

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

February 5, 2014

Alexander Funk, Esquire
Curley & Benton, LLC
250 Beiser Blvd, Suite 202
Dover, DE 19904

Casey Ewart, Esquire
Department of Justice
114 E. Market Street
Georgetown, DE 19947

RE: ***State vs. Samuel Baltazar***
ID #1104009636
Motion for Postconviction Relief (R1)
Motion to Vacate Conviction

Date Submitted: February 3, 2014

Dear Counsel:

Initially Mr. Baltazar filed a timely postconviction motion pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Mr. Alexander Funk was appointed to represent him.

The Defendant sought relief from the collateral consequence of deportation as a result of guilty pleas to Unlawful Sexual Contact in the Third Degree and Endangering the Welfare of a Child (misdemeanor) entered on August 23, 2011.

The Defendant successfully completed his sentence and was discharged on August 7, 2012. Unfortunately for the Defendant, Homeland Security initiated deportation proceedings in 2013.

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Recognizing that Rule 61 would not be the appropriate procedural path to relief, Mr. Funk filed a Rule 35 Motion arguing the deportation was an “extra ordinary circumstance” on which withdrawal from the guilty pleas should be granted.

The State opposes the present Motion, even as amended to vacate only the endangering conviction.

Because the Defendant was fully advised of the potential impact of the convictions on his immigration status, the Court cannot find that the deportation matters now pending are an extraordinary circumstance. Therefore the Court hereby denies both the Rule 61 Motion and the Rule 35 Motion.

IT IS SO ORDERED.

Very truly yours,

/S/ T. Henley Graves

T. Henley Graves

THG/ymp

pc: Prothonotary