

**WISCONSIN SUPREME COURT**  
**WEDNESDAY, FEBRUARY 8, 2012**  
**9:45 a.m.**

*This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a Washington County Circuit Court decision, Judge Andrew T. Gonring, presiding.*

2010AP1702

State v. Negrete

This case involves an illegal immigrant now facing deportation proceedings because of a crime he was convicted of 18 years ago. The Supreme Court examines whether the fact a transcript of Abraham C. Negrete's plea hearing is no longer available means that a motion to withdraw his guilty plea, pursuant to Sec. 971.08(2), Stats., cannot be granted.

Some background: On May 28, 1992, Negrete, a citizen of Mexico, pleaded guilty to second-degree sexual assault of a child. Negrete served his sentence. On March 10, 2010, Negrete filed a motion to withdraw his guilty plea from the 1992 assault.

Negrete alleged, by affidavit, that at the time he entered the guilty plea in this case he was not advised of the immigration consequences of his guilty plea, and that he did not know of the immigration consequences of the plea. Negrete tried to obtain the transcript of the plea hearing, but the court reporter is deceased, Negrete's original attorney is deceased, and the judge who heard the case is retired. The trial court found that no transcript is available.

On May 5, 2010, without conducting a hearing, the trial court denied Negrete's motion, noting that, at the time Negrete's plea was entered, the immigration warning was "not mandatory." The trial court ruled that the plea questionnaire signed by Negrete indicated that defense counsel had explained the immigration consequences to Negrete and that Negrete understood. The court ruled that any failure to orally warn Negrete on the record was harmless error.

Negrete appealed, and the Court of Appeals affirmed.

The State argued that Negrete's claim is barred by laches, asserting that an 18-year delay in seeking to withdraw a plea is unreasonable. Negrete responds that he did not unduly delay because he did not know his claim existed until deportation proceedings began and questions whether a laches defense is reasonable where the current deportation proceeding is apparently based on this 18-year-old conviction.

The Court of Appeals opted to address the merits of Negrete's claims. The court accepted, for the purpose of discussion, that the trial court did not properly advise him on the record, that no transcript can be had, and that deportation is "likely." The Court of Appeals agreed that the alleged failure to inform Negrete would be harmless error if, when he entered his plea, Negrete was aware that deportation could result. The Court of Appeals concluded that Negrete was aware of this consequence, noting that he had

initialed a box indicating such, and that Negrete's lawyer had signed the plea/waiver form indicating that the lawyer had discussed and explained the contents of each item with Negrete.

According to the Court of Appeals, therefore, "[t]here is nothing for an evidentiary hearing to resolve" because there is record evidence that Negrete was advised of the potential deportation consequences of the plea.

Negrete suggests that when the transcript is unavailable, the motion must be granted because the court is unable to determine that the warning was given. He also asserts that by the very terms of the statute, a motion to withdraw one's plea is not ripe unless and until he faces immigration proceedings.

The state contends that no relief was warranted because Negrete indicated his understanding by initialing and signing the Request to Enter Plea and Waiver of Rights form.

A decision by the Supreme Court could affect similar cases that may arise throughout the state.