

Crim-Imm Updates

New SJC Decisions and Pending Cases

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MADCL Post Conviction Seminar

March 2016

Padilla Motions

Comm v. Sylvain II, SJC-11896 (Mar. 14, 2016)

Sylvain I (retroactivity of Padilla under state law and deficient performance – remanded on prejudice)

Sylvain II

- **Motion judge found prejudice based on affidavits of defendant and trial counsel**
- **SJC**
 - ▣ **affidavits properly considered - not abuse of discretion**
 - ▣ **Special circumstances – do not also have to prove viable defense**

Rule 30 Motions

Comm v. Sylvain II (cont)

- **Rule 30(c)(3) – judge can rule on motion without evidentiary hearing if no substantial (factual) issue raised – if facts undisputed**
- **Can rely only on affidavits of defendant and trial counsel**
 - ▣ **Comm can submit affidavits or other evidence**

Deficient Performance

- **Counsel must make “reasonable inquiry” to determine defendant’s immigration status**
- **Clear imm consequence includes eligibility for relief –even if only risk rather than certainty**
- **Must either research law or seek expert**

Prejudice

- Refugee/asylee status is “special, special circumstance” – entitled to substantial weight**
- Special circumstances considered in “totality of circumstances” in determining prejudice**
- May introduce reliable hearsay similar to**

Pending cases in the SJC

Padilla motions

Comm v. Manuel Mercado, SJC-11964 (oral arg Feb. 10, 2016)

- **Is Article 12 right to advice about immigration consequences retroactive to April 24, 1996 (effective date of AEDPA)?**
 - ▣ **Sylvain says 6th A right retroactive to April 1, 1997 (effective date of IIRIRA)**

Pending cases in the SJC ***(cont)***

G.L. c. 278, 29D

**Comm v. Frank Valdez, SJC-12040 (oral arg
April 4, 2016)**

- **Prejudice – how to show “more than a hypothetical risk” under Grannum/Berthold**

NEED MORE HELP???

- **Monthly case notes/practice advisories on the IIU website at www.publiccounsel.net/iiu/**
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