



2009

Recent Developments: Rivera v. State: A Coram Nobis Petition, Resting on a Probation before Judgment, Where Deportation Is a Potential Collateral Consequence, May Be Denied if the Guilty Plea Was Made Knowingly and Voluntarily, in Satisfaction of Constitutional Demands

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Recommended Citation

Young, K. Alice (2009) "Recent Developments: Rivera v. State: A Coram Nobis Petition, Resting on a Probation before Judgment, Where Deportation Is a Potential Collateral Consequence, May Be Denied if the Guilty Plea Was Made Knowingly and Voluntarily, in Satisfaction of Constitutional Demands," *University of Baltimore Law Forum*: Vol. 40 : No. 1 , Article 15.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol40/iss1/15>

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## RECENT DEVELOPMENT

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### ***RIVERA v. STATE: A CORAM NOBIS PETITION, RESTING ON A PROBATION BEFORE JUDGMENT, WHERE DEPORTATION IS A POTENTIAL COLLATERAL CONSEQUENCE, MAY BE DENIED IF THE GUILTY PLEA WAS MADE KNOWINGLY AND VOLUNTARILY, IN SATISFACTION OF CONSTITUTIONAL DEMANDS.***

**By: K. Alice Young**

The Court of Appeals of Maryland held that, although standing for a coram nobis petition may rest on probation before judgment when deportation is a potential collateral consequence, the court may deny relief if the plea otherwise satisfies the demands of the Maryland Rules. *Rivera v. State*, 409 Md. 176, 973 A.2d 218 (2009). Specifically, when the record illustrates a knowing and voluntary guilty plea, the coram nobis court may deny relief without looking beyond the record to the assurances relied on by the defendant in making his plea. *Id.* at 195-96, 973 A.2d at 230.

The State arrested Juan Rivera (“Rivera”) during divorce proceedings after his wife alleged that he committed child sexual abuse. The State presented evidence that Rivera engaged in anal intercourse with his daughter. Rivera admitted to becoming aroused on one occasion when his daughter was in her parents’ bed, but denied any other sexual behavior toward his daughter. The State charged Rivera, a citizen of Peru and a lawful permanent resident of the United States, with child abuse, second-degree sexual offense, and third-degree sexual offense. Rivera and the State negotiated a guilty plea.

Mary Herdman (“Herdman”), Assistant State’s Attorney for Montgomery County, wrote a letter to Rivera’s counsel, in which she acknowledged Rivera’s concerns and addressed his deportation risks. According to Herdman’s letter, a Special Agent for Immigration and Customs Enforcement (“ICE”) verified that ICE would not “look behind” the charge of “contributing to acts, omissions, or conditions rendering a child in need of assistance” for deportation purposes. Relying on these specific assurances in Herdman’s letter, Rivera pleaded guilty to that charge on January 24, 2005, in the Circuit Court

for Montgomery County, and was subsequently sentenced to 360 days incarceration and two years of supervised probation.

Rivera filed a timely motion to reconsider his sentence. The sentencing modification court struck his guilty plea and entered a probation before judgment on January 16, 2007. Within three months, ICE arrested Rivera, who then petitioned for coram nobis relief.

The coram nobis court denied Rivera's petition on the merits, and alternatively, for lack of jurisdiction. The Court of Special Appeals of Maryland affirmed the denial of coram nobis on the merits, but disagreed with the lower court's holding that it lacked jurisdiction to grant the petition. The Court of Appeals of Maryland granted Rivera's petition for writ of certiorari and the State's conditional cross-petition for certiorari on the jurisdiction issue.

The Court of Appeals of Maryland first addressed the threshold jurisdictional issue. *Rivera*, 409 Md. at 191-92, 973 A.2d at 227-28. A petitioner for coram nobis relief seeks to correct a fundamental or constitutional error in his conviction, particularly when facing a significant collateral consequence from the conviction. *Id.* at 190-91, 973 A.2d at 227 (citing *Skok v. State*, 361 Md. 52, 75, 760 A.2d 647, 659 (2000)). Relying on precedent, the court explained that a probation before judgment can be considered a conviction for coram nobis purposes, when supported by the circumstances of the case. *Id.* at 191-92, 973 A.2d at 228. The court reasoned that eligibility for coram nobis relief rests not on the method of sentencing, but on the consequences that arise from the conviction itself. *Id.* at 192, 973 A.2d at 228 (quoting *Abrams v. State*, 176 Md. App. 600, 616-17, 933 A.2d 887, 897 (2007)).

Relying on this rationale, the court considered the critical issue of whether Rivera's conviction itself would result in significant collateral consequences, notwithstanding the form of sentencing. *Id.* at 192-93, 973 A.2d at 228-29. In 2000, the court held that deportation proceedings are a significant collateral consequence of a conviction, thereby critically expanding the availability of coram nobis relief in Maryland. *Id.* at 193, 973 A.2d at 229 (citing *Skok*, 361 Md. at 77, 760 A.2d at 660-61). Therefore, the court explained, Rivera's probation before judgment allowed standing for coram nobis relief, because even that sentence put him at risk for deportation. *Rivera*, 409 Md. at 193, 973 A.2d at 229.

The court then analyzed whether the colloquy on the record supported Rivera's voluntary entry into the guilty plea. *Id.* at 195, 973 A.2d at 230. Rivera contended that he pleaded guilty based on the

State's Attorney's written assurance that ICE would not use the lesser charge as a foundation for deportation proceedings. *Id.* Prior to the plea colloquy, Rivera's counsel requested that the court seal and incorporate into the court file the plea negotiation documents. *Id.* at 181, 973 A.2d at 221. Rivera's counsel noted that the referenced documents related to Rivera's potential immigration consequences. *Id.* at 181, 973 A.2d at 221-22. Rivera's plea colloquy immediately thereafter included questions about his understanding of the immigration consequences of a guilty plea. *Id.* at 193-94, 973 A.2d at 229.

The Court of Appeals of Maryland held that Rivera's plea colloquy comported with Maryland Rule 4-242(e) because the plea judge informed Rivera about the possibility of immigration consequences. *Rivera*, 409 Md. at 194, 973 A.2d at 229. The court reasoned that, despite Rivera's reliance on assurances from ICE in Herdman's correspondence, the letter did not provide Rivera a guarantee against deportation. *Id.* at 195-96, 973 A.2d at 230. The court determined that Rivera pleaded guilty voluntarily and that, although neither the State nor Rivera expected his deportation, the record failed to validate his reliance on Herdman's letter as a guarantee. *Id.*

Finally, the court analyzed the denial of coram nobis relief based on the sufficient factual foundation for Rivera's knowing entry into his guilty plea. *Id.* at 194-95, 973 A.2d at 229-30. Rivera contended that his guilty plea was unknowing and fundamentally flawed because the charge to which he pleaded guilty was not substantiated by the facts to which he averred. *Id.* at 187, 973 A.2d at 225. In Maryland, a court may accept a guilty plea after an examination of the defendant in a colloquy on the record, conducted either by the court, the State's Attorney, or the defendant's attorney. *Id.* at 195, 973 A.2d at 230 (quoting Md. Rule 4-242(c)). The court reasoned that a court derives the factual support underlying a guilty plea from either the defendant's testimony or opposing allegations. *Rivera*, 409 Md. at 194-95, 973 A.2d at 229-30 (citing *Methany v. State*, 359 Md. 576, 601, 755 A.2d 1088, 1103 (2000)). The court held that the statement of facts proffered by the State, which alleged that Rivera engaged in an act of anal intercourse with his daughter, sufficiently supported Rivera's knowing guilty plea. *Id.* at 195-96, 973 A.2d at 230.

*Rivera* emphasizes the need for defense counsel to critically view offers the State puts forth in order to obtain a guilty plea. A reviewing court may choose not to consider the assurances underlying a guilty plea as guarantees made by the State. Although *Rivera* preserves

coram nobis to protect defendants from collateral consequences, the ruling underscores the risk of relying on assurances put forth by the State to entice the defendant's plea. Maryland practitioners should take great care when counseling defendants who risk deportation as a collateral consequence of a conviction, because deportation can result even from a probation before judgment. Maryland practitioners should also ensure that the plea colloquy includes both a description of the State's assurances upon which the defendant bases his voluntary plea, and an acknowledgement by the court of the effect of those assurances. A thorough colloquy will create a record upon which the defendant may rely, in order to show the foundation for his knowing and voluntary plea.