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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 36036
)	
vs.)	
)	
HALTON FLOWERS,)	
)	
Defendant-Appellant.)	

SUPPLEMENTAL BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK**

**HONORABLE PETER D. MCDERMOTT
District Judge**

**LAWRENCE G. WASDEN
Attorney General
State of Idaho**

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PLAINTIFF-RESPONDENT**

**ATTORNEY FOR
DEFENDANT-APPELLANT**

IN THE SUPREME COURT OF THE STATE OF IDAHO,

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STATEMENT OF THE CASE

Nature of the Case, Statement of Facts and Course of Proceedings

The nature of the case, statement of facts and course of proceedings are set forth in the Respondent's Brief and are incorporated herein by reference. The state submits this Supplemental Respondent's Brief to address Flowers' claim that the United States Supreme Court's decision in Padilla v. Kentucky, ___ U.S. ___, 130 S.Ct. 1473 (2010), "has changed the analysis regarding what advisories must be given to a defendant by the court in order for a guilty plea to be valid." (Reply Brief of Appellant, pp.1-2; see also Reply Brief of Appellant, pp.5-9 (arguing the significance of Padilla as it relates to the issues in this case.).)

ARGUMENT

The United States Supreme Court's Decision In *Padilla v. Kentucky* Has No Bearing On The Constitutional Validity Of Flowers' Guilty Plea

A. Introduction

In its Respondent's brief, the state acknowledged that the district court failed at the change of plea hearing to advise Flowers that he would be required to register as a sex offender as a result of his guilty plea to rape. (Respondent's brief, p.9.) The state also acknowledged that the court's oversight resulted in a violation of Idaho Criminal Rule 11(d)(2). (Respondent's brief, p.9.) The state argued, however, that the failure to inform Flowers of the sex offender registration requirement does not entitle Flowers to withdraw his plea because (1) the requirement of sex offender registration is a collateral consequence of pleading guilty to an enumerated sex crime and, as such, the failure of the district court to advise Flowers of the registration requirement did not affect the constitutional validity of his plea, and (2) the technical violation of Rule 11(d)(2), I.C.R., does not otherwise rise to the level of manifest injustice entitling Flowers to withdraw his plea after sentencing. (Respondent's brief, pp.9-12.)

In reply, Flowers argues that the United States Supreme Court's recent decision in *Padilla v. Kentucky*, ___ U.S. ___, 130 S.Ct. 1473 (2010), "has changed the analysis regarding what advisories must be given to a defendant by the court in order for a guilty plea to be valid." (Reply Brief of Appellant, pp.1-2). Specifically, he contends that, after *Padilla*, the distinction between direct and collateral consequences no longer matters and a defendant pleading guilty to a sex offense that requires registration must be advised by the court of the

registration requirement in order for the plea to be constitutionally valid. (Reply Brief of Appellant, pp.5-7.) Flowers' interpretation of Padilla is incorrect.

While Padilla holds that trial counsel can be ineffective under the Sixth Amendment for failing to advise a defendant of even a collateral consequence of his plea, it does not overrule 40 years of Supreme Court precedent holding, as a matter of Fifth Amendment due process, that before a defendant pleads guilty, the trial court must advise him only of the direct consequences of his plea. Nor does Padilla, either alone or in combination with I.C.R. 11(d)(2), abrogate existing Idaho precedent holding that sex offender registration is a collateral consequence of a guilty plea and, as such, a trial court's failure to inform a defendant of the registration requirement prior to the entry of his plea does not render the plea constitutionally invalid.

Because, even after Padilla, the distinction between direct and collateral consequences still matters in determining whether a guilty plea is constitutionally valid, and because the requirement of sex offender registration is still a collateral consequence of a guilty plea, the district court's failure to advise Flowers of the registration requirement did not render Flowers' plea constitutionally invalid. Therefore, absent a showing that withdrawal of the plea is otherwise necessary to correct a manifest injustice – a showing Flowers has failed to make – Flowers is not entitled to withdraw his plea.

B. Padilla v. Kentucky Does Not Change The Analysis Regarding The Advisories A Trial Court Is Required To Give To Ensure A Constitutionally Valid Guilty Plea

Because Flowers sought to withdraw his plea after sentencing, he was required to show that withdrawal of the plea was necessary to correct a “manifest injustice.” I.C.R. 33(c). Manifest injustice is established, as a matter of law, “[i]f the plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be made voluntarily, knowingly and intelligently.” State v. Shook, 144 Idaho, 858, 859, 172 P.3d 1133, 1134 (Ct. App. 2007) (citing Ray v. State, 133 Idaho 96, 99, 982 P.2d 931, 934 (1999); State v. Huffman, 137 Idaho 886, 887, 55 P.3d 879, 880 (Ct. App. 2002); State v. Detweiler, 115 Idaho 443, 446, 767 P.2d 286, 289 (Ct. App. 1989)); accord State v. Heredia, 144 Idaho 95, 97, 156 P.3d 1193, 1195 (2007).

As a matter of constitutional due process, a plea is knowing and voluntary if it is “entered by one fully aware of the *direct consequences*, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel.” Brady v. United States, 397 U.S. 742, 755 (1970) (emphasis added). Because due process requires only that a defendant be advised of the direct consequences of a guilty plea, the trial court is not constitutionally required to inform a defendant of consequences that are collateral or indirect. Jakoski v. State, 136 Idaho 280, 32 P.3d 672 (Ct. App. 2001) (citation omitted) (“[D]ue process only requires that a defendant be informed of direct, as opposed to collateral consequences of a guilty plea.”); see also Heredia, 144 Idaho at 97-98, 156 P.3d at 1195-96 (citing State v. Huffman, 137 Idaho 886, 887, 55 P.3d 879,

880 (Ct. App. 2002); Ray v. State, 133 Idaho 96, 99-101, 982 P.2d 931, 934-36 (1999)) (under I.C.R. 11(c), which establishes the minimum requirements for taking a constitutionally valid guilty plea, “[t]he trial court is not required to inform a defendant of consequences that are collateral or indirect”). Sex offender registration is one such collateral consequence of a guilty plea and, as such, the failure of a trial court to inform a defendant that his or her plea will trigger the registration requirement does not render the plea constitutionally invalid. Ray, 133 Idaho at 99, 982 P.2d at 934.

On appeal, Flowers “acknowledges” the holding of Ray – *i.e.*, that sex offender registration is a collateral consequence of a guilty plea of which a defendant need not be informed in order for his plea to comport with due process. (Reply Brief of Appellant, p.3.) He argues, however, that this holding has been abrogated by that the United States Supreme Court’s recent decision in Padilla v. Kentucky, ___ U.S. ___, 130 S.Ct. 1473 (2010), which he contends, either alone or in combination with I.C.R. 11(d)(2), does away with the distinction between direct and collateral consequences and requires the trial court to advise a defendant about the sex offender registration consequences of his or her plea in order for the plea to satisfy constitutional due process standards under the Fifth and Fourteenth Amendments. (Reply Brief of Appellant, pp.3-9.) Contrary to Flowers’ assertions, neither Padilla nor I.C.R. 11(d)(2) alter, or even inform, the due process analysis at issue in this case.

The issue in Padilla was whether the Sixth Amendment’s guarantee of effective assistance of counsel requires a criminal defense attorney to advise his

or her non-citizen client whether the client's plea carries the risk of deportation. *Id.* at ___, 130 S.Ct. at 1477-78. Addressing this issue in the first instance, the lower court held that Padilla's counsel had no obligation to give Padilla correct advice, or even to advise him at all, that the offense to which he was pleading guilty would result in his deportation from this country because, the court reasoned, deportation was "merely a 'collateral consequence'" of Padilla's guilty plea. *Id.* at ___, 130 S.Ct. at 1478 (citation omitted). The Supreme Court rejected this reasoning, stating, "We ... have never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under *Strickland v. Washington*, 466 U.S. 668, 689 (1984)]." *Padilla*, ___ U.S. at ___, 130 S.Ct. at 1481. The Court discussed the practical effects of deportation and stated its view that "[d]eportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence." *Id.* at ___, 130 S.Ct. at 1482. The Court ultimately concluded, however, that whether counsel performed deficiently in failing to correctly advise Padilla of the deportation consequences of his plea turned not on the question of whether deportation is a direct or collateral consequence of a guilty plea, but rather on whether counsel's performance was objectively reasonable "under prevailing professional norms." *Id.* at ___, 130 S.Ct. at 1482 (citing *Strickland v. Washington*, 466 U.S. 668, 688 (1984)). Holding that "[t]he weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation," the Supreme Court

determined that the allegations in Padilla's petition were sufficient to satisfy the deficient performance prong of Strickland. Padilla, ___ U.S. at ___, 130 S.Ct. at 1482-83. The Court specifically noted, however, that "[w]hether Padilla is entitled to relief on his claim will depend on whether he can satisfy *Strickland's* second prong, prejudice," a matter the Court left to the lower courts to consider in the first instance. Id. at ___, 130 S.Ct. at 1483-84.

Although Flowers recognizes that Padilla concerned only trial counsel's duty under the Sixth Amendment to advise a defendant of the potential deportation risks of a guilty plea, he nevertheless cites it for the much broader proposition that trial courts must now inform defendants of all of the significant consequences of their guilty pleas, regardless of whether the consequences are deemed collateral or direct, in order for the plea to satisfy constitutional due process standards. (Reply Brief of Appellant, pp.5-9.) Flowers' reliance on Padilla for this proposition is clearly misguided.

In addressing the ineffective assistance of counsel claim before it, the Supreme Court in Padilla limited its analysis to whether the direct versus collateral consequences distinction is useful in evaluating whether trial counsel acted reasonably under prevailing professional norms as required by Strickland. Padilla, ___ U.S. at ___, 130 S.Ct. at 1481-82. The Padilla Court did not even mention the Fifth Amendment due process requirements applicable to guilty pleas, nor did it overrule its holding in Brady v. United States, 397 U.S. 742, 755 (1970), that a guilty plea satisfies due process standards if it is "entered by one fully aware of the direct consequences" thereof. To the extent Flowers argues

that the holding of Padilla can be logically extended to invalidate a guilty plea on due process grounds based solely on the failure of the trial court to advise the defendant of the “significant,” albeit collateral, consequences of the plea, such an extension is neither logical nor warranted. Even under the explicit reasoning of Padilla, a defendant seeking to withdraw his plea based on the failure of counsel to advise him of the risks of deportation must establish that he was actually prejudiced by counsel’s deficiency. Padilla, ___ U.S. at ___, 130 S.Ct. at 1483, 1485. If, as Flowers suggests, Padilla stands for the proposition that a defendant must have advice about all of the significant consequences of his plea in order for that plea guilty plea to be constitutionally valid, no showing of prejudice would be required.

The reasoning of Smith v. State, ___ S.E.2d ___, 2010 WL 2557336 (Ga., June 28, 2010), is instructive. Smith filed a “motion for out-of-time” appeal of his guilty pleas to several child molestation offenses, arguing, *inter alia*, that the trial court violated both a statutory provision and a court rule that required it to advise Smith that his guilty plea may have an effect on his immigration status. Id. at ___, 2010 WL 2557336 at *1. The Georgia Court of Appeals affirmed the denial of the motion, “acknowledging the alleged violation of [the statute] but relying on its precedent holding that a guilty plea will not be set aside due to the failure to advise the defendant of potential immigration consequences, because such consequences are ‘collateral.’” Id. at ___, 2010 WL 2557336 at *2 (citations omitted). The Supreme Court of Georgia granted certiorari and considered, in light of Padilla, whether due process required that Smith be advised of the

immigration risks of his guilty plea. *Id.* at ____, 2010 WL 2557336 at **2-5. Passing on this question, the Smith Court stated that “*Padilla*’s discussion of the ‘unique[] difficult[ies]’ of characterizing immigration consequences as ‘direct’ or ‘collateral,’ and its holding that counsel must advise non-citizen defendants about the potential immigration risks of a guilty plea” gave it “pause” in determining whether immigration risks are “collateral.” *Id.* at ____, 2010 WL 2557336 at *4. The court ultimately determined, however, that the Supreme Court’s unwillingness to apply the direct versus collateral consequences distinction in the context of a Sixth Amendment ineffective assistance of counsel claim did not affect the due process analysis regarding the advisories a trial court is required to give to ensure a constitutionally valid plea. The court explained:

The two doctrines [direct and collateral consequences and ineffective assistance of counsel] are not ... identical. Direct and collateral consequences relate to the trial court’s duty to ensure that guilty pleas are knowingly and voluntarily entered as a matter of Fifth Amendment due process, while ineffective assistance of counsel relates to the defense lawyer’s duty pursuant to the Sixth Amendment. ...

Padilla confirms this analytical distinction. The U.S. Supreme Court specifically declined to rely on the direct versus collateral consequences doctrine in determining the ineffective assistance claim presented, instead applying *Strickland*’s familiar evaluation of whether counsel acted reasonably in light of the prevailing professional norms for criminal defense lawyers. This approach clarifies that defense counsel may be ineffective in relation to a guilty plea due to professional duties for the representation of their individual clients that set a standard different and higher than those traditionally imposed on trial courts conducting plea hearings for defendants about whom the judges often know very little. This makes both analytical and practical sense.

In short, despite its discussion of the importance of deportation risks to some defendants, in the end the Supreme

Court did *not* extend the direct consequences doctrine to that issue, or reject the basic distinction between direct and collateral consequences in determining whether a defendant's guilty plea was knowingly and voluntarily entered. In the absence of such a binding directive to do so, we decline to do so either.

Smith, ___ S.E.2d at ___, 2010 WL 2557336 at **4-5 (internal citations omitted) (emphasis in original).

Flowers' claim that Padilla has done away with the direct versus collateral consequences distinction in determining whether a guilty plea is constitutionally valid is simply without merit. As found by the Smith Court, the analysis of Padilla is limited to the Sixth Amendment context and has no bearing on the Fifth Amendment due process question regarding what advisories a trial court must give to ensure a defendant's plea is knowingly and voluntarily entered. Because Padilla did not "reject the basic distinction between direct and collateral consequences in determining whether a defendant's guilty plea was knowingly and voluntarily entered," this Court, like the Smith Court, should decline to do so either. Smith, ___ S.E.2d at ___, 2010 WL 2557336 at *5.

This Court should also decline Flowers' invitation to hold that Padilla, either alone or in combination with I.C.R. 11(d)(2), elevates sex offender registration to a direct or significant enough consequence of a guilty plea such that a defendant must be advised of it before he pleads guilty in order for the plea to comport with due process. (See Reply Brief of Appellant, pp.4-9.) This Court has already determined that sex offender registration is a collateral consequence of a guilty plea and that the failure of a trial court to advise a defendant of the registration requirement does not render the plea constitutionally invalid. See

Ray v. State, 133 Idaho 96, 99, 982 P.2d 931, 934 (1999). Contrary to Flowers' assertions, neither Padilla nor this Court's adoption of I.C.R. 11(d)(2) provide any basis to overrule that determination. See, e.g., State v. Dana, 137 Idaho 6, 9, 43 P.3d 765, 768 (2002) (the rule of *stare decisis* dictates that controlling precedent be followed "unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice"); State v. Guzman, 122 Idaho 981, 1001, 842 P.2d 660, 680 (1992) ("[P]rior decisions of this Court should govern unless they are manifestly wrong or have proven over time to be unjust or unwise.").

In Padilla, the Supreme Court declined to classify deportation as either a direct or collateral consequence of a guilty plea but ultimately concluded, based on the weight of prevailing professional norms and "the unique nature of deportation," that constitutionally competent counsel must advise his or her non-citizen client of the deportation risks of a plea. Padilla, ___ U.S. at ___, 130 S.Ct. at 1481-83. From this holding, Flowers gleans that criminal defendants are constitutionally entitled to be advised of the significant consequences of their pleas, including the requirement of sex offender registration.¹ To support his position that sex offender registration is a constitutionally significant consequence of a guilty plea, Flowers argues that "everything [Padilla] said

¹ For the reasons that have already been discussed, Flowers' claim that Padilla changes the due process analysis regarding the advisories a trial court must give a defendant in order for a guilty plea to be valid is without merit.

about deportation can also be said in the context of sex offender registration” – namely, that “[b]oth deportation and sex offender registration have a close connection to the criminal process, and both happen automatically ... based on the conviction;” “both may act to penalize, [but] neither one is actually a penalty in terms of criminal sanction;” “the consequences of the deportation or the sex offender registration may be more significant (and last longer) tha[n] the actual punishment for the crime;”² and it is “difficult to divorce the requirement to register as a convicted sex offender from the conviction which gave rise to that requirement.” (Reply Brief of Appellant, pp.7-8 (footnotes omitted).) Even assuming the truth of these comparisons between the nature of deportation, discussed in Padilla, and the nature of the sex offender registration requirement at issue in this case, Flowers has failed to show that the conclusion of Ray – *i.e.* that sex offender registration is a collateral consequence of a guilty plea – should be overruled.

First, it cannot be overemphasized that although the Padilla Court characterized deportation as “unique” due to “its close connection to the criminal process,” the Court ultimately did not classify deportation as a direct or even a

² Flowers claims that the offense to which he pled guilty was an “aggravated offense” such that he may never petition to be released from the registration requirement. (Appellant’s brief, p.8 n.3.) Flowers is incorrect. Flowers pled guilty to the statutory rape of a 16-year-old girl, in violation of I.C. § 18-6101(1). (R., pp.165-169.) Pursuant to I.C. § 18-8303(1), Flowers’ crime is specifically excluded from the definition of “aggravated offense” and, as such, Flowers is entitled under I.C. § 18-8310 to petition for release from the registration requirements after 10 years.

constitutionally significant consequence of a guilty plea. Padilla, ___ U.S. at ___, 130 S.Ct. at 1481-82; see also Smith, ___ S.E.2d ___, 2010 WL 2557336 at *5 (“[D]espite its discussion of the importance of deportation risks to some defendants, in the end the Supreme Court did *not* extend the direct consequences doctrine to that issue.”) (emphasis in original). Thus, even assuming similarities between the nature of deportation and the nature of sex offender registration, Flowers’ contention that Padilla compels the conclusion that sex offender registration is a constitutionally significant consequence of a guilty plea is without merit.

Second, in deciding whether sex offender registration is a direct or collateral consequence of a guilty plea, the Ray Court specifically considered the unique nature of the registration requirement, including its close connection to the criminal process and its effects on defendants who are subject to it. See Ray, 133 Idaho at 99-101, 982 P.2d at 934-36. The Court recognized the burdens associated with registration but ultimately concluded, consistent with the majority of other jurisdictions, that sex offender registration is a collateral consequence of a guilty plea, reasoning, *inter alia*, that the registration requirement is remedial, not punitive; it does not extend the sentence; and it is an indirect consequence of conviction over which the district judge has no direct control. Id. at 100-01, 982 P.2d at 935-36. Relying on Padilla, Flowers has simply repeated the arguments already considered and rejected by the Idaho Supreme Court in Ray and has failed to advance any new basis why the well-reasoned opinion of the Court in Ray should be overturned.

The state does not dispute that sex offender registration, like deportation, is an important consequence of a guilty plea. However, not every important consequence of a guilty plea rises to the level of a direct or constitutionally significant consequence such that a defendant must be advised of it before he or she pleads guilty. Again, the reasoning of Smith v. State, ___ S.E.2d ___, 2010 WL 2557336 (Ga., June 28, 2010), relating to the classification of deportation as a direct or collateral consequence, illustrates the flaws in Flowers' argument.

After determining that it was not bound by Padilla to ignore the distinction between direct and collateral consequences in determining whether a defendant's guilty plea comported with due process, the Smith Court concluded that deportation, though undeniably "intimately related to the criminal process" and potentially "of enormous concern to a defendant," was nevertheless a collateral consequence because it – like many other consequences, including sex offender registration – "remains a consequence beyond the authority of the sentencing court, and one that does not lengthen or alter the sentence that the state court imposes." Smith, ___ S.E.2d at ___, 2010 WL 2557336 at *5 (citation omitted). The court reasoned:

If this Court extended the concept of direct consequences of a guilty plea to include possible immigration issues, it is not clear how we could draw the line there. For example, can we really say that a non-citizen defendant's ignorance of the risk of deportation so undermines the knowing and voluntary nature of her guilty plea that it violates due process, while still holding that a defendant's ignorance of the risk that she will lose custody of her young children by entering a guilty plea does not invalidate the plea? ***The ultimate result of extending the direct consequences doctrine to matters beyond the authority of the sentencing court would be to place on our trial courts the unrealistic burden of having to determine, before accepting each guilty plea, all of the***

potential important consequences of the plea to the particular defendant appearing before the court. That is something the law has never required.

Id. (emphasis added). Sex offender registration, like deportation, is a consequence beyond the authority of the sentencing court. Because the law has never required trial courts divine all of the indirect, but potentially important, consequences of a defendant's plea, this Court should adhere to its holding in Ray that sex offender registration is not a consequence of which the defendant must be advised in order for his or her plea to comport with due process.

This Court should also reject Flowers' argument that "I.C.R. 11(d)(2), either alone or in combination with the holding of *Padilla*, shows that the defendant is constitutionally entitled to [be advised by the trial court of the sex offender registration requirement] before pleading guilty." (Reply Brief of Appellant, p.7.) Idaho Criminal Rule 11(d)(2), adopted by the Idaho Supreme Court after Ray was decided, states that if a defendant is pleading guilty to an offense requiring sex offender registration, the district court "shall, prior to entry of [the] plea or the making of factual admissions during a plea colloquy ... inform the defendant of such registration requirements." Flowers argues that the adoption of this rule has "abrogated the conclusion of *Ray* that sex offender registration is a collateral consequence and thus the defendant does not need to be advised of it." (Reply Brief of Appellant, p.4.) Flowers is incorrect for the reasons already set forth by the state in its Respondent's brief, which the state relies on and incorporates herein by reference. (See Respondent's brief, pp.9-11.) Flowers is also incorrect because, contrary to his assertions, the Idaho

Supreme Court cannot by court rule alter the constitutional requirements of a valid guilty plea. Again, the reasoning of Smith v. State, ___ S.E.2d ___, 2010 WL 2557336 (Ga., June 28, 2010), is instructive.

In Smith, the defendant argued that the state legislature's enactment of a statute requiring trial courts to advise criminal defendants of the deportation risks of their guilty pleas rendered those risks a direct consequence of a guilty plea. Id. at ___, 2010 WL 2557336 at *6. The Smith Court rejected this argument, noting, "What is required to make a guilty plea constitutional ... is a matter of constitutional, not statutory law." Id. (citations omitted). The court agreed that the statute at issue "provides defendants with an additional and valuable right with respect to guilty pleas." Id. The court noted, however, that it was purely as "statutory right" and was "to be enforced as such." Id. Having determined that immigration risks are a collateral consequence of a guilty plea such that the trial court's failure to advise Smith of those risks did not require Smith's plea to be set aside as a matter of constitutional law, the Smith Court turned to the question of whether the statutory violation entitled Smith to withdraw his guilty plea. Id. Because Smith had moved after sentencing to withdraw his plea, the court determined, under a rule similar to I.C.R. 33, that Smith was required to prove that withdrawal of his plea was "necessary to correct a manifest injustice." Id. at ___, 2010 WL 2557336 at *7. Specifically, the court held: "[U]nless the defendant can show some real harm or prejudice from a violation of [the statute requiring the trial court to advise the defendant of immigration risks before the entry of his plea], he is not entitled to withdraw his guilty plea." Id.

The reasoning and result of Smith are equally applicable in this case. Like the legislature's enactment of the statute at issue in Smith, the Idaho Supreme Court's adoption of I.C.R. 11(d)(2) did not amend the constitutional requirements of a valid guilty plea. Although the rule imposes upon trial courts a mandatory duty to advise defendants of the sex offender registration requirements of their pleas, a violation of the rule does not, by itself, rise to a due process violation rendering the plea invalid. Therefore, as in Smith, a defendant seeking after sentencing to withdraw his plea based upon a violation of the rule must establish that withdrawal of the plea is necessary to correct a "manifest injustice." I.C.R. 33(c). In other words, he must establish "some real harm or prejudice from [the] violation." Smith, ___ S.E.2d at ___, 2010 WL 2557336 at *7. For the reasons set forth in the Respondent's brief and incorporated herein by reference, that is a showing Flowers has simply failed to make. (See Respondent's brief, pp.9-12.)

Neither the United States Supreme Court's decision in Padilla nor this Court's adoption of I.C.R. 11(d)(2) have altered the due process analysis regarding what advisories must be given to a defendant by the court in order for a guilty plea to be valid. Because the requirement of sex offender registration is still a collateral consequence of a guilty plea, the trial court's failure to advise Flowers of that requirement does not render Flowers' plea constitutionally invalid. Additionally, Flowers has failed to show any prejudice arising from the violation of I.C.R. 11(d)(2) and has therefore failed to show any manifest injustice entitling him to withdraw the plea he knowingly and voluntarily entered.

CONCLUSION

For the reasons set forth herein, as well as in the initial Brief of Respondent, the state respectfully requests that this Court affirm the judgment and sentence entered upon Flowers' guilty plea to rape.

DATED this 23rd day of September, 2010.


LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of September, 2010, I caused two true and correct copies of the foregoing SUPPLEMENTAL BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

GREG S. SILVEY
Silvey Law Office, Ltd.
PO Box 956
Kuna, ID 83643


LORI A. FLEMING
Deputy Attorney General

LAF/pm

