINGS
12/12/2001	Scheduled Event Jan 22 2002 at 1:15 PM PRETRIAL CONFERENCE HON. KELLY MARK EASTON
02/05/2002	Document Filed TENDERED DOCUMENT <i>ORDER SETTING TRIAL</i>
02/08/2002	Document Filed ORDER SETTING TRIAL / HEARING <i>for jury trial 5-21-02. at 9:00.</i> <i>copy to com'th atty. and q. pearl</i> <i>jr.</i>
02/08/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER SETTING TRIAL / HEARING HAND DELIVERY <i>for jury trial 5-21-02, at 9:00.</i> <i>copy to com'th atty. and q. pearl</i> <i>jr.</i>

DATE	PROCEEDINGS
02/12/2002	Scheduled Event at 09:00 AM JURY TRIAL HON. KELLY MARK EASTON SET FOR 5-21-02 - WRONG DATE - NEW ORDER ENTERED 2-12-02 SET FOR 3-21-02
02/12/2002	Document Filed ORDER SETTING TRIAL / HEARING <i>CORRECT TRIAL DATE IS 3-21-02 AT 9AM, COPIES HD CHB COMTH ATTY, Q PEARL, JR</i>
02/12/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER SETTING TRIAL / HEARING HAND DELIVERY
02/14/2002	Document Filed TENDERED DOCUMENT CA <i>AGREED ORDER</i>

DATE	PROCEEDINGS
02/19/2002	Scheduled Event at 09:00 AM JURY TRIAL HON. KELLY MARK EASTON <i>CONT. TO 5-31-02 AT 9:00</i>
02/19/2002	Document Filed ORDER-AGREED <i>FOR JURY TRIAL CONT. TO 5-31-02 AT 9:00. COPY HDCHB TO COM' TH ATTY. Q. PEARL JR</i>
02/19/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER - AGREED HAND DELIVERY <i>FOR JURY TRIAL CONT TO 5-31-02 AT 9:00. COPY HDCHB TO COM' TH ATTY. Q. PEARL JR.</i>
02/19/2002	Scheduled Event May 31 2002 at 09:00 AM JURY TRIAL HON. KELLY MARK EASTON
05/01/2002	Motion Filed MOTION TO SUPPRESS ATTORNEY-PUBLIC ADVOCATE <i>WITH TEND. ORDER</i>

DATE	PROCEEDINGS
05/06/2002	Scheduled Event May 21 2002 at 1:15 PM MOTION HOUR HON. KELLY MARK EASTON
05/21/2002	Document Filed MISCELLANEOUS <i>COPY OF DOCKET MARKED - HEARING ON MOTION TO SUPPRESS MAY 28, 2002 AT 8AM - COPIES HD CHB COMTH, Q PEARL, JR</i>
05/23/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. MISCELLANEOUS HAND DELIVERY <i>COPY OF DOCKET MARKED - HEARING ON MOTION TO SUPPRESS MAY 28, 2002 AT 8AM - COPIES HD CHB COMTH, Q PEARL, JR</i>
05/23/2002	Scheduled Event May 28 2002 at 08:00 AM SUPPRESSION HEARING HON. KELLY MARK EASTON

DATE	PROCEEDINGS
05/28/2002	Document Filed EXHIBIT CA <i>EXHIBITS # 1 & 2</i>
05/29/2002	Document Filed ORDER - OTHER <i>DEF'S CONSENT TO SEARCH WA VALID, THE MOTION TO SUPPRESS BE DENIED, SEE ORDER FOR OTHER DETAILS, COPIES HD CHB COMTH, Q PEARL</i>
05/29/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER - OTHER HAND DELIVERY <i>DEF'S CONSENT TO SEARCH WA VALID, THE MOTION TO SUPPRESS BE DENIED, SEE ORDER FOR OTHER DETAILS, COPIES HD CHB COMTH, Q PEARL</i>
05/30/2002	Document Filed PRETRIAL COMPLIANCE CA <i>SUPPLEMENTAL</i>

DATE	PROCEEDINGS
06/03/2002	Document Filed TENDERED DOCUMENT <i>ORDER, TEND. AFTER DATE</i>
06/06/2002	Scheduled Event Aug 22 2002 at 09:00 AM JURY TRIAL HON. KELLY MARK EASTON
06/06/2002	Document Filed ORDER SETTING TRIAL / HEARING <i>SET FOR 8-22-02 AT 9. COPY HDCHB TO COM'TH ATTY, AND Q. PEARL, JR.</i>
06/06/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER SETTING TRIAL / HEARING HAND DELIVERY <i>SET FOR 8-22-02 AT 9. COPY HDCHB TO COM'TH ATTY, AND Q. PEARL, JR.</i>
08/22/2002	Motion Filed MOTION TO ENTER GUILTY PLEA ATTORNEY-PUBLIC ADVOCATE

DATE	PROCEEDINGS
08/22/2002	Document Filed COMMONWEALTH OFFER ON A PLEA OF GUILTY CA
09/04/2002	Document Filed TENDERED DOCUMENT CA <i>ORDER - (GUILTY PLEA)</i>
09/11/2002	Charge Disposed 0007230 **OBS** INCORRECT GROSS WEIGHT ON VEHICLE ID CARDS CHARGE 4 ORIGINAL DISMISSAL BY MOTION OF PROSECUTOR
09/11/2002	Document Filed JUDGMENT ON PLEA OF GUILTY <i>DIS CT 4, PLEA G POSS OF MARJ, POSS OF DRUG PARA, TRAFF IN MARJ, SENT SET FOR 9-17-02 AT 1:15PM, COPIES HD CHB COMTH, Q PEARL, JR, PT, PROB</i>

DATE	PROCEEDINGS
09/11/2002	<p>NOE to All Counsel of Record and Parties Not Represented by Counsel. JUDGMENT ON PLEA OF GUILTY HAND DELIVERY <i>DIS CT 4, PLEA G POSS OF MARJ, POSS OF DRUG PARA, TRAFF IN MARJ, SENT SET FOR 9-17-02 AT 1:15PM, COPIES HD CHB COMTH, Q PEARL, JR, PT, PROB</i></p>
09/11/2002	<p>Scheduled Event Sep 17 2002 at 1:15 PM SENTENCING HON. KELLY MARK EASTON</p>
09/11/2002	<p>Sentence Imposed <i>DEF TO SERVE 5 YR, THEN PROB, CT 1 & 2 RUN CONCUR W CT 3 BUT CONSEC W ANY OTHER SENT, SEE JUDGMENT FOR OTHER DETAILS</i></p>

DATE	PROCEEDINGS
09/11/2002	Sentence Imposed <i>SEE CT 1 FOR FEES & COSTS, CT 1 & 2 RUN CONCURD W CT 3, BUT CONSEC W ANY OTHER SENT, SENT TOTAL 10 YRS, SERVE 5 YRS, PROB BAL, SEE JUDGMENT FOR OTHER DETAILS</i>
09/11/2002	Sentence Imposed <i>SEE CT 1 FOR FEES & COSTS, CT 1 & 2 RUN CONCURD W CT 3 BUT CONSEC W ANY OTHER SENT, SENT TOTAL 10 YRS, SERVE 5 YRS BAL PROB SEE JUDGMENT FOR OTHER DETAILS</i>
09/17/2002	Document Filed PRESENTENCE INVESTIGATION REPORT <i>SEE CLERK'S CONFIDENTIAL FILE</i>
10/03/2002	Document Filed TENDERED DOCUMENT CA <i>JUDGMENT AND ORDER IMPOSING SENTENCE</i>

DATE	PROCEEDINGS
10/04/2002	Case Disposed 338 Days <i>APPEAL FILED 9-24-04</i>
10/04/2002	Charge Disposed 0423310 POSSESSION OF MARIJUANA CHARGE 1 ORIGINAL GUILTY
10/04/2002	Charge Disposed 0420750 USE/POSSESS DRUG PARAPHERNALIA, 1ST OFFENSE CHARGE 2 ORIGINAL GUILTY
10/04/2002	Charge Disposed 0423210 TRAFFIC IN MARIJUANA, > 5 LBS - 1ST OFFENSE CHARGE 3 ORIGINAL GUILTY

DATE	PROCEEDINGS
10/04/2002	Document Filed JUDGMENT / SENTENCE - PLEA OF GUILTY <i>D GUILTY POSS OF MARJ, POSS OF DRUG PAR, TRAF IN MARJ, SENT TOTAL 10 YRS, SERVE 5 YRS, PROB, SEE JUDG FOR OTHER DETAILS, C HD CHB COMTH, Q PEARL, JR, PT, PROB, HCSD, FCM JAILER, WARDEN</i>
10/04/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. JUDGMENT / SENTENCE - PLEA OF GUILTY OTHER <i>D GUILTY POSS OF MARJ, ROSS OF DRUG PAR, TRAF IN MARJ, SENT TOTAL 10 YRS, SERVE 5 YRS, PROB, SEE JUDG FOR OTHER DETAILS, C HD CHB COMTH, Q PEARL, JR, PT, PROB, HCSD, FCM JAILER, WARDEN</i>
12/13/2002	Document Filed TENDERED DOCUMENT CA <i>AGREED ORDER</i>

DATE	PROCEEDINGS
12/30/2002	Document Filed ORDER - AGREED <i>DEF SHALL PAY TO CW ATTY \$12,000.00 & UPON PAYMENT OF FUNDS SHALL RET 1995 FREIGHTLINER AND TRAILER. SEE ORDER FOR FURTHER DETAILS. COPIES HDCHB TO CW ATTY, Q PEARL, & KY MOTOR</i>
12/30/2002	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER - AGREED OTHER <i>DEF SHALL PAY TO CW ATTY \$12,000.00 & UPON PAYMENT OF FUNDS SHALL RET 1995 FREIGHTLINER AND TRAILER. SEE ORDER FOR FURTHER DETAILS. COPIES HDCHB TO CW ATTY, Q PEARL, & KY MOTOR</i>
01/29/2003	Motion Filed MOTION TO SUSPEND (FURTHER EXECUTION OF SENTENCE) ATTORNEY-PRIVATE <i>W TEND ORDERS</i>

DATE	PROCEEDINGS
02/05/2003	Scheduled Event at 00:00 MOTION NOT REQUIRING HEARING HON. KELLY MARK EASTON
02/05/2003	Document Filed ORDER AMENDING <i>KY VEHICLE ENFORCEMENT MAY DISPOSE OF ITEMS LISTED, SEE ORDER FOR OTHER DETAILS COPIES HD CHB COM'TH, Q PEARL, JR, FCM KY VEH ENFORCEMENT</i>
02/05/2003	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER AMENDING OTHER <i>KY VEHICLE ENFORCEMENT MAY DISPOSE OF ITEMS LISTED, SEE ORDER FOR OTHER DETAILS, COPIES HD CHB COM'TH, Q PEARL, JR, FCM KY VEH ENFORCEMENT</i>

DATE	PROCEEDINGS
02/11/2003	Document Filed ORDER DENYING <i>MOTION FOR SHOCK</i> <i>PROBATION IS DENIED.</i> <i>COPIES HDCHB TO CW ATTY, Q</i> <i>PEARL, PROB & PT.</i>
02/11/2003	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER DENYING HAND DELIVERY <i>MOTION FOR SHOCK</i> <i>PROBATION IS DENIED.</i> <i>COPIES HDCHB TO CW ATTY, Q</i> <i>PEARL, PROB & PT.</i>
03/11/2003	Document Filed TENDERED DOCUMENT CA <i>ORDER OF RELEASE OF</i> <i>PROPERTY</i>
04/08/2003	Document Filed ORDER - OTHER <i>RELEASE OF BRIEFCASE AND</i> <i>ITS CONTENTS TO THE DEFT.</i> <i>OR AGENT. COPIES HD CHB TO</i> <i>COMTH ATTY, Q. PEARL, JR.</i> <i>AND FCM TO KMVE.</i>

DATE	PROCEEDINGS
04/08/2003	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER - OTHER OTHER <i>RELEASE OF BRIEFCASE AND ITS CONTENTS TO THE DEFT. OR AGENT. COPIES HD CHB TO COMTH ATTY, Q. PEARL, JR. AND FCM TO KMVE.</i>
08/18/2004	Motion Filed MOTION TO VACATE ATTORNEY-PRO SE <i>FOR RCR 11.42 MOTION - COPIES HD C HB COMTH ATTY, FCM ATTY GENERAL</i>
08/18/2004	Motion Filed MOTION - OTHER ATTORNEY-PRO SE <i>FOR EVIDENTIARY HEARING & FOR PERSONAL APPEARANCE</i>
08/18/2004	Motion Filed MOTION - OTHER ATTORNEY-PRO SE <i>FOR APPOINTMENT OF COUNSEL W ATTACHMENTS</i>

DATE	PROCEEDINGS
08/18/2004	Document Filed AFFIDAVIT OF INDIGENCY APS <i>W TEND OI</i>
08/18/2004	Charge Filed 0026070 MOTION TO VACATE SENTENCE, SET ASIDE OR CORRECT SE Citation: NA Citation Date: CHARGE 5 ORIGINAL <i>RCR 11.42</i>
08/19/2004	Scheduled Event Sep 9 2004 at 06:15 AM REVIEW HON. KELLY MARK EASTON <i>SUBMIT FILE ON 11.42</i>
09/14/2004	Charge Disposed 0026070 MOTION TO VACATE SENTENCE, SET ASIDE OR CORRECT SE CHARGE 5 ORIGINAL DENIED <i>RCR 11.42</i>
09/14/2004	Document Filed ORDER DENYING <i>RCR 11.42 MOTION IS DENIED.</i> <i>COPIES AS LISTED.</i>

DATE	PROCEEDINGS
09/14/2004	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER DENYING OTHER <i>RCR 11.42 MOTION IS DENIED. COPIES AS LISTED.</i>
09/23/2004	Motion Filed MOTION TO PROCEED IN FORMA PAUPERIS ATTORNEY-PRO SE <i>W TEND ORDER & TEND NOTICE OF APPEAL</i>
09/23/2004	Motion Filed MOTION - OTHER ATTORNEY-PRO SE <i>FOR APPOINTMENT OF COUNSEL ON APPEAL W TEND ORDER</i>
09/23/2004	Motion Filed MOTION - OTHER ATTORNEY-PRO SE <i>FOR COMPLIANCE PURSUANT TO CR 75.0 7(4) W TEND ORDER</i>
09/23/2004	Document Filed AFFIDAVIT OF INDIGENCY APS <i>W TEND OI</i>

DATE	PROCEEDINGS
09/23/2004	Document Filed DESIGNATION OF RECORD APS
09/24/2004	Document Filed ORDER- OTHER <i>DEF IS ALLOWED TO FILE APPEAL IN FORMA PAUPERIS & APPT OF COUNSEL IS GRANTED, CFCM J PADILLA, DEPT OF PUB ADV, Q PEARL JR, COM'TH ATTY, ATTY GENERAL, G M GEOGHEGAN, III, CLERK, KY CT OF APPEALS</i>
09/24/2004	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER-OTHER FIRST CLASS MAIL <i>DEF IS ALLOWED TO FILE APPEAL IN FORMA PAUPERIS & APPT OF COUNSEL IS GRANTED, C FCM J PADILLA, DEPT OF PUB ADV, Q PEARL JR, COM'TH ATTY, ATTY GENERAL, G M GEOGHEGAN, III, CLERK, KY CT OF APPEALS</i>

DATE	PROCEEDINGS
09/24/2004	Document Filed NOTICE OF APPEAL APS <i>OF JOSE R PADILLA FILED & C FCM J PADILLA, DEPT OF PUB ADV, Q PEARL JR, COMTH ATTY, ATTORNEY GENERAL, G M GEOGHEGAN, III, CLERK, KY CT OF APPEALS</i>
09/24/2004	NOE to All Counsel of Record and Parties Not Represented by Counsel. NOTICE OF APPEAL FIRST CLASS MAIL <i>OF JOSE R PADILLA FILED & C FCM J PADILLA, DEPT OF PUB ADV, Q PEARL JR, COMTH ATTY, ATTORNEY GENERAL, G M GEOGHEGAN, III, CLERK, KY CT OF APPEALS</i>
09/27/2004	Document Filed TAPE <i>W CERTIFICATION OF RECORD ON APPEAL</i>
10/07/2004	Document Filed CORRESPONDENCE APA <i>FROM DEPT OF PUBLIC ADV IN REF TO CERT OF CASE</i>

DATE	PROCEEDINGS
10/12/2004	Document Filed DESIGNATION OF RECORD APA
10/19/2004	Document Filed NOTICE OF CERTIFICATION OF RECORD ON APPEAL <i>CERT OF RECORD ON APPEAL,</i> <i>NOTICE OF APPEAL</i> <i>CERTIFIED, C FCM J PADILLA;</i> <i>DEPT OF PUBLIC ADV;</i> <i>Q PEARL, JR ; C SHAW,</i> <i>COM'TH ATTY; ATTY GEN; G M</i> <i>GEOGHEGAN, III, CLERK, KY</i> <i>CT OF APPEALS</i>
10/19/2004	NOE to All Counsel of Record and Parties Not Represented by Counsel. NOTICE OF CERTIFICATION OF RECORD ON APPEAL FIRST CLASS MAIL <i>CERT OF RECORD ON APPEAL,</i> <i>NOTICE OF APPEAL</i> <i>CERTIFIED, C FCM J PADILLA;</i> <i>DEPT OF PUBLIC ADV;</i> <i>Q PEARL, JR ; C SHAW,</i> <i>COM'TH ATTY; ATTY GEN; G M</i> <i>GEOGHEGAN, III, CLERK, KY</i> <i>CT OF APPEALS</i>

JOINT APPENDIX C
COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 2004-CA-001981

Appeal from Hardin Circuit Court
Honorable Kelly M. Easton, Judge
Action No. 01-CR-00517

JOSE R. PADILLA

Appellant,

v.

COMMONWEALTH OF KENTUCKY,

Appellee.

CASE DOCKET

DATE	PROCEEDINGS
09/14/2004	Circuit Court Judgment
09/24/2004	Notice Of Appeal - Criminal
10/19/2004	Notif. Of Certification (Reg.- Criminal)
10/20/2004	Record Request From Circuit Court Clrk
10/25/2004	Record Filed
10/29/2004	Inform Public Advocate That Record Filed

DATE	PROCEEDINGS
12/07/2004	Appeal Perfected
02/07/2005	Appellee Brief Filed
02/07/2005	Substantive Motion
02/22/2005	Motions Scheduled For Following Steps.
02/23/2005	Late Letter - Return Of Pleading On Court's Own Motion
02/25/2005	Procedural Motion
03/11/2005	Motions Scheduled For Following Steps.
03/14/2005	Order Granting Procedural Motion
03/14/2005	Case Abated By Court Order
03/28/2005	Order Granting Procedural Motion
03/28/2005	Appellant's Reply Brief
10/05/2005	Return To Active Docket Court Order Delivered, Returning This Case To The Active Docket.
10/05/2005	Submission
11/08/2005	Appeal Assigned On The Merits Assigned Month:03/2006 Presiding Judge:Combs Sara Walter Panel:1 Note:

DATE	PROCEEDINGS
12/29/2005	Assign/Schedule (Date, Time & Location) Date:03/08/2006 Time:09:30 AM Location:Jefferson County Judicial Center, 10th Floor Appellate Courtroom, 700 West Jefferson, Louisville, Kentucky Note:
02/13/2006	Record Returned From Judge's Chambers. Judge Combs Returned 1 Brown Case Folder On 2/7/06.
03/08/2006	Procedural Motion Appellant Counsel's Motion To Respond In Some Format. (3 Copies To Js)
03/21/2006	Motions Scheduled For Following Steps.
03/31/2006	Opinion - Vacating & Remanding Opinion Vacating And Remanding Combs Dyche (Concurs) And Henry (Dissents And Files Separate Opinion) To Be Published 12 Pages
03/31/2006	Order Denying Procedural Motion Order The Court Orders That The Appellant Counsel's Motion To Respond In Some Format To Any Questions The Panel May Have Regarding The Merits Of The Appeal Is Hereby Denied As Moot In Light Of The Opinion Rendered.

DATE	PROCEEDINGS
05/01/2006	Disc. Review Filed KY Supreme Court Motion For Discretionary Review Filed In Supreme Court. 2006-SC-321-D
08/17/2006	Disc. Review Granted By Supreme Ct. Order Granting Discretionary Review In Supreme Court. 2006-SC-321-D
06/20/2008	Finality

JOINT APPENDIX D
SUPREME COURT OF KENTUCKY

2006-SC-000321-DG

On Review From The Court Of Appeals
Case Number 2004-CA-001981
Hardin Circuit Court No. 01-CR-000517

COMMONWEALTH OF KENTUCKY,
Appellant,

v.

JOSE R. PADILLA
Appellee.

CASE DOCKET

DATE	PROCEEDINGS
09/14/2004	JUDGMENT / ORIGINAL ACTION DATE: JD
05/01/2006	MOTION FOR DISCRETIONARY REVIEW (CRMN.): DR No Filing Fee Required; Court Of Appeals Opinion Rendered March 31, 2006; P. (Due Date: 05/31/2006)
05/17/2006	RESPONSE TO MOTION FOR DISC. REVIEW: RS Respondent Filed Response To Motion For Discretionary Review.

DATE	PROCEEDINGS
05/17/2006	READY - DISCRETIONARY REVIEW: R5
05/17/2006	SENT OUT FOR ASSIGNMENT: SH
08/17/2006	ORDER GRANTING DISC. REVIEW: DG Case Will Stand Submitted Following Briefing. No Oral Argument Will Be Scheduled. (Due Date: 10/16/2006)
08/23/2006	RECORD FILED: RF 1 Volume Record, 1 Video Tape, 1 Video Tape Copy, And Court Of Appeals' Record.
08/28/2006	RECORD CHECKED OUT: RCDOUT 1 Volume Record, 1 Video Tape Copy Checked Out To Attorney General's Office.
09/13/2006	MISCELLANEOUS MOTIONS: MM Hon. Damon L. Preston Filed Motion To Add Hon. Timothy G. Arnold As Co-Counsel For Appellant. (Due Date: 09/26/2006)
09/27/2006	SCHEDULE TO MOTION DOCKET: MS No Response Filed

DATE	PROCEEDINGS
09/29/2006	<p>MISC MOTION ORDER: OM Order Granted Appellee's Motion To Add Hon. Timothy G. Arnold As Co-Counsel Of Record With Hon. Richard E. Neal.</p>
10/16/2006	<p>MOTION FOR EXT.OF TIME (13 DAY RESPONSE): ME Appellant, Commonwealth Of Kentucky, Filed Motion For An Extension Of Time, To And Including November 15, 2006, In Which To File Its Brief. (Due Date: 10/29/2006)</p>
10/31/2006	<p>SCHEDULE TO MOTION DOCKET: MS No Response Filed.</p>
11/02/2006	<p>ORDER FOR EXTENSION OF TIME: OE Order Granted Appellant's Motion For An Extension Of Time, To And Including November 15, 2006, In Which To File Its Brief. (Due Date: 11/15/2006)</p>
11/15/2006	<p>APPEAL PERFECTED (AFTER D. R. GRANTED): DP 1 Volume Record, 1 Video Tape Copy Returned By Attorney General's Office. (Due Date: 01/14/2007)</p>

DATE	PROCEEDINGS
11/15/2006	<p>RECORD CHECKED OUT: RCDOUT 1 Volume Record, 1 Video Tape Copy Checked Out To Dept. Of Public Advocacy.</p>
12/08/2006	<p>MOTION AS TO BRIEFING: MB Appellee Filed Motion To Strike Brief For Appellant, Commonwealth Of Kentucky. (Due Date: 12/21/2006)</p>
12/15/2006	<p>RESPONSE TO MOTION AS TO BRIEFING: ZB Appellant Filed Response To Motion To Strike Brief For Appellant, Commonwealth Of Kentucky.</p>
12/15/2006	<p>SCHEDULE TO MOTION DOCKET: MS</p>
01/16/2007	<p>MOTION FOR EXT. OF TIME (13 DAY RESPONSE): ME Appellee Filed Motion For An Extension Of Time Of Thirty (30) Days From The Date Of The Order Ruling On The Motion To Strike Brief For Commonwealth In Which To File His Brief. (Due Date: 01/29/2007)</p>

DATE	PROCEEDINGS
01/30/2007	SCHEDULE TO MOTION DOCKET: MS No Response Filed.
02/12/2007	ORDER ON COURTS OWN MOTION: BC Appellee's Motion To Strike The Appellant's Brief Is Passed To The Consideration Of The Merits Of The Appeal.
02/12/2007	ORDER FOR EXTENSION OF TIME: OE Order Granted Appellee's Motion For An Extension Of Time In Which To File His Brief. Appellee Shall File His Brief Within 30 Days Of The Date Of The Entry Of This Order. (Due Date: 03/14/2007)
03/14/2007	MOTION FOR EXT. OF TIME (13 DAY RESPONSE): ME Appellee File Motion For An Extension Of Time, To And Including May 3, 2007, In Which To File His Brief. (Due Date: 03/27/2007)
03/28/2007	SCHEDULE TO MOTION DOCKET: MS No Response Filed.

DATE	PROCEEDINGS
03/28/2007	<p>ORDER FOR EXTENSION OF TIME: OE</p> <p>Order Granted Appellee's Motion For An Extension Of Time, To And Including May 3, 2007, In Which To File His Brief As A Final Extension Of Time.</p> <p>(Due Date: 05/03/2007)</p>
05/03/2007	<p>MOTION FOR EXT. OF TIME (13 DAY RESPONSE): ME</p> <p>Appellee Filed Motion For 7 Day Extension Of Time, To And Including May 10, 2007, In Which To File The "Brief For Appellee".</p> <p>(Due Date: 05/16/2007)</p>
05/10/2007	<p>**NOTE**: CK</p> <p>Tendered 11 Copies Of Appellee Brief. (1 Volume Record, 1 Video Tape Copy Returned By The Department Of Public Advocacy)</p>
05/17/2007	<p>SCHEDULE TO MOTION DOCKET: MS</p> <p>No Response Filed.</p>
05/21/2007	<p>ORDER FOR EXTENSION OF TIME: OE</p> <p>Order Granted Appellee's Motion For An Extension Of Time In Which To File His Brief And The Heretofore Tendered Brief Is Filed.</p>

DATE	PROCEEDINGS
05/21/2007	<p>APPELLEE BRIEF FILED: AB Appellee Brief Filed. (Due Date: 06/05/2007)</p>
06/05/2007	<p>APPELLANT'S REPLY BRIEF FILED: RB Appellant's Reply Brief Filed With CD.</p>
06/05/2007	<p>READY (ON MERITS OF APPEAL): R3</p>
06/05/2007	<p>SENT OUT FOR ASSIGNMENT: SH</p>
01/16/2008	<p>ORDER AS TO BRIEFS: OB Order Denied Appellee's Motion To Strike The Appellant's Brief.</p>
01/24/2008	<p>OPINION REVERSING: PR By Chief Justice Lambert. *All Concur, Except Cunningham, J., Dissents By Separate Opinion In Which Schroder, J., Joins. *To Be Published* (Due Date: 02/13/2008)</p>
02/13/2008	<p>MOTION FOR EXT. OF TIME (13 DAY RESPONSE): ME Appellee Filed Motion For Extension Of Time, To And Including February 18, 2008 In Which To File The Petition For Rehearing. (Due Date: 02/26/2008)</p>

DATE	PROCEEDINGS
02/19/2008	** NOTE **: CK Tendered 11 Copies Of Appellee's Petition For Rehearing.
02/27/2008	SCHEDULE TO MOTION DOCKET: MS No Response Filed.
02/27/2008	ORDER FOR EXTENSION OF TIME: OE Order Granted Appellee's Motion For An Extension Of Time In Which To File The Petition For Rehearing And The Heretofore Tendered Petition For Rehearing Is Filed.
02/27/2008	PETITION FOR REHEARING: RH Appellee's Petition For Rehearing Filed Pursuant To Court Order. (Due Date: 03/18/2008)
03/18/2008	RESPONSE TO PETITION FOR REHEARING: HR Appellant Filed Response To Petition For Rehearing.
03/19/2008	SENT OUT FOR ASSIGNMENT: SH
06/19/2008	ORDER DENYING REHEARING: RD FINALITY – Appellee's Petition For Rehearing Is Petition For Denied.

DATE	PROCEEDINGS
06/19/2008	PUBLICATION LETTER: FLPUBL
06/19/2008	FINALITY: FL Returned To Hardin Co. Circuit Court Clerks Office, 1 Volume Record, 1 Video Tape, 1 Video Tape Copy, By U.P.S., And 1 Volume Court Of Appeals' Record To Court Of Appeals By Messenger.
09/18/2008	** NOTE **: CK Received Notice From U.S. Supreme Court A Motion For Extension Of Time Was Granted Until November 16, 2008, To File A Petition For Writ Of Certiorari.
11/20/2008	** NOTE **: CK Received Notice From U.S. Supreme Court Petition For Writ Of Certiorari Was Filed On November 14, 2008, And Placed On The Docket November 18, 2008, As No. 08-651.
02/26/2009	** NOTE **: CK Received Notice From U.S. Supreme Court Petition For Writ Of Certiorari No. 08-651 Was Granted On February 23, 2009.

JOINT APPENDIX E
COMMONWEALTH OF KENTUCKY
HARDIN DISTRICT COURT

NO. 01-F-00423

ELIZABETHTOWN
DIVISION

COMMONWEALTH
OF KENTUCKY

PLAINTIFF,

VS.

ORDER

JOSE RAMON
PADILLA

DEFENDANT.

* * * * *

This matter having come on before the court on court's own motion after telephonic request of the Motor Vehicle Enforcement,

IT IS HEREBY ORDERED that defendant's bond shall be changed from \$25,000.00 cash to **no bond** status as defendant is believed to be an illegal alien and is awaiting deportation by the Federal authorities.

This [19th] day of September, 2001.

[Kimberly Winkenhofer Shumate]
KIMBERLY WINKENHOFFER SHUMATE
JUDGE, HARDIN DISTRICT COURT

JOINT APPENDIX F

U.S. Department of Justice
Immigration and Naturalization Service

Immigration Detainer -
Notice of Action

File No. Axx xxx xxx
Date: 9/20/01

TO (Name and title of institution) Jailer Hardin County Jail
--

FROM: (INS office address) Immigration & Naturalization Service 601 W. Broadway, Rm# 601 Louisville, Kentucky 40202
--

Name of alien: Padilla-Carbajal, Jose Ramon
[FBI# 58690CBO]

Data of birth: 11/18/1950

Nationality: Honduran Sex: M

You are advised that the action noted below has been taken by the Immigration and Naturalization Service concerning the above-named inmate of your institution:

Investigation has been initiated to determine whether this person is subject to removal from the United States.

A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on _____
(Date)

A warrant of arrest in removal proceedings, a copy of which is attached, was served on _____
(Date)

Deportation or removal from the United States has been ordered.

It is requested that you:

Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work and quarters assignments, or other treatment which he or she would otherwise receive.

Federal regulations (8 CFR 287.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays) to provide adequate time for INS to assume custody of the alien. You may notify INS by calling (502)582-6526 during business hours or [(502)332-7156] after hours in an emergency.

Please complete and sign the bottom block of the duplicate of this form and return it to this office.

A self-addressed stamped envelope is enclosed for your convenience. Please return a signed copy via facsimile to (502)582-6373
(Area code and facsimile number)

Return fax to the attention of
[THOMAS E. PERRYMAN],
(Name of INS officer handling case)
at (502)582-6526 [X246]
(Area code and phone number)

Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

Notify this office in the event of the inmate's death or transfer to another institution.

Please cancel the detainer previously placed by this Service on _____.

[Thomas E. Perryman]
Thomas E. Perryman Officer in Charge
(Signature of INS official) (Title of INS official)

Receipt acknowledged:

Date of latest conviction: _____

Latest conviction charge: _____

Estimated release date: _____

Signature and title of official: _____

JOINT APPENDIX G
THE COMMONWEALTH OF KENTUCKY
HARDIN CIRCUIT COURT, NINTH JUDICIAL
CIRCUIT
DIVISION NO. [III]
INDICTMENT NO. 01-CR-[00517]

August Term, 2001
October, 2001, Session

**The Commonwealth
Of Kentucky
Against
JOSE R. PADILLA**

1. Possession of
Marijuana; Class "A"
Misdemeanor
2. Possession of
Drug Paraphernalia;
Class "A"
Misdemeanor
3. Trafficking in
Marijuana, Greater
Than Five
Pounds; Class "C"
Felony
4. Operating
Without a Weight and
Distance Tax Number;
Violation

CHARGE

1. K.R.S. 218A.1422
2. K.R.S. 218A.500(2)
3. K.R.S. 218A.1421(a)
4. K.R.S. 138.720(3)

The Grand Jurors of the County of Hardin, the name and by the authority of the Commonwealth of Kentucky, charge:

COUNT 1: That on or about the 17th day of September, 2001, in Hardin County, Kentucky, the above named Defendant committed the offense of Possession of Marijuana when he knowingly and unlawfully possessed a quantity of marijuana in a semi-tractor cab at the weigh station on I-65, Elizabethtown, Kentucky.

COUNT 2: That on or about the 17th day of September, 2001, in Hardin County, Kentucky, the above named Defendant committed the offense of Possession of Drug Paraphernalia when he possessed with the intent to use drug paraphernalia in the form of a pipe filled with marijuana and rolling papers for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.

COUNT 3: That on or about the 17th day of September, 2001, in Hardin County, Kentucky, the above named Defendant committed the offense of Trafficking in Marijuana, Greater Than 5 Pounds, when he knowingly and unlawfully trafficked in marijuana, by possessing with the intent to sell or transfer approximately 1033 pounds of marijuana in

semi-tractor trailer at the weigh station on I-65, Elizabethtown, Kentucky.

COUNT 4: That on or about the 17th day of September, 2001, in Hardin County, Kentucky, the above named Defendant committed the offense of Operating Without a Weight and Distance Tax Number when he failed to have the required weight and distance tax number (KYU number) when his declared weight on registration was in excess of 59,000 pounds..

Against the peace and dignity of the Commonwealth of Kentucky.

Witness:
Off. Cheryl Hendley,
KVD

EDC 01-F-00423

A TRUE BILL

[forewoman's signature]

Foreman

[10-31], 2001

Bond
\$[100,000 (in custody)]

RECEIVED, from the
Foreman of the Grand
Jury, in. their presence,
and filed in open Court.

Stand on Bond \$ _____

~~Warrant on~~ _____
~~Indictment~~

[T. Steven Bland]

JUDGE, NINTH
JUDICIAL CIRCUIT

ATTEST: [Ralph
Baskett, Clerk
by: JBoone, D.C.]

Hardin Circuit Court
Clerk

JOINT APPENDIX H

AOC-491 Doc. Code EGP
Rev. 11-95

Case No. [01-CR-005 17]
Court [Circuit]
Division [III]
County [HARDIN]

Commonwealth of Kentucky
Court of Justice

RCr 8.08,8.10

COMMONWEALTH OF
KENTUCKY

PLAINTIFF,

VS.

MOTION TO ENTER
GUILTY PLEA

[*JOSE R. PADILLA*]

DEFENDANT.

[DOB: 11-18-50]

[xxx-xx-xxxx]

Comes the Defendant, in person and with aid of counsel, and respectfully moves this Court to allow him to withdraw his former plea of “**NOT GUILTY**” and enter a plea of “**GUILTY**” as set forth below. In support of this motion, the Defendant states as follows:

1. My full name is [Jose R. Padilla]. I am the same person named in the indictment.

2. My judgment is not now impaired by drugs, alcohol, or medication.

3. I have reviewed a copy of the indictment and told my attorney all the facts known to me concerning my charges. I believe he/she is fully informed about my case. We have fully discussed and I understand my charges and any possible defenses to them.

4. I understand that I may plead **“NOT GUILTY”** to any charge against me, in which event the Constitution would guarantee me the following rights:

(a) The right not to testify against myself;

(b) The right to a speedy and public trial by jury at which I would be represented by counsel and the Commonwealth would have to prove my guilt beyond a reasonable doubt;

(c) The right to confront and cross-examine all witnesses called to testify against me;

(d) The right to produce any evidence, including attendance of witnesses, in my favor;

(e) The right to appeal my case to a higher court.

I understand that if I plead **“GUILTY,”** I waive these rights.

5. I understand that if I plead **“GUILTY,”** the Court may impose any punishment within the range provided by law and that although it may consider

the Commonwealth's recommendation, the Court may reject it. The legal penalty ranges are set forth on the attached "Commonwealth's Offer on a Plea of Guilty" which I have reviewed and signed.

6. I understand that if the Court rejects the plea agreement, it must so inform me. If this occurs I may either persist in my guilty plea and possibly receive harsher treatment than I bargained for or I may withdraw my guilty plea and proceed to trial. I further understand that the Court may wait until it reviews a pre-sentence report regarding the history of the case and my background before it must inform me if it will accept the plea agreement.

7. In return for my guilty plea, the Commonwealth has agreed to recommend to the Court the sentence(s) set forth in the attached "Commonwealth's Offer on a Plea of Guilty." Other than that recommendation, no one, including my attorney, has promised me any other benefit in return for my guilty plea nor has anyone forced or threatened me to plead **"GUILTY."**

JOINT APPENDIX I

AOC-491.1 Doc. Code COPG
Rev. 3-00

Case No. 01-CR-005 17
Court Circuit
Division III
County Hardin

Commonwealth of Kentucky
Court of Justice

COMMONWEALTH OF KENTUCKY *PLAINTIFF,*

VS. COMMONWEALTH'S
OFFER OF A PLEA

JOSE R. PADILLA *DEFENDANT.*

1. Charge(s):	Penalty:
Possession of Marijuana	0 – 12 Months
Possession of Drug Paraphernalia	0 – 12 Months
Trafficking in Marijuana, Greater Than Five Pounds	5 – 10 Years
Operating Without a Weight and Distance Tax Number	Violation

2. Amended Charge(s) (If Applicable): **Penalty:**
DWOP Count 4, upon a
stipulation of probable cause.

3. Facts of the case:**4. Recommendations on a Plea of Guilty (Plea Agreement):**

Twelve (12) months, on the charge of Possession of Marijuana; Twelve (12) months, on the charge of Possession of Drug Paraphernalia; Ten (10) years, on the charge of Trafficking in Marijuana, Greater Than Five Pounds, with counts one (1) and two (2) running concurrently to count 3, for a total of Ten (10) years, Five to serve, and Five (5) probated. Defendant agreeing to forfeit the truck and trailer (freightliner) owned by the him.

It is expressly understood by all parties that, as an express condition of this plea, if the Defendant fails to appear for sentencing, this plea agreement provides that the sentence(s) for the criminal offense(s) herein shall be the maximum sentence allowed under existing law for each class of criminal offense.

[X] J Padilla
DEFENDANT

It is expressly understood by all parties that, as an express condition of this plea, if the Defendant fails to appear for sentencing, this plea agreement provides that the multiple counts and/or multiple cases, if any, shall be served consecutively, up to the maximum sentence allowed under existing law.

[X] J Padilla
DEFENDANT

It is expressly understood by all parties that, as an express condition of this plea, if the Defendant fails to appear for sentencing, this plea agreement provides that all the sentence(s) herein shall be to serve.

 J Padilla
DEFENDANT

- THE DEFENDANT AGREES TO PAY RESTITUTION, IF ANY.
- ALL TIME IS TO RUN CONSECUTIVE WITH ANY OTHER SENTENCE THAT THE DEFENDANT MAY HAVE OR RECEIVE FROM ANY OTHER COURT PROCEEDING, IN THIS JURISDICTION OR ANY OTHER, UNLESS SPECIFICALLY AGREED TO OTHERWISE BEFORE ENTRY OF GUILTY PLEA.
- DEFENDANT AGREES TO FORFEITURE OF ANY AND ALL SEIZED PROPERTY AND/OR FUNDS UNLESS AGREED TO OTHERWISE BEFORE ENTRY OF GUILTY PLEA.

5. Reason(s) or amended charge(s) (If Applicable):

6. Offered this _____ day of _____, ____.

[M. M. Ferguson]
Commonwealth's Attorney or
Assistant Commonwealth's Attorney

[Quinn Pearl, Jr.] [X] J Padilla]
Defense Attorney Defendant

Prosecuting Witness Police Officer

Prosecuting Witness Police Officer

JOINT APPENDIX J
HARDIN CIRCUIT COURT
9TH JUDICIAL CIRCUIT
DIVISION III
CASE NO. 01-CR-00517

COMMONWEALTH
OF KENTUCKY

PLAINTIFF,

VS.

ORDER

v.

JOSE R. PADILLA

DEFENDANT.

This matter came before the Court on the 22nd day of August 2002, at 9:00 a.m., with the Defendant, **Jose R. Padilla**, appearing in open court with his counsel, Quinn Pearl, Jr., and the Commonwealth appearing through Michael M. Ferguson, First Assistant Commonwealth's Attorney.

The Commonwealth moved to **DISMISS** Count 4 of Indictment No. 01-CR-00517, said charge being as follows: **Operating Without a Weight and Distance Tax Number** under KRS 138.720(3), a Violation.

IT IS HEREBY ORDERED AND ADJUDGED that Count 4 of Indictment No. 01-CR-00517, said charge being as follows: **Operating Without a Weight and Distance Tax Number** under KRS 138.720(3), a Violation, be, and it is, **DISMISSED WITHOUT PREJUDICE, upon stipulation of probable cause.**

Thereupon came the Defendant, by agreement, and with advice of counsel, who filed a "Motion to Enter Guilty Plea" and entered a plea of guilty in Case No. 01-CR-00517 to the following charge(s): **Possession of Marijuana** under KRS 218A.1422, a Class "A" Misdemeanor; **Possession of Drug Paraphernalia** under KRS 218A.500(2), a Class "D" Felony; and **Trafficking in Marijuana, Greater Than Five Pounds** under KRS 218A.1421(a), a Class "C" Felony.

Defendant was interrogated by the Court, and the Court finds that the Defendant understands the charges against him, that the Defendant knowingly, intelligently, and voluntarily waives his right to a trial by jury, the privilege against self-incrimination, the right of confrontation of witnesses, and that there is a factual basis for the Defendant's plea.

IT IS ORDERED that the Petition be filed and that the Defendant's plea be accepted and entered as prayed for in the Petition and as recommended in the certificate of counsel.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant is guilty of the following crimes: **Possession of Marijuana; Possession of Drug Paraphernalia; and Trafficking in Marijuana, Greater Than Five Pounds.**

The Court hereby takes notice of the Commonwealth's recommendation that the Defendant be sentenced as follows: **Twelve (12) months** on each of the charges of **Possession of**

Marijuana and Possession of Drug Paraphernalia under the custody of the Hardin County Detention Center; and to **Ten (10) years** on the charge of **Trafficking in Marijuana, Greater Than Five Pounds** under the custody of the Department of Corrections, with counts one (1) and to (2) to run concurrently to count three (3), **for a total of Ten (10) years, Five, to serve, and Five, probated**, with the Commonwealth recommending probation for a period of Five (5) years, said charges to running consecutively with any other sentence the Defendant may have or receive from any other court proceeding, in this jurisdiction or any other, with the Defendant agreeing to forfeit any and all seized property and/or assets, including, but not limited to the truck and trailer (freightliner) owned by him, and, as an express condition of this plea, should the Defendant fail to appear for sentencing, the sentence(s) for the criminal offense(s) herein shall be the maximum sentence allowed under existing law for each class of criminal offense pled to herein, said sentence(s) to be served, and served consecutively, and that this modified sentence condition for failure to appear for sentencing shall be to serve.

However, entry of the Judgment and Order Imposing Sentence is withheld and postponed pending a pre-sentence investigation. A hearing is set for the 17th day of September 2002, at 1:15 p.m., for imposition of sentence and the Division of Probation and Parole is hereby ordered to prepare a written report of its pre-sentence investigation on the Defendant, and is to provide a copy of the report to the Defendant's attorney, the Commonwealth's

Attorney, and this Court, prior to the above scheduled hearing.

The Defendant is to remain in custody, pending further orders of this Court.

SO ORDERED this [6th] day of September 2002.

[Kelly Mark Easton]
JUDGE, HARDIN CIRCUIT COURT
DIVISION III

TENDERED BY:

[M. M. Ferguson]
COMMONWEALTH'S ATTORNEY'S OFFICE
9th Judicial Circuit

JOINT APPENDIX K
HARDIN CIRCUIT COURT
9TH JUDICIAL CIRCUIT
DIVISION III
CASE NOS. 01-CR-00517

COMMONWEALTH OF KENTUCKY *PLAINTIFF,*

VS. JUDGMENT AND ORDER
IMPOSING SENTENCE

JOSE R. PADILLA *DEFENDANT.*

** ** * * * * *

On the 22nd day of August 2002, this Court accepted the Defendant's Plea of Guilty to the charges of **Possession of Marijuana; Possession of Drug Paraphernalia; and Trafficking in Marijuana, Greater Than Five Pounds** and entered an Order accepting same.

On this the 17th day of September 2002 at 1:15 p.m., the Defendant appeared in open court with his counsel, Quinn Pearl, Jr., with the Commonwealth represented by Robert W. Stevens, Assistant Commonwealth's Attorney.

The Court inquired of the Defendant and his attorney whether they had any legal cause to show why judgment should not be pronounced, and afforded the Defendant and his attorney the opportunity to make statements in the Defendant's behalf and to present any information in mitigation of punishment, and the Court having informed the

Defendant and his attorney of the factual contents and conclusions contained in the written report of the pre-sentence investigation prepared by the Division of Probation and Parole and provided Defendants' attorney with a copy of the report although not the sources of confidential information, the Defendant agreed with the factual contents of the report.

Having given due consideration of the written report by the Department of Probation and Parole, and to the nature and circumstances of the crime, and to the history, character and condition of the Defendant, the Court is of the opinion that imprisonment is necessary for the protection of the public because:

- ___ A. There is a substantial risk that the Defendant will commit another crime during any period of probation, probation with an alternative sentencing plan, or conditional discharge.
- ___ B. The Defendant is in need of correctional treatment that can be provided most effectively by the Defendant's commitment to a correctional institution.
- X C. Probation, probation with an alternative sentencing plan, or conditional discharge would unduly depreciate the seriousness of the Defendant's crime.

- ___ D. The Defendant is not eligible for probation, probation with an alternative sentencing plan, or conditional discharge because of the applicability of KRS 532.080 or KRS 533.060 or KRS 532.045 or KRS 439.3401.
- ___ E. The Defendant does not desire probation and waives his/her right to have probation be considered by the Court after having his/her rights explained to him/her.

No sufficient cause having been shown why judgment should not be pronounced, **IT IS ADJUDGED BY THE COURT** that the Defendant is guilty of the following crimes: **Possession of Marijuana; Possession of Drug Paraphernalia;** and **Trafficking in Marijuana, Greater Than Five Pounds**, and is **Sentenced to Twelve (12) months** on each of the charges of **Possession of Marijuana** and **Possession of Drug Paraphernalia** under the custody of the Hardin County Detention Center; and to **Ten (10) years** on the charge of **Trafficking in Marijuana, Greater Than Five Pounds** under the custody of the Department of Corrections, with counts one (1) and to (2) to run concurrently to count three (3), **for a total of Ten (10) years, Five, to serve, and Five, probated**, said charges to running consecutively with any other sentence the Defendant may have or receive from any other court proceeding, in this jurisdiction or any other.

The Court is of the opinion that **following service of the Five-year sentence**, the Defendant is eligible for probation, probation with an alternative sentencing plan, or conditional discharge on the remainder of that Ten-year sentence, as hereinafter ordered:

X Probationary Supervision, for a period of **Five (5) years** on the remainder of that Ten-year sentence from the date of release from incarceration, subject to the following conditions:

1. Not commit another offense;
2. Avoid injurious or vicious habit;
3. Avoid persons or places of disreputable or harmful character;
4. Work faithfully at suitable employment as far as possible;
5. Support your dependents and meet other family responsibilities;
6. Remain within the County and State specifically approved by the Probation and Parole office in Hardin County, Kentucky, in their sole discretion, subject to modification by subsequent order of this Court;
7. The Defendant shall forfeit any and all seized property and/or assets, including, but not limited to the truck and trailer (freightliner) owned by him;
8. The Defendant shall pay the following costs and fees within Ninety (90) days of the date of release from **incarceration**:

Costs	\$ 50.00
Sheriff Security Fee	\$ 5.00
Bond Fee	\$ 4.00
Court Security Fee (Ind after 7/1/00)	\$ 7.00
Court Facilities Fee (Ind after 10/1/00)	\$ 25.00

Arrest Fee (excluding KSP) as follows:

Arrest or warrant served prior to 7/15/96	\$ 10.00
Arrest or warrant served after 7/15/96	\$ 20.00
Arrest without warrant (any)	\$ 10.00
If convicted of misdemeanor only	\$ 10.00

Fees for Misdemeanor Convictions and/or Violations:

Brady Bill Fee (misdemeanors only)	\$ 5.00
Crime Stoppers Fee, only for charges after 7/15/98 (all misdemeanors and violations except KRS 196, 187, 188, 189 and 189A)	\$ 1.00

P.A. Administration Fee as follows:

For appointments made prior to 7/15/98	\$ 40.00
For appointments made after 7/15/98	\$ 50.00
For Appointments made after 5-15-98	\$ 50.00

Traumatic Brain Injury Fee as follows:

For all Speeding Violations (except State Traffic School)	\$ 10.00
For SELECT Moving Violations (see schedule)	\$ 10.00
For DUI's, including under 21 (except chapter 281A)	\$ 20.00
Drug Testing Fee	\$ 60.00

Pay the Crime Victim's Compensation Fund as follows:

For charges prior to 7/15/98	_____ \$ 10.00
For charges after 7/15/98	\$ 20.00
Deputy Clerk Enhancement Fee (2% of restitution on orders of rest. made after 7/15/98)	_____
DUI Service Fee (Charges before 10/1/00)	\$200.00
DUI Service Fee (Charges after 10/1/00)	\$250.00
SCHIR Fee (for Speeding Convictions only)	_____
	\$ 12.50
SCHIR Fee (for violation of Child Restraint/ Seat Belt laws)	_____ \$ 25.00

A five (5%) percent Deputy Clerk Enhancement Fee as applicable to the Items above.

9. That the supervision fee is set at **\$500.00**, to be paid as follows: **\$200.00** by the end of the first year; **\$200.00** by the end of the second year and **\$100.00** by the end of the third year, **with 5% Deputy Clerk Enhancement Fee to be paid with each payment.**
10. Report to the probation officer as directed and comply with all written rules, regulations or stipulations imposed by him and the Department of Corrections, Division of Probation and Parole.
11. Permit the probation officer to visit the Defendant at home or elsewhere.
12. Answer all reasonable inquiries by the probation officer and promptly notify the

probation officer of any change in address or employment.

13. Return to the Hardin Circuit Court only as directed.
14. No drugs or alcohol.
15. Submit to random alcohol and drug testing.
16. The Defendant is to enroll in, actively participate in, and successfully complete any substance abuse treatment and any counseling for his illegal behavior, the Division of Probation and Parole recommends.

IT IS FURTHER ORDERED that the 1995 Freightliner and Trailer, VIN #1FUYDZYB9SH706768, bearing the name Transamerica Freight Company owned by the Defendant, shall, pursuant to KRS 218A.405, et seq., be forfeited to the State and sold by the Hardin County Sheriff.

IT IS FURTHER ORDERED that the Defendant is hereby credited with time spent in custody prior to sentence, namely Three-hundred Sixty-five (365) days as credited by the jailer of Hardin County towards service of the maximum term of imprisonment, through the 17th day of September 2002.

Thereupon, the Court informed the Defendant of his right to an appeal to the Court of Appeals of Kentucky with the assistance of counsel, and of his right to a free appeal, including free

counsel and free transcript, if he could not afford same.

SO ORDERED this [4th] day of [October] 2002.

[Kelly Mark Easton]
JUDGE, HARDIN CIRCUIT COURT
DIVISION III

TENDERED BY:

[M. M. Ferguson]
COMMONWEALTH'S ATTORNEY'S OFFICE
9th Judicial Circuit

JOINT APPENDIX L
DEPARTMENT OF CORRECTIONS
ACKNOWLEDGEMENT/RELEASE
ROEDERER CORRECTIONAL COMPLEX
BOX 69
LAGRANGE, KENTUCKY 40031
PHONE: (502) 222-0170

Date 10/10/2002

I.N.S.
601 WEST BROADWAY
LOUISVILLE KY

Name: JOSE PADILLA # 159435-AC
Case#: A-xx-xxx-xxx
Charges: UNLAWFUL ENTRY INTO U.S.

Current Parole Eligibility Date: 12/2002
Current Minimum Expiration Date:
NOT AUDITED

*Subject to change based on good time loss or credits

Dear CLERK:

We are lodging your DETAINER detainer/hold against the above captioned.

We have received your ORDER FOR APPEARANCE which we are using as a hold.

If you wish to file a detainer, please forward appropriate documents.

For detainer/holds active when inmate becomes eligible for release, interested parties will be notified prior to the actual date of release in order for arrangements to be made to assume custody.

We are releasing your _____
detainer/hold since:

- Case(s) dismissed by the Court.
- Case(s) passed on to the Circuit Court, case number(s)_____.
- Charge(s) reduced to misdemeanor charge(s).
- Subject was sentenced on case(s).
- Our records indicate subject was released on own recognizance (ROR). If you wish to be notified upon subject's release from our custody, please forward your request in writing to this office.

We trust this disposition is satisfactory and assure you of our continued cooperation.

Sincerely

FRANK VASQUEZ
Offender Records Specialist
Central Office Inmate File
Institutional Inmate File
Inmate
CTO :K. WALLOVER

AN EQUAL OPPORTUNITY EMPLOYER M/F/D

JOINT APPENDIX M
HARDIN CIRCUIT COURT
COMMONWEALTH OF KENTUCKY
DIVISION III
NO: 01-CR-00517

JOSE PADILLA

VS.

RCr.11.42 MOTION

COMMONWEALTH
OF KENTUCKY

RESPONDENT

Comes now, Jose Padilla, movant, Pro-Se, and moves this court to appoint counsel, grant a hearing, then to vacate and set aside his conviction pursuant to RCr.11.42; in support thereof:

HISTORY OF CASE

The movant was sentenced to a term of 10 years with 5 years of that term probated on the 17th day of September 2002, and the judgment entered on October 4, 2002. On October 10, 2002, the movant had an Immigration Detainer lodged against him. (see movant's Exhibit).

JURISDICTION

This motion is filed within the three years time limitation pursuant to RCr.11.42. The movant is being held due to ineffective assistance of counsel in violation of the 6th and 14th Amendments of the

United States Constitution, and RCr.11.42 is the proper remedy for relief.

ISSUE AND ARGUMENT

TRIAL COUNSEL FAILED TO PROPERLY INVESTIGATE MOVANT IMMIGRATION STATUS BEFORE ENTERING AN AGREEMENT IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The movant who is an honorably discharged vietnam veteran has never become a United States Citizen. His immigration status therefore was at issue in this case.

His defense counsel, Quinn Pearl, Jr., was obligated in his investigation to determine and inform the movant of all consequences of his plea.

In a to be published decision: Fuortado V. Com., KyApp., ___ S.W.3d ___ (decided November 21, 2003; Case No. 2002-CA-001729 MR). Held that trial counsel is required to investigation possible immigration consequences. Fuortado, Supra at 8 to 12 of the slip opinion.

Mr. Pearl comments were the movant did not have to worry about immigration status since he had been in the country so long. This statement was not true given 8 U.S.C. 1227 (a) (2) (a) (iii) and the current provision is found at 8 U.S.C. 1227 (a) (2) (B) (i).

Had the movant been properly advise advise by counsel general duty to investigate and be prepared

he would not have plead guilty but would have insisted on going to trial.

The action of counsel reaches the level of ineffectiveness by improperly advising the movant See: Taylor V. Com., Ky. App., 724 S.W.2d 223 (1986); and hill V. Lockhart, 474 U.S. 52 (1985); United States V. Santelises, 509 F.2d 703 (2nd Cir 1975).

The Kentucky Court of Appeal in Fuortado Supra at 10 held that the proper standard to apply (in these type of cases) is a case-by-case approach and that approach was explained by the Supreme Court of Colorado in People V. Pozo, 746 P.2d 523,529 (Colo. 1987).

The movant suffer unreasonable prejudice and consequences by the mistaken advise of counsel and his failure to properly investigate, and such action violates the 6th Amendment of the United States Constitution and the 14th Amendment. See: Quintero V. Bell, 256 F.3d 409 (6th Cir . 2001); Baker V. U.S., 781 F.2d 85 (6th Cir. 1986).

As a matter of law had counsel properly advised the movant, he would have gone to trial. See: Bronk V. Com., Ky., 58 S.W.3d 482 (2001); and Casey V. Com., Ky. App, 994 S.W.2d 18 (1999).

Wherefore, The movant, Jose Padilla, Pro-Se, moves this court to appoint him counsel, grant him a hearing, the to vacate and set aside his judgment pursuant to RCr.11.42.

Respectfully Submitted

[X J Padilla]
Jose Padilla, #159435,
Northpoint Training Center
P.O. Box 479
Burgin, Kentucky 40310

VERIFICATION

I, Jose Padilla, being first duly sworn depose and say upon my oath:

- 1). I am the undersigned
- 2). I have filed the foregoing motion pursuant to RCr.11.42 and all facts and statements therein are true to the best of my knowledge and recollection.
- 3). Further Affiant sayeth not.

[X J Padilla]
Jose Padilla/Affiant

Subscribed and sworn to before me by Jose Padilla this [13th] day of August 2004.

[Robert Melby]
NOTARY PUBLIC

[06-03-07]
MY COMMISSION EXPIRES

JOINT APPENDIX N
COMMONWEALTH OF KENTUCKY
[Hardin] CIRCUIT COURT
CASE NO. [01 CR 517]

[Jose R. Padilla]

VS.

MOTION FOR
EVIDENTIARY
HEARING
AND FOR PERSONAL
APPEARANCE

COMMONWEALTH OF
KENTUCKY

RESPONDENT

* * * * *

THE MOVANT, [Jose R. Padilla], IN HIS OWN BEHALF, PRO SE, MOVES THIS COURT FOR THE ENTRY OF AN ORDER GRANTING A FULL EVIDENTIARY HEARING IN THIS MATTER AND TO PERMIT HIM TO BE PRESENT AT WHICH TIME THE COURT SO CONDUCTS SAID HEARING.

THIS COURT IS AUTHORIZED TO GRANT AND HOLD A HEARING IN THIS MATTER, PURSUANT TO COTES V. COMMONWEALTH, KY., 386 s.w.2d 465 (1965).

WHEREFORE, IN VIEW OF THE FOREGOING, MOVANT RESPECTFULLY REQUEST THAT HE BE ALLOWED TO PERSONALLY APPEAR AT

SAID HEARING AND WITHIN SUFFICIENT TIME
TO CONSULT WITH COUNSEL.

RESPECTFULLY
SUBMITTED,

[X J Padilla]
NORTHPOINT TRAINING
CENTER
P.O. Box 479, Hwy. 33
BURGIN, KENTUCKY 40310

DATED ON THIS [13th] DAY OF [August] 20[04].

JOINT APPENDIX O
AFFIDAVIT

Comes the Affiant, Jose R. Padilla, and after first being duly sworn, states the following:

1. I am the defendant in *Commonwealth v. Jose Padilla*, Hardin Circuit Court, Indictment No: 01-CR-517. My case is currently on appeal in *Commonwealth v. Jose Padilla*, 2006-SC-321-DG.

2. I am a citizen of Honduras, who has been a legal permanent resident of the United States from the 1960's to the present. My INS identification number is Axxxxxxxx.

3. I am currently living with my family in La Puente, California. I am facing deportation because of my conviction in this matter. It is my understanding that if this conviction was vacated and I was ultimately not convicted of this offense, I would not be subject to deportation.

4. Upon my apprehension by Hardin County authorities, my immigration documentation was copied by the police. A copy of my immigration documentation was turned over to me in discovery.

5. Attached is a true and correct copy of my immigration documentation, attesting to my current status as a legal permanent resident of the United States.

JOINT APPENDIX P
SUPREME COURT OF KENTUCKY
Case No: 2006-SC-321-DG

COMMONWEALTH
OF KENTUCKY

APPELLANT,

VS.

MOTION TO STRIKE
“BRIEF FOR
APPELLANT,
COMMONWEALTH
OF KENTUCKY”

JOSE R. PADILLA

APPELLEE.

Comes the Appellee, Jose R. Padilla, through counsel, pursuant to CR 12.06, CR 76.12, and all other applicable law, and moves this court to strike the “Brief for Appellant, Commonwealth of Kentucky.” As basis for this motion, the Appellee states the following:

1. Mr. Padilla is a legal permanent resident of the United States¹, who served honorably in the United States Army during the Vietnam conflict,² and prior to his arrest drove a semi-truck under a Commercial Drivers License (CDL) which was lawfully issued by the State of Nevada.³ Mr. Padilla was pulled over in Hardin County, and

¹ See Affidavit, attached at 5-1

² TR 59, attached at 3-2

³ TR 9-10, attached at 4-1

arrested upon an allegation that he was trafficking in marijuana.

2. Mr. Padilla ultimately pled guilty to the charges, and was sentenced to ten years, five to serve, with five additional years probated. While in prison, Appellee filed a *pro se* motion under RCr 11.42, alleging that he was “an honorably discharged Vietnam veteran [who] has never become a United States Citizen.” His allegation was that prior to taking the plea, his attorney had advised him that he “did not have to worry about immigration status since he had been in the country so long.”⁴ He alleged that he would not have taken the plea had he known that it would have led to deportation, and that deportation proceedings were currently pending against him. The Commonwealth did not respond.

3. The trial court denied Padilla’s motion, without appointing counsel and without an evidentiary hearing, finding that:

Padilla’s counsel does not make a deportation decision, and neither does this Court. This record indicates that Padilla was aware of the possibility that he could be deported. Padilla cannot show ineffective assistance of counsel merely because of a statement of opinion on whether the Immigration and Naturalization Service would choose to

⁴ See RCr 11.42 Petition, attached, at pg. 3-2.

deport Padilla given his length of time in the United States.⁵

Padilla appealed that decision to the Kentucky Court of Appeals.

4. Ultimately, the Court of Appeals granted limited relief to Mr. Padilla, finding that if he could prove that his attorney did advise him that his plea had no immigration consequences (as opposed to merely saying “I don’t know”), that the plea did indeed have consequences as far as immigration is concerned, and that he would not have taken the plea had the attorney not assured him that there were no consequences, he would indeed be entitled to relief.⁶ As none of those claims was refuted by the record, the Court of Appeals found that Mr. Padilla was entitled to an evidentiary hearing.⁷

5. The Commonwealth sought discretionary review by this court, to resolve the following issue: “Does the 6th Amendment Guarantee against attorney misadvice concerning potential consequences collateral to a guilty plea.” On August 17, 2006, this court granted the Commonwealth’s motion. On November 15, 2006, the Commonwealth filed the “Brief for Appellant, Commonwealth of Kentucky” (hereinafter “BC”).

⁵ Attached, 2-3 to 2-4

⁶ See Slip Op., attached at 1-1 to 1-8.

⁷ *Id.*, pp. 1-7 to 1-8

6. At no time in the proceedings leading to this point has the Commonwealth disputed Mr. Padilla's right to be in this country prior to his arrest.⁸ However, in its brief to this court, the Commonwealth alleges for the first time that Padilla is actually an illegal alien. In the introduction, the Commonwealth states that "Padilla, ***an illegal alien***, successfully plea bargained for five years to serve and five years probation on drug trafficking and related charges" (BC, pg. i)(emphasis added). Later, in the argument section of the brief, the Commonwealth states that "***An illegal alien***, Padilla contends that his guilty plea to drug trafficking crimes is invalid by reason of counsel ineffectiveness" (BC, pg. 3)(emphasis added). In concluding its argument, the Commonwealth argues that "Padilla is especially ill suited to complain here. ***As an illegal alien, he is subject to deportation anyway***" (BC, pg. 5)(emphasis added). The Commonwealth goes on state that "[t]he record does not reflect, and Padilla's counsel has not said, whether Padilla has been deported or is facing deportation" (*Id.*).⁹

7. Generally, this court has the power to strike a brief if it does not conform to any substantial requirement of CR 76.12. CR 76.12(8)(a). Moreover, under CR 12.06, this court may order stricken "any

⁸ There was no response filed in the trial court. Relevant portions of the Commonwealth's Brief in the Court of Appeals are attached at 6-1 to 6-6.

⁹ In answer to the Commonwealth's insinuation that this case is moot, Mr. Padilla remains in the country, and is facing deportation. See Affidavit of Jose Padilla, attached, 5-1.

insufficient defense or any sham, redundant, immaterial, impertinent, or scandalous matter.” In this case, the Commonwealth’s assertions that Padilla is an illegal alien – which the Commonwealth did not mention in its brief to the Court of Appeals, or in its motion for discretionary review – are certainly “immaterial” and “impertinent” to the issue on which this court has accepted review. This Court did not accept discretionary review of this matter to determine whether an illegal immigrant to vacate his plea. Rather, it granted review to determine whether a person can vacate their plea on an ineffectiveness claim when they plea to an offense which results in mandatory deportation after their attorney advises them that would not be deportable. To adapt this position for the first time today, in the absence of any record to support it, and without affording Mr. Padilla a chance to respond, is “scandalous.”

8. Moreover, this court has the authority to strike a brief if it does not comply with the CR 76.12. CR 76.12(4)(c)(v) provides that the argument to a brief should include “ample supportive references to the record.” However, at no point does the Commonwealth include a citation to the record to support its newfound claim that Padilla is an illegal alien. The absence of citation belies the fact that the assertion is simply unsupported. There has been no evidentiary hearing in this case where Mr. Padilla’s immigration status has been litigated, so Mr. Padilla has never been given any opportunity to offer evidence about his immigration status. Mr. Padilla filed this pleading *pro se*, and undoubtedly assumed that his legal status in this country was implicit to

the fact that he was an honorably discharged Vietnam veteran.

9. In addition to Mr. Padilla's unrefuted allegation that he is an honorably discharged veteran of the United States military, the record also contains a record a report on his commercial drivers license, showing that at the time of his arrest, he possessed a valid commercial drivers license issued by the State of Nevada. In general, such a license cannot be issued to a person who is not a legal resident of the State of Nevada. *See Nev.Rev.St. 483.250(7); Nev.Rev.St. 483.141(1).* Moreover, Padilla's social security number is listed on the printout, xxx-xx-****.¹⁰ *See 42 U.S.C.A. 405(c)(2)(b)(III)* (prohibiting the Commissioner of Social Security from issuing a number to a person who is, "because of his alien status, prohibited from engaging in employment.")

10. The only mention of Mr. Padilla's status by the trial court is in the order denying Mr. Padilla's RCr 11.42 motion. There, the court noted that "By an order [of the district court] entered on September 19, 2001, Padilla's bond was changed because he 'is believed to be an illegal alien who is awaiting deportation by the Federal authorities.'¹¹ Thus, it appears that from the very beginning of this case Padilla would have been aware of the possibility of deportation." In its brief, the Commonwealth asserts

¹⁰ The full number has been redacted from this pleading for identity protection purposes.

¹¹ Bond was reinstated when Padilla was indicted, and the issue of whether Padilla was an illegal immigrant was not raised to the circuit court.

that “apparently deportation proceedings against Padilla already were underway long before he pleaded guilty” (BC, pg. 5), apparently referencing that statement. Of course, that is not what the court said, and the court’s order contains no reference to deportation proceedings being “underway long before he pleaded guilty”. Rather, the court’s finding was limited to the fact that Padilla was likely to have been aware of the fact that he was known to the INS, and that any conviction may carry consequences up to and including deportation.¹² There is no court finding in the record at any level that Padilla is, in fact, an illegal alien.¹³

11. As noted, Padilla himself has never been given the opportunity to offer proof on the subject. Lest there be any doubt about Padilla’s status, attached is his affidavit attesting to his status, along with a copy of his resident alien card.¹⁴ This information would have been easily obtained by the

¹² The trial court’s finding in this regard is somewhat inapposite. Padilla’s claim is that he was concerned about the immigration consequences of his plea, and was only induced to plea by his attorneys representation that there would be no consequences.

¹³ The only basis on which one could have assumed that Padilla was in fact an illegal alien was the charge listed on the form prepared by the Roederer Correctional Complex acknowledging the detainer, which listed Padilla’s charges as “illegal entry into US.” *See* 3-5, attached. However, the detainer request itself does not list a charge as the basis for the detainer, merely that Padilla was “under investigation.” *See* 3-6. Consequently, the statement appears to be merely an incorrect assumption on the part of an employee of the Department of Corrections.

¹⁴ Attached at 5-1 to 5-3.

Commonwealth prior to filing its brief. Not only was Mr. Padilla's resident alien card copied by the police and retained in the Commonwealth Attorney's file, Mr. Padilla resident alien number – Axxxxx***¹⁵ – is also the case number on the detainer issued by the INS, which was attached to Mr. Padilla's RCr 11.42 and contained in the appellate record.

12. In short, it was well within the Commonwealth's power to determine whether Mr. Padilla was or was not illegal, prior to asserting it in their brief. The Commonwealth has a duty to learn of information in the possession of any of its agents which might be favorable to the defendant. *Kyles v. Whitley*, 514 U.S. 4.19, 115 S.Ct. 1555 (1995). The Commonwealth has a duty not to assert as fact things it knows or ought to know to be untrue. To that end, this court has long known that:

[i]t especially is incumbent upon the attorney representing the Commonwealth to fully represent the evidence in its true light; because any statement uttered by him in a criminal case is more or less strengthened by his official position, since all men know it is his duty not only to endeavor to convict the guilty, but likewise to effect the acquittal of the innocent.

Edwards v. Commonwealth, 182 S.W.2d 948, 952 (Ky. 1944). Or, as the United States Supreme Court has

¹⁵ The remainder of the number is redacted to protect Mr. Padilla's identity.

put it: “while [a prosecutor] may strike hard blows, he is not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935). By its own account, the Commonwealth has failed to acquaint itself with Mr. Padilla’s status, and consequently it has made assertions of fact which are simply untrue.

13. The Commonwealth made the assertion because it very clearly changes the complexion of the case. If Mr. Padilla was an illegal immigrant – and therefore was subject to deportation regardless of whether he was convicted or acquitted of this offense – he would have very little basis to claim that his plea was affected by his attorney’s misadvice. On the other hand, if he is a legal permanent resident, whose plea to an “aggravated felony” will result in mandatory deportation, his attorney’s misadvice would be very significant.

14. Factually, this case presents the latter situation. Padilla’s allegation is that he pled to a trafficking charge after being assured that he would not be deported as a result of the plea. However, a plea in state court to a trafficking charge is an “aggravated felony” under immigration law. *Lopez v. Gonzales*, ___ U.S. ___, ___ S. Ct. ___, 2006 WL 3487031 (2006). A plea to an “aggravated felony” will result in mandatory deportation. See 8 U.S.C.A. § 1227(a)(2)(A)(iii) (requiring deportation, for a person convicted of an aggravated felony); 8 U.S.C.A. § 1229b(a)(3) (prohibiting the Attorney General from canceling the deportation of a person who is convicted of an aggravated felony); 8 U.S.C.A. §§ 1158(b)(2)(A)(ii) and (B)(i) (barring a person convicted of an aggravated felony from seeking

asylum). Given that deportation is a such direct result of the plea, it is easy to see why the Commonwealth would prefer this Court to believe that Mr. Padilla was an illegal immigrant whose plea was essentially irrelevant to his immigration status.

15. This case has extraordinarily significant consequences for Mr. Padilla. This court's ruling will go a long way to deciding whether he has to leave his family and a country he has known and served for nearly 40 years, or whether he might be able to remain in this country and perhaps someday obtain citizenship. In defending this action, Padilla should not have to disprove unsupported allegations by the Commonwealth. Accordingly, this court should order the brief stricken, and order a the Commonwealth to prepare and file a new brief with appropriate citations to the record, and which does not rely upon unsupported factual claims.

WHEREFORE, for the foregoing reasons, the Appellee requests that the court order the "Brief for Appellant, Commonwealth of Kentucky" to be stricken from the record.

Respectfully Submitted,

[Timothy G. Arnold]

Timothy G. Arnold
Assistant Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601
(502) 564-8006
(502) 564-789 (fax)

Notice

Please take notice that the foregoing motion has been filed in the Kentucky Supreme Court on December 8, 2006.

Certificate of Service

I certify that on December 8, 2006 a true and correct copy of the foregoing document was served by mail upon Hon. David Smith, Assistant Attorney General, 1024 Capital Center Drive, 3rd Floor, Frankfort, KY 40601.

[Timothy G. Arnold]

JOINT APPENDIX Q

SUPREME COURT OF KENTUCKY

Case No: 2006-SC-321-DG

COMMONWEALTH
OF KENTUCKY

APPELLANT,

VS.

REPLY BRIEF FOR
APPELLANT
COMMONWEALTH
OF KENTUCKY

JOSE R. PADILLA

APPELLEE.

INTRODUCTION

This brief is a reply to assertions made in Padilla's appellee brief.

POINTS

The Commonwealth makes three (3) points in reply:

1. **One cannot convert a non-cognizable claim into a cognizable claim simply by blaming his lawyer.** "As counsel owed no duty to the defendant to investigate [deportation] consequences, his failure to conduct that investigation could not be regarded as ineffective assistance of counsel." (Padilla's brief, p. 10, citing Commonwealth v. Fuartado, 170 S.W.3d 384 (Ky. 2005).

Padilla suggests on the following page, though, that defense counsel “affirmatively bamboozle[d]” him by ‘volunteering incorrect advice.’

Since a guilty plea is valid despite the defendant’s misunderstanding about a collateral consequence, the source of that misunderstanding does not matter. If the misunderstanding is irrelevant, as indeed it is, then the cause of the misunderstanding likewise is irrelevant.

2. Padilla’s IAC claim does not turn on whether he is a guest of this country or an intruder into it. Padilla dislikes the record’s references to him as an illegal alien. He has filed a motion to strike the Commonwealth’s main brief for having cited to the record on that score. The Commonwealth’s response to the motion to strike observed that the record in this respect is undisputed. By February 12, 2007 order, his Court passed the motion to the merits.

Padilla’s brief resumes his motion to strike. He uses quicksilver wording which, upon dissection, indicates that he remained here illegally as opposed to entering here illegally. Padilla’s distinction between entering illegally and remaining illegally makes no difference and it brings to mind the language in the burglary statute. Padilla’s minimization of his alien status is akin to his protest that the illegal drugs he was smuggling at the time of his capture weighed only half a ton.

Contrary to the suggestions made in Padilla’s brief, the ruling in this case does not turn on whether he was a legal alien or an illegal alien at the time of

his arrest. A constitutionally valid guilty plea stands alone. Attorney misadvice about a collateral consequence made to a natural U.S. citizen does not invalidate such a plea. Neither does attorney misadvice about the collateral consequence of deportation made to an alien invalidate his guilty plea.

3. **Padilla still has not divulged whether he has been deported or is facing deportation.** The last sentence of the Commonwealth's main brief noted that Padilla has never indicated whether he has been deported or is facing deportation. Padilla's brief clamors about the harshness of potential "banishment" but avoids telling this Court whether he has been deported or is facing deportation.

A counsel ineffectiveness claim requires actual prejudice, not just the risk of prejudice. From Padilla's evasion of the deportation question it must be assumed that no prejudice has occurred.

Padilla's IAC claim fails both the performance prong (**Point # 1**) and the prejudice prong (**Point # 3**) of the test. Under this Court's unanimous decision in Fuortado, 170 S.W.3d at 386, an IAC claim about deportation consequences of a guilty plea conviction is not cognizable in the first place:

Because the consideration of collateral consequences is outside the scope of representation required under the Sixth Amendment, failure of defense counsel to advise Appellee of potential deportation consequences was not

cognizable as a claim for ineffective assistance of counsel.

WHEREFORE, the opinion of the Court of Appeals should be reversed and the judgment of the Circuit Court should be reinstated in all respects.

Respectfully Submitted,

Gregory D. Stumbo
Attorney General of Kentucky

[David A. Smith] _____
David A. Smith
Assistant Attorney General
1024 Capital Center Drive
Frankfort, Kentucky
40601-8204
(502) 696-5342
Counsel for Appellant