

WOOD

Reg. # 118

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,226

THE STATE OF FLORIDA,

Petitioner,

FILED

vs.

REG. # 118

JOSEPH CASSEUS, AUG 12 1981

CLERK, SUPREME COURT

Respondent.

Deputy Clerk

\* \* \* \* \*

ON PETITION FOR DISCRETIONARY REVIEW

\* \* \* \* \*

BRIEF OF PETITIONER ON MERITS

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## INTRODUCTION

Petitioner, the State of Florida, was the prosecution in the trial court and Respondent, Joseph Casseus, was the defendant. The parties will be referred to as they stood in the trial court. All emphasis is supplied unless the contrary is indicated. The appendix to the State's jurisdictional brief contains the defendant's Rule 3.850 motion (Exhibit "A"), the trial court's order summarily denying the motion (Exhibit "B"), and the Third District's opinion which reversed the trial court's summary denial of the motion (Exhibit "C").

STATEMENT OF THE CASE AND FACTS

The defendant was charged in Case Nos. 82-25201, 82-25233, and 82-26520, with three counts of robbery with a firearm and one count of armed kidnapping. On April 18, 1983, the defendant pleaded guilty to the above charges and was sentenced to life imprisonment.

On November 1, 1986, the defendant filed a Rule 3.850 motion in the trial court (Exhibit "A" in appendix to State's jurisdictional brief). The sole claim for relief was that trial counsel failed to advise the defendant of the possible deportation consequences arising from his guilty plea. The defendant did not claim that he was misadvised, rather only that counsel failed to advise him at all concerning deportation.

The trial court summarily denied the 3.850 motion (Exhibit "B" in appendix to State's jurisdictional brief). The Third District then reversed the trial court (Exhibit "C" in appendix to State's jurisdictional brief) and remanded for further proceedings consistent with Edwards v. State, 393 So.2d 597 (Fla. 3d DCA 1981) and Ginebra v. State, 490 So.2d 467 (Fla. 3d DCA 1986).

The State then sought discretionary review based on conflict between Edwards, supra, and Hahn v. State, 421 So.2d 710 (Fla. 1st DCA 1982). On July 14, 1987, this Court entered an order accepting jurisdiction and dispensing with oral argument.

STATEMENT OF THE ISSUE

WHETHER TRIAL COUNSEL'S FAILURE TO ADVISE  
THE DEFENDANT REGARDING POSSIBLE DEPORTATION  
CONSEQUENCES STEMMING FROM HIS GUILTY PLEA  
CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.

SUMMARY OF ARGUMENT

The above-stated issue was recently resolved by this Court in State v. Ginebra, 12 F.L.W.322 (Fla. July 2, 1987, Case No. 69,283), wherein this Court held that trial counsel is not constitutionally required to advise an alien defendant of the collateral consequence of possible deportation resulting from his guilty plea. The Third District's opinion below should therefore be reversed.

ARGUMENT

TRIAL COUNSEL'S FAILURE TO ADVISE THE  
DEFENDANT REGARDING POSSIBLE DEPORTATION  
CONSEQUENCES STEMMING FROM HIS GUILTY  
PLEA DID NOT CONSTITUTE INEFFECTIVE  
ASSISTANCE OF COUNSEL.

The defendant did not allege in his Rule 3.850 motion that trial counsel misinformed him regarding possible deportation consequences of his guilty plea. The defendant's sole contention is that counsel rendered no advice whatsoever as to this collateral consequence.<sup>1</sup> Thus the defendant falls squarely within the recent holding of this Court in State v. Ginebra, supra, wherein this Court held that failure to advise regarding possible deportation consequences did not constitute ineffective assistance of counsel. The opinion of the Third District below should therefore be reversed.

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<sup>1</sup> The defendant also alleged in his motion that he was an illegal alien from Haiti. He is therefore per se deportable without regard to his Florida convictions.

CONCLUSION

The opinion of the District Court below is erroneous,  
and should therefore be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the  
foregoing BRIEF OF PETITIONER ON THE MERITS was furnished by  
mail to Joseph Casseus, pro se, D.O.C. #089313, 19000 Southwest  
377th Street, Florida City, Florida 33034, on this 10th day  
of August, 1987.

  
RALPH BARREIRA  
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