



IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL BALTAZAR, )  
 )  
 Defendant Below, )  
 Appellant, ) Case No. 92, 2014  
 )  
 v. )  
 )  
 STATE OF DELAWARE, )  
 )  
 Plaintiff Below, )  
 Appellee. )

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

**STATE OF DELAWARE'S ANSWERING BRIEF**

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## NATURE AND STAGE OF THE PROCEEDINGS

On February 23, 2011, a grand jury indicted Appellant Samuel Baltazar (“Baltazar”) with unlawful sexual contact first degree (11 *Del. C.* § 769(a)(3)) and endangering the welfare of a child (11 *Del. C.* § 1102(a)(1) and (b)(3)), both of which are felonies. A35, 83. On August 23, 2011, Baltazar entered a *Robinson*<sup>1</sup> plea to the lesser included misdemeanor offenses of unlawful sexual contact third degree (11 *Del. C.* § 767) and endangering the welfare of a child (11 *Del. C.* § 1102(a)(1)). A1. The Superior Court immediately sentenced him to one year and six months of Level V incarceration, suspended for one year of Level III probation. A3-4. Baltazar was discharged from probation early on August 9, 2012. A84.

Baltazar is a legal permanent resident in the United States. A33. On April 9, 2013, Baltazar received notice to appear for removal proceedings under the Immigration and Nationality Act. A33. According to the notice, he was subject to removal because his plea for endangering the welfare of a child amounted to a conviction for a crime of child abuse. *Id.* Thereafter, on October 9, 2013, Baltazar filed a *pro se* motion for postconviction relief, arguing among other things 1) that his counsel was ineffective for failing to advise him “he would face the virtual certainty of loss of his status as [a legal permanent resident] and his removal from the U.S.” A23.

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<sup>1</sup> *Robinson v. State*, 291 A.2d 279 (Del. 1972).

Counsel was appointed to represent Baltazar for his motion for postconviction relief; however, instead of amending the motion, Baltazar opted to pursue a motion to vacate his sentence. A41, 49-54. In a letter to the court, Baltazar's counsel indicated that the motion to vacate the sentence would render his motion for postconviction relief moot. A41. The Superior Court denied both of Baltazar's motions on February 5, 2014 on the basis that the deportation proceedings did not amount to extraordinary circumstances sufficient to justify consideration of his claims under Superior Court Criminal Rules 35 or 61. A82.

Baltazar appealed. He filed his opening brief on June 10, 2014. This is the State's Answering Brief.

## SUMMARY OF THE ARGUMENT

I. Appellant's claim is DENIED. The Superior Court did not abuse its discretion in denying Baltazar's motion to vacate his sentence under Superior Court Criminal Rule 35(b). The threat of deportation in Baltazar's case did not amount to extraordinary circumstances justifying consideration under Rule 35(b) because Baltazar was aware at the time of his plea that his conviction might result in deportation. Moreover, the relief of vacating a sentence is not available under Rule 35(b).

In addition, the court acted within its discretion in denying Baltazar's motion for postconviction relief under Superior Court Criminal Rule 61. Baltazar did not have standing to seek relief under Rule 61 because he had completed his sentence. Moreover, his motion was procedurally time-barred under Rule 61(i)(1). Even considering his motion on the merits, Baltazar's motion fails. Baltazar's counsel effectively advised him that he risked deportation by pleading guilty and he cannot show that he would not have pled guilty had his counsel advised him he most certainly faced deportation.



## STATEMENT OF FACTS

Baltazar is alleged to have inappropriately touched his girlfriend's seven-year-old granddaughter inside her underwear on her vagina on at least one occasion.<sup>2</sup> Ex. A; A35. He was charged and indicted with first degree unlawful sexual contact and endangering the welfare of a child when the child is the victim of a sexual offense. Ex. A; A35. On August 23, 2011, he took a *Robinson* plea to the misdemeanor lesser included charges of third degree unlawful sexual contact and endangering the welfare of a child. A3. He signed a guilty plea form and a Truth in Sentencing Guilty Plea ("TIS") Form. A1-2.

The guilty plea form specifically notes in the section entitled "State and Defendant Agree to the Following" that the defendant "understands that this plea may affect his immigration status." A1. In addition, Baltazar provided a "yes" answer in response to the question on the TIS Form, "NON-CITIZENS: Are you aware that conviction of a criminal offense may result in deportation/removal, exclusion from the United States, or denial of naturalization?" A2.

Baltazar entered his plea with the help of an interpreter. A9. His counsel told the court that he had reviewed all of the forms with Baltazar through the interpreter. *Id.* Counsel further informed the court: "I've explained to him that, even though this isn't a felony, it might have ramifications regarding his status in

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<sup>2</sup> Since Baltazar entered a plea for his charges, the facts of his case are taken from the probable cause affidavit to the arrest warrant (Ex. A).

this country. He's legal. He has permanent legal residency, but this may affect his ability to stay in the country, and he's aware of that." A10. Baltazar testified that his attorney had reviewed the guilty plea form with him line by line. A14. The court accepted Baltazar's plea as knowingly, voluntarily and intelligently offered. A15-16. The Superior Court discharged Baltazar early from probation on August 9, 2012. A84.

According to the paperwork submitted by Baltazar that he received from the Department of Homeland Security ("DHS"), he is a native of Guatemala who has been in the United States since September of 1985. A33. In December of 1990 his status was adjusted to lawful permanent resident. *Id.* On April 9, 2013, Baltazar received notice from the DHS that it was instituting deportation proceedings against him because of his conviction for endangering the welfare of a child in Delaware. *Id.* According to Baltazar, he has been in Immigrations and Customs Enforcement Custody since April 9, 2013. A25.

## ARGUMENT

### I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO VACATE BALTAZAR'S SENTENCE UNDER SUPERIOR COURT CRIMINAL RULE 35.

#### Question Presented

Whether the Superior Court abused its discretion when it found the impact of Baltazar's convictions on his immigration status did not amount to extraordinary circumstances sufficient to justify consideration of his motion to vacate his convictions under Superior Court Criminal Rule 35.

#### Standard and Scope of Review

This Court reviews a Superior Court decision to deny a motion for modification of a sentence for abuse of discretion.<sup>3</sup>

#### Merits of the Argument

Baltazar initially challenged his conviction and sentence under Superior Court Criminal Rule 61 ("Rule 61"). Op. Br. at 13. Later, however, he filed a motion to vacate his conviction under Superior Court Criminal Rule 35(b) ("Rule 35"). A49, 84. Baltazar argued that extraordinary circumstances warranted consideration of his motion under Rule 35(b) to vacate his convictions despite the fact that it was filed almost two and a half years after imposition of his sentence because he was facing deportation. A53.

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<sup>3</sup> *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002).

As noted above, at the time of his plea, Baltazar was a legal permanent resident of the United States. Under the Immigration and Nationality Act (“INA”), a legal permanent resident shall be removed upon the order of the Attorney General if he “is convicted of . . . a crime of child abuse, child neglect, or child abandonment.”<sup>4</sup>

Superior Court Criminal Rule 35(b) provides that the court may consider a motion for reduction of sentence made more than ninety days after imposition of a sentence only in extraordinary circumstances. “Rule 35(b) . . . confers upon a sentencing trial judge considerable discretion over the appropriate grounds for a reduction of sentence.”<sup>5</sup> This Court held in *Lewis v. State*<sup>6</sup> (“*Lewis*”), that the risk of deportation might amount to extraordinary circumstances despite the fact that the defendant’s sentence had already been served. *Lewis* held that the Superior Court did not abuse its discretion in modifying a sentence that had already been served when it considered collectively, “1) the nature of the original sentence; 2) the time Defendant spent actually incarcerated; 3) possible deportation of

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<sup>4</sup> See 8 U.S.C. § 1227(a)(2)(E)(i), INA § 237(a)(2)(E)(i) (providing for removal of aliens for certain deportable offenses); 8 U.S.C. § 1101(a)(3) (“The term ‘alien’ means any person not a citizen or national of the United States.”).

<sup>5</sup> *Lewis*, 797 A.2d at 1201.

<sup>6</sup> *Id.*

Defendant; and 4) the hardship on innocent persons that would result from Defendant's deportation . . . .”<sup>7</sup>

As a preliminary matter, Baltazar is not entitled to relief under Rule 35(b), as the rule is addressed to modifying or reducing a sentence, not to vacating a conviction. In *Lewis*, the defendant sought to have his sentence reduced, not vacated. Lewis’ offense only called for deportation if the sentence was a year or longer.<sup>8</sup> Baltazar’s conviction calls for deportation no matter the length of the sentence.<sup>9</sup>

Notwithstanding that the relief Baltazar seeks is not available under Rule 35(b), the Superior Court properly exercised its discretion to find that the deportation proceedings in Baltazar’s case do not amount to extraordinary circumstances justifying consideration of his motion after his sentence had been fully served. Ex. A to Op. Br. The court specifically noted that at the time Baltazar entered the plea, he had been advised by his attorney and by the TIS and guilty plea forms that his plea carried a risk of deportation. *Id.*

“Under [the] highly deferential [abuse of discretion] standard, a reviewing court should resist a tendency to substitute its views for those of the judge exercising the initial power. The test is not whether the reviewing court would

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<sup>7</sup> *Id.* (quoting *State v. Lewis*, 2000 WL 33113932, \*3 (Del. Super. Oct. 27, 2000).

<sup>8</sup> *See Lewis*, 797 A.2d at 1199.

<sup>9</sup> *See* 8 U.S.C. § 1227(a)(2)(E)(i), INA § 237(a)(2)(E)(i).

have ruled otherwise but whether the trial court acted within a zone of reasonableness or stayed within ‘a range of choice.’”<sup>10</sup> The court acted well within its discretion in denying Baltazar’s motion to vacate his sentence. Not only did Baltazar’s plea agreement and his TIS form provide him with notice that he risked deportation by pleading guilty, but also his counsel told him the plea might affect his ability to remain in the country. A10.

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<sup>10</sup> *Lewis*, 797 A.2d at 1202.

## **II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING BALTAZAR'S MOTION FOR POSTCONVICTION RELIEF UNDER SUPERIOR COURT CRIMINAL RULE 61.**

### **Question Presented**

Whether the Superior Court abused its discretion when it found Superior Court Criminal Rule 61 was not the appropriate procedural path for Baltazar to challenge his conviction when his sentence had been fully served.

### **Standard and Scope of Review**

The Superior Court's decision to deny postconviction relief is reviewed on appeal for abuse of discretion.<sup>11</sup>

### **Merits of the Argument**

In his *pro se* motion for postconviction relief, Baltazar asserted several claims, including the argument that his counsel was ineffective for failing to advise him of the immigration consequences of the convictions to which he pleaded guilty. A23. Then, in a letter to the Superior Court, Baltazar conceded that he had received "adequate and sufficient notice of the potential collateral consequences to his immigration status to withstand scrutiny of prior counsel's performance." A70. The Superior Court denied Baltazar's motion for postconviction relief, noting that Baltazar had recognized that Rule 61 was not the appropriate path for procedural relief. Ex. A to Op. Br. at 2. On appeal, Baltazar asks the Court to find his counsel

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<sup>11</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

was ineffective based on the argument that, at the time of his plea, his conviction would have resulted in certain deportation, while his attorney merely advised him that it would result in a risk of deportation. Op. Br. at 21-28. He requests that his case be remanded for an evidentiary hearing. *Id.* at 28-29.

In *Padilla v. Kentucky*,<sup>12</sup> the United States Supreme Court held that defense counsel has a duty to inform a noncitizen client that he faces a risk of deportation when entering into a plea that might subject him to such risk. “[F]ailure to do so ‘clearly satisfies the first prong of the *Strickland* analysis.’”<sup>13</sup> The Supreme Court found Padilla’s counsel ineffective when not only did his counsel fail to advise him of the consequences of entering into his plea, but also he told Padilla that he did not have to worry about his immigration status because he had been in the country for so long.<sup>14</sup>

This Court has held that a defendant who has been discharged from probation and is not subject to any future custody for his conviction has no standing to seek relief under Rule 61.<sup>15</sup> Indeed, this Court has so held despite the

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<sup>12</sup> 559 U.S. 356, 368-69 (2010).

<sup>13</sup> *Id.* at 371 (quoting *Hill v. Lockhart*, 474 U.S. 52, 62 (1985) (White, J. concurring)).

<sup>14</sup> *Id.* at 359.

<sup>15</sup> See *Ruiz v. State*, 2008 WL 1961187, \*2 (Del. May 7, 2008) (“We have previously explained that a person loses standing to move for postconviction relief under Rule 61 where the defendant is not in custody or subject to future custody for the underlying offense or challenged sentence.”).



decision in *Padilla*.<sup>16</sup> Baltazar was discharged from probation on August 9, 2012. Therefore, he lacks standing to pursue a claim under Superior Court Criminal Rule 61.

Even if Baltazar did have standing, his claim still fails because it is procedurally barred under Rule 61(i)(1) as untimely. Although the Superior Court found Baltazar's motion for postconviction relief to have been timely filed (Ex. A to Op. Br.), that is not the case. Baltazar had one year to file a motion for postconviction relief from the date his conviction became final.<sup>17</sup> Under Rule 61(m)(1), Baltazar's conviction became final thirty days after August 23, 2011, the date the court imposed his sentence. A83. He did not file his motion for postconviction relief until October 9, 2013, more than two years later. A84. Baltazar is not asserting a retroactively applicable right that is newly recognized to justify exception from the time bar of Rule 61(i)(1). Therefore consideration of his postconviction relief motion is barred as untimely.

Even considering Baltazar's claim on the merits, it fails. In order to prevail on a claim of ineffective assistance of counsel, "the defendant must show that

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<sup>16</sup> See *Ruiz v. State*, 2011 WL 2651093, \*2 (Del. Jul. 6, 2011) (finding that despite the fact that Ruiz faced deportation, he still lacked standing to pursue postconviction relief years after he had been released from custody, and noting that *Padilla* did not address the "in custody" requirement of the federal habeas corpus statute). *But see Paul v. State*, 2011 WL 3585607, \*2 (Del. Aug. 15, 2011) (implying that defendant could overcome general rule mooted claims under Rule 61 because he was not longer subject to future custody if he could demonstrate a specific right lost or burden imposed as a result of the conviction).

<sup>17</sup> Super. Ct. Crim. R. 61(i)(1).

counsel's representation fell below an objective standard of reasonableness,' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'"<sup>18</sup> A defendant must overcome a strong presumption that trial counsel's conduct was professionally reasonable.<sup>19</sup> "In the context of a guilty plea, to establish prejudice the defendant must demonstrate a reasonable probability that, but for his counsel's unprofessional errors, the defendant would not have pled guilty but would have insisted on going to trial."<sup>20</sup>

Baltazar's claims of ineffective assistance of counsel are contradicted by the statements he made during his plea colloquy and on the TIS Guilty Plea form. Not only did the TIS and guilty plea forms notify him that his plea might result in deportation, but also his attorney represented to the Superior Court that he had advised Baltazar that his plea might affect his ability to stay in the country. Baltazar argues, however, that although his paperwork and his counsel advised him that his plea carried a risk of deportation, to be effective, his counsel should have advised him that his plea would result in a near-certainty of deportation. *See Op. Br. at 20-28.*

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<sup>18</sup> *Albury v. State*, 551 A.2d 53, 58 (Del. 1988) (applying *Strickland v. Washington*, 466 U.S. 668, 688 (1984) standard to Delaware).

<sup>19</sup> *Id.* at 59.

<sup>20</sup> *Smith v. State*, 2014 WL 1017277, \*2 (Del. March 13, 2014) (citation omitted).

In *Padilla*, the Supreme Court held:

When the law is not succinct and straightforward ... a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear ... the duty to give correct advice is equally clear.<sup>21</sup>

A number of courts in other jurisdictions have interpreted this language in *Padilla* to mean that defense counsel has a duty to advise a client that he *will* be deported if it is clear that his conviction will result in removal.<sup>22</sup> The courts have also acknowledged, however, as the Supreme Court did in *Padilla*, that immigration law is complex and it is often not clear whether a conviction will result in presumptive deportation.<sup>23</sup> Thus, in cases in which determining whether an individual would be subject to automatic deportation required something more than a simple reading of the statute, courts have held trial counsel need only advise a

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<sup>21</sup> *Padilla*, at 369.

<sup>22</sup> See, e.g., *United States v. Urias-Marrufo*, 744 F.3d 361, 368 (5th Cir. 2014) (holding that under *Padilla* counsel has a duty “to warn of certain immigration consequences” and that it is irrelevant that defendant had discussed with her attorney the possible adverse immigration consequences); *Kostraba v. State*, 2011 WL 5829141, \*4 (Minn. Ct. App. Nov. 21, 2011) (holding that under *Padilla*, where the terms of the relevant immigration statute are succinct, clear and explicit, defense counsel must provide accurate advice). Accord *Lopez-Penalosa v. State*, 804 N.W.2d 537, 543-44 (Iowa App. 2011). But see *Neufville v. State*, 13 A.3d 607, 614 (R.I. Supr. 2011) (finding that under *Padilla*, “Counsel is not required to inform their clients that they will be deported, but rather that a defendant’s ‘plea would make [the defendant] eligible for deportation.’” (quoting *Padilla*, at 368)).

<sup>23</sup> See, e.g., *Lopez-Penalosa*, 804 N.W. 2d at 544 (citing *Padilla* in discussing the complex nature of the immigration laws).

client that a conviction might carry a risk of adverse immigration consequences.<sup>24</sup>

Determining whether Baltazar's conviction results in automatic deportation is similarly complicated.

Under the INA, a legal permanent resident shall be removed if he is convicted of a crime of child abuse.<sup>25</sup> The INA directs that the Attorney General shall begin removal proceedings "as expeditiously as possible after the date of conviction."<sup>26</sup> A defense attorney must turn to the case law to learn that a crime of child abuse includes a conviction for endangering the welfare of a child.<sup>27</sup>

A legal permanent resident who has lived in the United States continuously for seven years and who has not been convicted of an "aggravated felony" may be eligible for cancellation of removal.<sup>28</sup> Cancellation of removal is a discretionary

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<sup>24</sup> See *Id.* at 545 (finding counsel owed more limited duty of advising of risk of deportation when "to accurately advise Lopez-Penalzoza about the deportation consequences of her plea, her counsel would have been required . . . to step into the 'labyrinth' of immigration law"); *Kostraba*, 2011 WL 5829141, at \*5 (finding counsel need only advise of risk of deportation when "[b]ecause of the numerous relevant statutes, the complex rules of eligibility for relief, and the discretionary nature of some forms of relief, the deportation consequences and the likelihood of Kostraba obtaining relief from removal could not 'easily be determined'");

<sup>25</sup> See 8 U.S.C. § 1227(a)(2)(E)(i), INA § 237(a)(2)(E)(i) (providing for removal of aliens for certain deportable offenses); 8 U.S.C. § 1101(a)(3) ("The term 'alien' means any person not a citizen or national of the United States.").

<sup>26</sup> 8 U.S.C. §1229(d)(1), INA § 239(d)(1).

<sup>27</sup> See, e.g., *Charles v. Mukasey*, 276 Fed.Appx. 382, 383 (5th Cir. 2008) (noting Board of Immigration Appeals had determined appellant's conviction of endangering the welfare of a child was a crime of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i)); 8 U.S.C. § 1227(a)(2)(E)(i) (providing no definition for crime of child abuse).

<sup>28</sup> 8 U.S.C. §1229b(a), INA § 240A(a).

form of relief.<sup>29</sup> The United States Supreme Court in *Padilla*<sup>30</sup> noted that under the most recent iteration of the INA, if a noncitizen has committed a removable offense, “his removal is practically inevitable but for the possible exercise of limited remnants of equitable discretion vested in the Attorney General to cancel removal. . . .” It is not clear whether Baltazar would be eligible for cancellation of removal, as his conviction for endangering the welfare of a child<sup>31</sup> might be considered an “aggravated felony” under the INA.<sup>32</sup>

In sum, it is not clear from a simple reading of the statute whether Baltazar’s plea carries a near certainty of removal. Therefore, under *Padilla*, his counsel did

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<sup>29</sup> See, e.g., *Champion v. Holder*, 626 F.3d 952, 958 (7th Cir. 2010).

<sup>30</sup> 559 U.S. at 363-64.

<sup>31</sup> Although Baltazar originally sought to have both his convictions for endangering the welfare of a child and unlawful sexual contact (“USC”) third degree vacated, he later amended his motion to exclude his USC conviction. A69, 72. The government was not seeking to remove him for the USC conviction. A69. If, however, the USC conviction were to remain, it too would likely subject Baltazar to removal as a crime of child abuse or of moral turpitude. See, e.g., *Mallari v. Riley*, 2004 WL 1717589, \*1 (E.D.Pa. Jul. 30, 2004) (finding Board of Immigration Appeal properly found conviction for USC third degree under 11 *Del. C.* § 767 was crime involving moral turpitude and crime involving child abuse under 8 U.S.C. § 1227(a)(2)).

<sup>32</sup> Compare *Jabbar v. Attorney General of the United States*, 2013 WL 11909, \*2 (3d Cir. Jan. 2, 2013) (finding New Jersey conviction for third degree endangering the welfare of a child to constitute “aggravated felony” when Jabbar admitted in plea colloquy to engaging in sexual act in front of a minor); *Ferreira-Arias v. Attorney General of the United States*, 2009 WL 1144024, \*2 (3d Cir. Apr. 29, 2009) (finding Delaware conviction for second degree unlawful sexual contact to be “aggravated felony” because conduct punishable by statute amounts to sexual abuse of a minor) and *Singh v. Ashcroft*, 383 F.3d 144 (3d Cir. 2004) (finding Delaware conviction for third degree unlawful sexual contact did not constitute “aggravated felony” despite note on sentencing order that victim was under 16 because the language of the statute itself does not establish the age of the victim); *Stubbs v. Attorney General of the United States*, 452 F.3d 251 (3d Cir.2006) (finding New Jersey conviction for third degree endangering the welfare of a child did not constitute “aggravated felony” when neither language of statute nor charging instrument satisfied definition of sexual abuse of a minor).

not have a duty to advise him that his conviction would certainly lead to deportation. He was effective in advising him simply that his conviction *might* affect his immigration status.<sup>33</sup>

Furthermore, Baltazar cannot demonstrate prejudice. Given the nature of the allegations against him, short of dismissal, Baltazar was not likely to have resolved his case with a plea that did not carry a risk of deportation.<sup>34</sup> Moreover, “a defendant’s statements to the Superior Court during the guilty plea colloquy are presumed to be truthful.”<sup>35</sup> Baltazar is bound by the representations he made to the trial court during his plea colloquy that he had read and understood the forms he signed. On those forms, he indicated that he understood that his conviction might affect his immigration status. A1-2. Baltazar failed to provide clear and convincing evidence to contradict his answers in the plea colloquy and on the TIS form. Therefore, there was no basis for the Superior Court to grant postconviction relief for his claims of ineffective assistance of counsel.<sup>36</sup>

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<sup>33</sup> *Cf. State v. Telford*, 22 A.3d 43, 47-52 (N.J. Super. 2011) (finding defense counsel who advised defendant only that he “might” be deported effective when the deportation question was highly complex in part because it was not clear whether defendant was eligible for cancellation of removal).

<sup>34</sup> *See, e.g., Singh*, 383 F.3d at 152-64 (discussing evidence the Board of Immigration Appeals may consider when determining whether an offense amounts to the aggravated felony of sexual abuse of a minor).

<sup>35</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) (citation omitted).

<sup>36</sup> *Smith*, 2014 WL 1017277, at \*3 (finding no error in Superior Court’s rejection of ineffective assistance of counsel claim because appellant was bound by sworn statements in plea colloquy in the absence of clear and convincing evidence to the contrary).

## CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

/s/ Kathryn J. Garrison

Bar I.D. No. 4622

Deputy Attorney General

Department of Justice

114 East Market Street

Georgetown, DE 19947

(302) 856-5369

DATED: July 14, 2014

# **EXHIBIT A**



Adult Complaint and Warrant  
In the Justice of the Peace Court  
In and for the  
State of Delaware

State of Delaware vs. **SAMUEL BALTAZAR**

I, DET ROBERT B TRUITT (00155) of TROOP 4 STATE POLICE, do hereby state under oath or affirmation, to the best of my knowledge, information and belief that the above-named accused violated the laws of the State of Delaware by committing criminal acts in **Sussex** county on or about the date, or dates, and at or about the location, or locations, as indicated in Exhibit A hereto attached and made a part hereof.

Wherefore, your affiant prays that the above-named accused may be forthwith approached and held to answer this complaint consisting of **2** charges, and to be further dealt with as the law directs.

X

Affiant/Video Phone Warrant

Sworn to and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, AD \_\_\_\_\_.

Judge/Commissioner/Court Official

(To be completed by the Judge/Commissioner/Court Official)

- A. \_\_\_\_\_ The crime was committed by a child.
- B. \_\_\_\_\_ A misdemeanor was committed against a child.
- C. \_\_\_\_\_ A misdemeanor was committed by one family member against another family member.
- D. \_\_\_\_\_ Other: Explain

Warrant

To any constable or other authorized person:

Whereas, the foregoing complaint consisting of **2** charges, having been made, as listed in Exhibit A which is attached hereto and incorporated herein, and having determined that said complaint has been properly sworn to and having found that there exists probable cause for the issuance of process, based upon the affidavit of probable cause which is attached hereto and incorporated herein as Exhibit B, you are hereby commanded in the name of the State of Delaware, to take **SAMUEL BALTAZAR** accused, and bring same before

**JUSTICE OF THE PEACE COURT 02, FORTHWITH, to answer said charges.**

GIVEN UNDER MY HAND, this \_\_\_\_\_ day of \_\_\_\_\_, AD \_\_\_\_\_.

Judge/Commissioner/Court Official

Executed on \_\_\_\_\_ by \_\_\_\_\_

Case Number: **11 04 009636** Warrant Number: 04 11 003491

State of Delaware vs. **SAMUEL BALTAZAR**

Case: 11 04 009636

Exhibit A

Charge Sequence: 001

Police Complaint Number: 05 11 014807 Arrest Number:

Charge: **USC with person who is < 13 years of age or causes the victim to have sexual contact with the person or a third person**

In Violation of 11

**Del.C. § 0769 00a3 F D**

Location: 11445 Clover DR - Dove Estates - Seaford, 19973

**TO WIT: BALTAZAR, SAMUEL, between the 1st day of FEBRUARY, 2011 and the 4th day of April, 2011 in the County of SUSSEX, State of Delaware, did intentionally have sexual contact with or caused the victim, ALANI CASTREJON, to have sexual contact with the person or a third person, who has not reached their thirteenth birthday and as of the date of the crime was 7 years of age, THE ACCUSED RUBBED THE VICTIM'S VAGINA.**

Charge Sequence: 002

Police Complaint Number: 05 11 014807 Arrest Number:

Charge: **Endangering the Welfare of a Child and Child is Sex Assault Victim**

In Violation of 11 **Del.C. § 1102 00B3 F G**

Location: 11445 Clover DR - Dove Estates - Seaford, 19973

**TO WIT: BALTAZAR, SAMUEL, between the 1st day of FEBRUARY, 2011 and the 4th day of April, 2011 in the County of SUSSEX, State of Delaware, did being in the care of a child less than 18 years old, BALTAZAR, SAMUEL knowingly acted in a sexual manner as defined in section 761(d) that endangered ALANI CASTREJON, to wit: THE ACCUSED RUBBED THE VICTIM'S VAGINA.**

Exhibit B

SBI Number: **00689327**

Also Known As:

Date of Birth/Age: **May 12, 1966 (44)**

Sex: **Male**

Race: **White**

Eye Color: **Brown**

Hair Color: **Brown**

Height: **5'3"**

Weight: **160 lbs**

Driver's License: **DE - 1143242**

Social Security Number: **591688604**

Address: **11402 1ST ST  
BRIDGEVILLE, DE 19933**

Next of Kin, Address, Employer  
**MARIE BALTAZAR  
GUATAMALA,**

Phone: **(302) 569-8940**

Employer: **ASPHALT BY JULIE  
9619 CORDOVA RD  
EASTON, MD 21601  
(410) 714-1900**

Date and Times of Offense: **Between 02/01/2011 at 0800 and 04/04/2011 at 2130**

Location of Offense: **11445 Clover DR - Dove Estates - Seaford, 19973**

Your affiant DET ROBERT B TRUITT can truly state that: Your affiant is a sworn member of the Delaware State Police and is currently assigned to the Major Crimes Unit located at Troop 4 in Georgetown, Delaware. On 040411, CPL. Hargis of Troop 5 responded to Nanticoke Hospital for a sexual assault incident. CPL. Hargis documented an initial report with the parties involved and forwarded same to the Troop 4 Major Crimes Unit. On 040711, I attended a Children's Advocacy Center interview for Victim Alani Castrejon WFH7 DOB 070403. Forensic Interviewer Randy Ramirez facilitated the interview with Alani and the following information was learned. Alani stated that she and the Accused Samuel Baltazar were playing school and tic tac toe in Alani's bedroom. Alani stated that the Accused was sitting across from her and she had pajamas on. Alani stated that the Accused then touched her private with his hand. Alani associated the name "private" with her vagina earlier in the interview. Alani disclosed that the Accused touched her skin which is indicative of being touched on the inside of clothing.

After the forensic interview, I spoke with Melissa Castrejon who is Alani's mother. Melissa informed me that the Accused stayed with them periodically from early February 2011 until Alani told Melissa on April 4, 2011. Melissa also confirmed that Alani and the Accused played school together often when the Accused was there.

Your affiant has not included each and every fact known to this investigation, but that only necessary to establish probable cause for the arrest of Samuel Baltazar.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, AD \_\_\_\_\_

Affiant

Judge/Commissioner/Court Official

State of Delaware vs. **SAMUEL BALTAZAR**  
Case: 11 04 009636

Affiant: DET ROBERT B TRUITT (00155) of TROOP 4 STATE POLICE

Victim:  
ALANI CASTREJON

Date of Birth  
07/04/2003

Relationship Victim to Defendant  
Acquaintance

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, AD \_\_\_\_\_

\_\_\_\_\_  
Affiant

\_\_\_\_\_  
Judge/Commissioner/Court Official

**CERTIFICATION OF MAILING/SERVICE**

The undersigned certifies that on July 14, 2014, she caused the attached *State's Answering Brief* to be delivered to the following persons in the form and manner indicated:

Alexander W. Funk, Esq.  
Curley & Benton, LLC  
250 Beiser Blvd., Suite 202  
Dover, DE 19904  
*Attorney for Appellant*

via File and Serve Xpress.

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

*/s/ Kathryn J. Garrison*

Kathryn J. Garrison (#4622)  
Deputy Attorney General  
114 East Market Street  
Georgetown, DE 19947  
(302) 856-5369

DATE: July 14, 2014