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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. EAST 7

HON. BRIAN M. HOFFSTADT, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

VS.

FRANCISCO

DEFENDANT.

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) NO.
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REPORTER'S TRANSCRIPT OF MOTION TO WITHDRAW PLEA

WEDNESDAY
MARCH 2, 2011

APPEARANCES:

FOR THE PEOPLE:

STEVE COOLEY, DISTRICT ATTORNEY
BY: ELIZABETH KARB, DEPUTY
1427 WEST COVINA PARKWAY
WEST COVINA, CALIFORNIA 91790

FOR THE DEFENDANT:

KIARASH FEYZJOU
ATTORNEY AT LAW

JULIE R. VAZQUEZ, CSR NO. 5521
OFFICIAL REPORTER

1 NUMBER KA092715
 2 CASE NAME: PEOPLE VS. FRANCISCO
 3 WEST COVINA, CALIFORNIA WEDNESDAY, MARCH 2, 2011
 4 DEPARTMENT NO. EAST 7 HON. BRIAN M. HOFFSTADT, JUDGE
 5 REPORTER: JULIE R. VAZQUEZ, CSR #5521
 6 TIME: 9:20 A.M.

7 APPEARANCES:

8 DEFENDANT WITH HIS COUNSEL, KIARASH FEYZJOU,
 9 ATTORNEY AT LAW; ELIZABETH KARB, DEPUTY
 10 DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES,
 11 REPRESENTING THE PEOPLE OF THE STATE OF
 12 CALIFORNIA.

13 (JULIE R. VAZQUEZ, OFFICIAL REPORTER.)

14 (MARIA DELGADO, CERTIFIED SPANISH INTERPRETER.)

15

16 -- 000 --

17

18 MARIA DELGADO,

19 AN INTERPRETER, AFTER BEING SWORN TO WELL AND TRULY, TO THE
 20 BEST OF HER ABILITY, TRANSLATE ALL PROCEEDINGS IN CONNECTION
 21 WITH THIS PROCEEDING FROM ENGLISH INTO SPANISH AND FROM
 22 SPANISH INTO ENGLISH, TRANSLATED AS FOLLOWS:

23

24 THE COURT:: PEOPLE VERSUS FRANCISCO

25

26 MR. FEYZJOU: KIARASH FEYZJOU, PRESENT IN
 27 COURT, OUT OF CUSTODY BEING ASSISTED BY THE COURT
 28 SPANISH INTERPRETER.

1 THE COURT:: ON THIS MATTER, THIS COURT HAS
2 SEEN THIS CASE A COUPLE OF TIMES.

3 I'LL BRING THE PEOPLE UP TO SPEED. HE
4 FILED A MOTION UNDER PENAL CODE SECTION 1016.5,
5 ALLEGING THAT HIS PLEA BACK IN 1992 WAS
6 DEFECTIVE FOR FAILURE TO COMPLY WITH THAT
7 PROVISION WITH REGARD TO BEING ADVISED OF
8 IMMIGRATION CONSEQUENCES.

9 WHEN THE COURT REVIEWED THE RECORD
10 SEVERAL MONTHS BACK, THE RECORD INDICATED THAT
11 THE DEFENDANT HAD BEEN ADVISED OF THOSE RIGHTS
12 AT THE TIME OF ARRAIGNMENT, BUT THERE WAS
13 NOTHING IN THE RECORD INDICATING HE HAD BEEN
14 ADVISED OF THEM AT THE TIME OF THE HEARING, AT
15 THE TIME OF THE PLEA.

16 COUNSEL FOR MR. BROUGHT THE
17 COURT'S ATTENTION TO A RECENT DECISION OF THE
18 COURT OF APPEALS, WHICH INDICATED THAT FOR THE
19 TIMING OF THE ADVISEMENT HAD TO BE THE SAME AS
20 THE TIMING OF THE PLEA. THAT WAS PEOPLE VERSUS
21 AKHILE, A CASE FROM 2008.

22 THE COURT LOOKED AT THAT CASE AND DID
23 ADDITIONAL RESEARCH. IT APPEARS TO BE THE LAW.

24 HOWEVER, SO THERE APPEARS TO HAVE BEEN
25 A NON-COMPLIANCE FOR 1015.

26 THE COURT NEVERTHELESS NOTED THAT THE
27 DEFENDANT ALSO HAS TO ESTABLISH THAT HE
28 SUFFERED PREJUDICE. THAT IS --

1 THE INTERPRETER: I'M SORRY, YOUR HONOR, HAS
2 OR HAS NOT?

3 THE COURT:: HAS.

4 THAT IS, WHICH REQUIRES SHOWING
5 REASONABLY WOULD HAVE NOT PLEADED GUILTY IF
6 PROPERLY ADVISED.

7 THE COURT DIDN'T SEE ANY SUCH PROOF IN
8 THE DOCUMENT SUBMITTED BY MR.

9 HOWEVER, COUNSEL HAS NOW SUBMITTED IN A
10 SUPPLEMENTAL DECLARATION FOR MR.
11 INDICATING THAT IF HE HAD KNOWN OF THE
12 IMMIGRATION CONSEQUENCES HE WOULD NOT HAVE
13 ENTERED HIS PLEA BACK IN 1992, WHICH SEEMS TO
14 SATISFY THAT REQUIREMENT.

15 THERE'S ALSO A TIMELINESS REQUIREMENT
16 THAT THE CASES ARE BARELY FLEXIBLE. AS LONG AS
17 THE, SORT OF TRUE IMPACT OF THE CONSEQUENCES
18 DON'T COME TO LIGHT AS LONG AS THE DEFENDANT
19 ACTS IN A RELATIVELY EXPEDITIOUS FASHION
20 THEREAFTER, IT'S NOT CONSIDERED UNTIMELY, EVEN
21 THOUGH 18 OR 19 YEARS HAVE PASSED SINCE THE
22 1992 CONVICTION.

23 IN THIS CASE, IT APPEARS THE DEFENDANT
24 BECAME AWARE OF THE IMMIGRATION CONSEQUENCES IN
25 2010 AND FILED HIS MOTION SOON THEREAFTER.

26 SO, ALL OF THE REQUIRED SHOWINGS APPEAR
27 TO BE SATISFIED IN ORDER FOR MR. HERRERA TO BE
28 ENTITLED TO RELIEF.

1 WHAT I WANTED TO GET FURTHER INPUT FROM
2 THE PEOPLE AND THE PEOPLE'S POSITION, HOWEVER
3 BEFORE I MADE A RULING OF --

4 MS. KARB: JUST A MOMENT.

5 THERE'S ANOTHER MOTION FOR THE SAME
6 REASON. I THOUGHT I READ THAT RECORD. I
7 HAVEN'T READ THIS ONE.

8 I JUST NEED A MOMENT.

9 THE COURT:: SURE.

10 MS. KARB: I AGREE WITH THE COURT THAT THERE
11 APPEARS TO BE NO ADVISEMENT OF IMMIGRATION
12 CONSEQUENCES AT THE TIME OF THE PLEA AND THAT THE
13 DEFENDANT HAS STATED IF HE HAD KNOWN THE
14 IMMIGRATION CONSEQUENCES HE WOULD NOT HAVE ENTERED
15 THE PLEA.

16 PEOPLE SUBMIT.

17 THE COURT:: IN LIGHT OF THE REASONS THAT THE
18 COURT HAS INDICATED ON THE RECORD, I BELIEVE
19 MR. MOTION IS WELL TAKEN.

20 THE COURT WILL GRANT THE MOTION TO
21 VACATE THE CONVICTION IN THIS CASE.

22 THAT WILL BE THE ORDER OF THE COURT.

23 ANYTHING FURTHER, COUNSEL?

24 MR. FEYZJOU: NO. I GUESS TECHNICALLY THAT
25 MEANS CASE WOULD BE ON THE ACTIVE CALENDAR, UNLESS
26 THE PEOPLE AGREE TO DISMISS 1385.

27 I GUESS TECHNICALLY THE CASE GOES BACK
28 TO ACTIVE STATUS.

1 MS. KARB: WE HAVE TO ARRAIGN AND SET IT FOR
2 PRETRIAL.

3 THE COURT:: OKAY.

4 THIS CASE IS ACTUALLY, SINCE WE WERE
5 LAST HERE, WE'VE DONE SORT OF AN ALPHABET
6 SHIFT. THIS ACTUALLY GOES TO DEPARTMENT EIGHT.

7 AT THIS POINT, DOES HE WISH TO WITHDRAW
8 HIS PLEA?

9 MR. FEYZJOU: YES.

10 THE COURT:: I'LL SET THIS FOR ARRAIGNMENT
11 AND PLEA THEN ON -- MY THOUGHT, COUNSEL IS TO, IF
12 YOU'RE AMENABLE GIVE US TIME WAIVER, IS TO SET THIS
13 30 DAYS OUT IN DEPARTMENT EIGHT.

14 THAT WILL GIVE THE PEOPLE AN
15 OPPORTUNITY TO REVIEW THEIR FILE. AND THAT WAY
16 THEY CAN MAKE A DETERMINATION AS TO HOW THEY
17 WOULD LIKE TO PROCEED.

18 ARE YOU AGREEABLE?

19 MR. FEYZJOU: YES, YOUR HONOR.

20 THE COURT:: DOES THAT MAKE SENSE FROM THE
21 PEOPLE'S PERSPECTIVE?

22 MS. KARB: YES, YOUR HONOR.

23 ALTHOUGH I AGREE BECAUSE OF THE AGE OF
24 CASE IS LIKELY UNABLE TO PROCEED, WE STILL HAVE
25 TO GO THROUGH THE FOOT WORK, UNABLE TO PROCEED
26 BEFORE WE ANNOUNCE THAT.

27 THE COURT:: I'LL SET IT FOR ARRAIGNMENT AND
28 PLEA FOR WEDNESDAY, MARCH 30, 2011, AT 8:30 IN THE

1 MORNING, DEPARTMENT EIGHT, AS 0 OF 45 DATE.

2 TIME WAIVED?

3 MR. FEYZJOU: SO WAIVED.

4 THANK YOU.

5 THE COURT:: THANK YOU.

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8 (END OF PROCEEDINGS.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

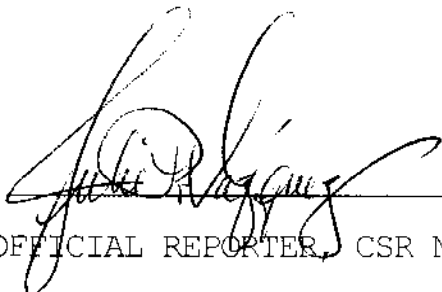
FOR THE COUNTY OF LOS ANGELES

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THE PEOPLE OF THE STATE OF CALIFORNIA,)
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PLAINTIFF,)
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DEFENDANT.)

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, JULIE R. VAZQUEZ, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES 1 THROUGH 6, COMPRISE A FULL TRUE AND
CORRECT TRANSCRIPT OF PROCEEDINGS TAKEN AND TESTIMONY TAKEN
IN THE MATTER OF THE ABOVE ENTITLED CAUSE ON
MARCH 2, 2011.


OFFICIAL REPORTER, CSR NO. 5521