

**STATE V. IBARRA**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellant,  
v.  
**JOSE IBARRA,**  
Defendant-Appellee.

No. 32,488

COURT OF APPEALS OF NEW MEXICO

December 9, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Samuel L.  
Winder, District Judge

**COUNSEL**

Gary K. King, Attorney General, Margaret McLean, Assistant Attorney General, Santa Fe, NM, for Appellant

Law Office of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, for Appellee

**JUDGES**

LINDA M. VANZI, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,  
MICHAEL E. VIGIL, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Judge.**

{1} The State of New Mexico (the State) appeals from the district court's order vacating Jose Ibarra's (Defendant) plea and disposition agreement. [RP 223] We affirm.

{2} In 1999, Defendant pled guilty as a repeat offender to false imprisonment (a fourth degree felony) and battery against a household member (a petty misdemeanor). [Ct. App. File, State's 1st MIO 2] On March 3, 2011, Defendant filed a motion to set aside his plea agreement, alleging ineffective assistance of counsel, pursuant to *State v. Paredes*, 2004-NMSC-036, ¶ 19, 136 N.M. 533, 101 P.3d 799 (providing that if a client is a non-citizen, the attorney must advise that client of the specific immigration consequences of pleading guilty). See *Kentucky v. Padilla*, 559 U.S. 356, 369-71 (2010) (holding that deportation advice is not categorically removed from the Sixth Amendment right to counsel and that defense counsel engages in deficient performance if counsel fails to advise a defendant that his guilty plea makes him subject to deportation). [RP 56] Although in the written plea agreement Defendant stated that he “underst[ood] that being convicted may affect my immigration or naturalization status” [State's 1st MIO 2] at the hearing held in 2012 on Defendant's motion to set aside his plea, the parties stipulated that Defendant's attorney had not advised Defendant as to the immigration consequences of his plea. [State's 1st MIO 4]

{3} At the time that this Court issued its first calendar notice proposing to affirm, the issue of whether *Paredes* applied retroactively to assist Defendant in vacating his plea was before the New Mexico Supreme Court in *State v. Ramirez*, 2012-NMCA-057, 278 P.3d 569, *aff'd*, *Ramirez v. State*, 2014-NMSC-023, 333 P.3d 240. We stayed this appeal pending the New Mexico Supreme Court decision in *Ramirez*. Subsequently, in *Ramirez*, 2014-NMSC-023, ¶ 6, the New Mexico Supreme Court held that, because since 1990, the New Mexico Supreme Court rules and forms have required an attorney to certify having engaged the client in detail in a guilty plea colloquy that included immigration consequences, the holding in *Paredes* applies retroactively to 1990.

{4} Relying on the New Mexico Supreme Court's opinion in *Ramirez*, we lifted the stay of this appeal and issued a second calendar notice, again proposing to affirm the district court's order vacating Defendant's plea and setting this case for trial. [Ct. App. File, CN2] The State has filed a response to the second calendar notice, indicating that it is unable to provide any additional facts or legal argument to challenge the proposed summary affirmance. [Ct. App. File, State's Response 1-2] The State also adheres to the remedy this Court proposed in the second calendar notice, stating that “[t]he remedy is a remand to the state district court for further proceedings.” [Id.]

{5} Accordingly, for the reasons set forth herein and in the second calendar notice, we affirm the district court's order vacating Defendant's plea and remand to the district court for further proceedings.

{6} **IT IS SO ORDERED.**

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**MICHAEL E. VIGIL, Judge**