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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

NO. 19

JUAN PADILLA-ZUNIGA,

Appellant.

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20 Eagle Street  
Albany, New York  
February 11, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN  
ASSOCIATE JUSTICE TROY K. WEBBER

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE WILSON: Last case on today's  
2 calendar is People v. Juan Padilla-Zuniga.

3 MR. ULGEN: Good afternoon. May it please the  
4 court. Argun Ulgen for Appellant. I'm requesting one  
5 minute rebuttal time.

6 JUDGE RIVERA: I'm sorry. Could you speak up? I  
7 don't know if the mic is working, but it's difficult to  
8 hear you. Thank you, sir.

9 MR. ULGEN: Argun Ulgen for Appellant. I'm  
10 requesting one minute for rebuttal.

11 CHIEF JUDGE WILSON: Yep.

12 MR. ULGEN: Appellant's plea is invalid. And  
13 because all of appellant's claims survive preservation,  
14 vacatur is required. Firstly, the plea court's failure - -  
15 -

16 JUDGE WEBBER: Well, do all - - - well, it's a  
17 threshold matter. What about the notice of - - - excuse me  
18 - - - the waiver of the right to appeal?

19 MR. ULGEN: Yes, Your Honor - - -

20 JUDGE WEBBER: How do we get around - - - how do  
21 you get around that one?

22 MR. ULGEN: Because each of appellant's claims,  
23 Your Honor, are predicated on the voluntariness of his  
24 plea. Because they rise to the level of constitutional  
25 dimension, they survive the appeal waiver.

1 JUDGE WEBBER: And then preservation?

2 MR. ULGEN: With regard to preservation, the  
3 Louree exception would apply, firstly, to the court's  
4 failure to state the mandatory fines at the time of plea  
5 because the court only stated that those fines during the  
6 imposition of sentence.

7 JUDGE WEBBER: And so after sentence was imposed,  
8 in terms of the mandatory fine, why, at that point in time,  
9 was there no motion to vacate the - - - the plea?

10 MR. ULGEN: Because CPL 220.60(3) prohibits  
11 motions to withdraw pleas during the imposition of  
12 sentence. The statute says that those motions must be  
13 placed prior to the imposition of sentence - - -

14 JUDGE WEBBER: Why not after?

15 MR. ULGEN: I would think that the statute was  
16 speaking to finality. Once the order is final, Your Honor,  
17 I think that the next step would be appeal - - -

18 JUDGE WEBBER: So you could not bring a 440 to  
19 vacate the - - - the - - - the plea and sentence based upon  
20 the fact that he was not informed of the fine?

21 MR. ULGEN: Because of the fact that the omission  
22 is on the record, and because that lies, as a result, as a  
23 per se defect, because the court failed to state that fine,  
24 then 440.10 is precluded because that would require - - -  
25 because it's on the record, and that it would be before the

1 Appellate Court for appeal.

2 JUDGE WEBBER: And no requirement that the  
3 attorney at the time of sentencing, where the court says  
4 that it is imposing the mandatory fine of \$500, that at  
5 that point in time, the defense attorney says nothing?

6 MR. ULGEN: I think, once again, the time would  
7 have passed for a motion to withdraw a plea.

8 JUDGE WEBBER: Oral. Oral. You know, I noticed  
9 that in your papers. But not all objections have to be in  
10 writing. I mean, you can have an oral objection on the  
11 record. So at that point in time, where the judge says and  
12 the mandatory - - - excuse me - - - the mandatory fine of  
13 \$500, plus applicable surcharges, are imposed, why, at that  
14 point in time, could the attorney not say, wait a minute,  
15 judge, this was never mentioned. This was never discussed.

16 MR. ULGEN: My answer to that is twofold, Your  
17 Honor. First, the only recognized way to object to an  
18 invalid plea is a motion to withdraw the plea. The  
19 defendant would have to actually say that he wants to  
20 withdraw the plea. And that goes to the heart of the  
21 Louree exception, I think, Your Honor - - -

22 JUDGE TROUTMAN: At the time that the court has  
23 now pronounced what the fine is, the court has completed  
24 sentence. It - - - did - - - so does that go to whether  
25 the defendant, at that point, would have had a reasonable

1 opportunity to preserve the - - - in the traditional route?

2 MR. ULGEN: That's - - - that's exactly correct,  
3 Your Honor. It goes to the - - -

4 JUDGE RIVERA: So if - - - if we agree with you  
5 about the fines, do we have to address any other issue?

6 MR. ULGEN: We would not, because the invalidity  
7 of the fines would implicate the entire plea bargain. It  
8 would go to the defendant's decision making at the  
9 inception of the plea.

10 JUDGE CANNATARO: That may be true, but just - -  
11 - just for purposes of filling your time, what about - - -  
12 what about the allocution on the aggravated unlicensed?  
13 How - - - how is - - - how is that properly before this  
14 court?

15 MR. ULGEN: It's properly before this court  
16 because once the defendant denied having a license and  
17 stating that he never had a license, he was saying no to  
18 the question of the court as to whether he had a suspended  
19 license. That is a direct negation of the essential  
20 element of driving with a suspended license under VTL 511.  
21 The error was now properly before the court, because once  
22 the defendant is essentially protesting his guilt before  
23 the court, it becomes the court's independent obligation to  
24 secure a valid plea by asking further questions.

25 JUDGE WEBBER: But his attorney - - - first of -

1 - - how does that negate an element of the crime? And two,  
2 his attorney specifically says, well, isn't it true that  
3 your - - - your privilege to drive a motor vehicle, you do  
4 not have a privilege to drive a motor vehicle? And he  
5 said, no, I don't have a license. I never had a license.

6 MR. ULGEN: The first question was a direct  
7 question. Were you driving with a suspended license? The  
8 defense - - - defendant's direct answer was no. And - - -

9 JUDGE WEBBER: No, I never had a license.

10 MR. ULGEN: Yes. And that was his second answer,  
11 essentially doubling down on his negation of the first  
12 question of did you drive with a suspended license? It - -  
13 -

14 JUDGE CANNATARO: And what was the next question?

15 MR. ULGEN: The first - - - the next question - -  
16 -

17 JUDGE CANNATARO: After that second answer. I -  
18 - - because I believe, if I - - - if my recollection of the  
19 record is correct, is the court just went on to a  
20 completely different topic - - -

21 MR. ULGEN: Yes.

22 JUDGE CANNATARO: - - - after he said, I never  
23 had a license.

24 MR. ULGEN: Yes. And that's the error of law,  
25 which is a fundamental part of our client's - - -

1 JUDGE CANNATARO: So you're saying that's the  
2 juncture at which the court must have had to make the  
3 inquiry?

4 MR. ULGEN: Yes. And if the record was devoid of  
5 any follow-up inquiry by the court, then at that point, the  
6 significant doubt as to the appellant's guilt remains.

7 JUDGE CANNATARO: So I just want to go back a  
8 step to when you said that, you know, when he said, I never  
9 had a license, I feel like you're almost arguing that  
10 that's tantamount to an objection in the sense that it puts  
11 the court on notice that there is something wrong with the  
12 plea. Is - - - is that - - - can you just articulate what  
13 the reasoning is behind how making that statement preserves  
14 the issue.

15 MR. ULGEN: It does, because at that point, the  
16 defendant is essentially making an argument that it is a  
17 factual and legal impossibility, that he had reason to know  
18 that he was driving with a suspended license. And  
19 therefore, then - - -

20 JUDGE CANNATARO: So although he doesn't know it,  
21 he's saying to the court, you can't convict me of this  
22 crime because I wasn't driving with a suspended license. I  
23 never had a license to begin with. That's - - -

24 MR. ULGEN: I think that regardless of what the  
25 defendant was thinking, it's on the face of the record.

1 JUDGE TROUTMAN: So it's - - - is that  
2 essentially saying he didn't - - - he didn't have the  
3 privilege to drive in the first instance? Is that  
4 different from having a license in the first instance?

5 MR. ULGEN: Yes. I think there would have to be  
6 something on the record to show that the defendant had  
7 reason to know that his license had been suspended, and  
8 that's where the court was to come in and to ask, well, you  
9 know, you never had a license. So you're saying you never  
10 had a license, so were you contacted by DMV, for instance.  
11 Were you notified? Something to clear up the confusion.  
12 And if, in fact, the defendant continues to protest, then  
13 the defendant is essentially saying that he's not guilty  
14 and refuting factual allocution - - -

15 JUDGE TROUTMAN: So you're saying the court  
16 failed to fulfill its obligation to inquire further?

17 MR. ULGEN: It has an independent due process  
18 obligation to secure a factually sufficient allocation.  
19 And when the - - - excuse me - - - the negation is so  
20 evident on the record, it does become the court's  
21 obligation regardless of preservation.

22 JUDGE WEBBER: So I'm back to preservation now.  
23 So at that point in time, before - - - and that's before -  
24 - - that's the plea, but before sentence, why is there no  
25 motion to withdraw the plea at that point in time prior to

1 sentence? Because this has already occurred. This  
2 occurred at the plea. Right. So the - - - the - - - the  
3 argument is that he should not have pled to this crime  
4 because the elements were not fulfilled. Why now is there  
5 no motion to withdraw because we're before sentencing?

6 MR. ULGEN: Because I still think that we're - -  
7 - with the factual allocution, Your Honor, I still think  
8 that we're left in that position where we're not quite sure  
9 what the defendant is thinking. I mean, on the one hand,  
10 we have this very evident statement that he is confused.  
11 He's stating that he might not have known about a suspended  
12 license and - - - and making these statements, but we don't  
13 really know what the defendant's decision making is yet.  
14 It would have only been resolved if the court came in and  
15 asked those questions. Then he made it - - -

16 JUDGE CANNATARO: But that answer, it's somewhat  
17 unsatisfying in - - - in that you previously responded to  
18 Judge Webber that, you know, just raising an objection in  
19 itself is insufficient in this context. Your - - - your  
20 remedy, if you're a defendant who's taking an improper  
21 plea, is to move to vacate the plea, and I think the - - -  
22 the judge is pointing out to you that there was an  
23 opportunity here because that error happened at the  
24 allocution, not at the sentencing. You had the opportunity  
25 to do what you said is necessary, which is to make the

1 motion to vacate the plea, but you didn't avail yourselves  
2 of it.

3 MR. ULGEN: Let me frame it this way, Your Honor,  
4 if I may. I think that the two errors are separate. I  
5 think that with regard to the court's failure to state a  
6 mandatory fine, that goes to the defendant being - - -  
7 having the opportunity to make a fully informed decision  
8 before going into the factual allocution.

9 JUDGE CANNATARO: Uh-huh.

10 MR. ULGEN: And the only way to respect the  
11 defendant's decision, if I may finish my - - -

12 JUDGE CANNATARO: So you mean negating an element  
13 of the crime is somehow an error of a different category  
14 than - - -

15 MR. ULGEN: Yeah - - -

16 JUDGE CANNATARO: - - - not being fully informed  
17 about the direct consequences of your plea?

18 MR. ULGEN: Yes, Your Honor. And if I may, I  
19 know my light is on. That goes to the court's  
20 responsibility to enter in a factual allocution of guilt.  
21 And when there's a negation of that factual allocation of  
22 guilt, the entry of plea - - - the entry of the guilty  
23 plea, even if the defendant says, hey, I want to enter - -  
24 - plead guilty, I would say is - - - is fundamentally  
25 erroneous.

1 CHIEF JUDGE WILSON: Thank you.

2 MR. KING: May it please the court. My name is  
3 Kevin King. I'm representing the respondent, Nassau County  
4 District Attorney's office. There were, of course,  
5 deficiencies at the plea proceeding, and that's on the  
6 record.

7 JUDGE RIVERA: Isn't the - - - the failure to  
8 inform the defendant of the fines a reversible error?

9 MR. KING: Well, yeah, it's an enhanced sentence  
10 error, and - - -

11 JUDGE RIVERA: Uh-huh.

12 MR. KING: - - - it would be reversible if  
13 defendant had preserved it, which he didn't. If - - - if  
14 defendant had called attention to the - - - called the  
15 court's attention to that error, the court would have had  
16 an opportunity to correct it - - -

17 JUDGE RIVERA: I mean, but once the court  
18 announced it, at that point, you had to say, wait a minute,  
19 you can't - - - but you didn't tell me about that.

20 MR. KING: Right.

21 JUDGE RIVERA: Isn't our case law to the  
22 contrary?

23 JUDGE CANNATARO: Is that a meaningful  
24 opportunity to - - - you have to do it instantaneously?

25 MR. KING: Well, in this case, again, yes. I

1 mean, I think it's - - - it's not an - - - an onerous or  
2 unreasonable burden to expect a defense - - - defendant,  
3 who's represented by an experienced and competent defense  
4 attorney to alert the court that the imposition of a  
5 monetary fine that the defendant was unaware of, and that  
6 would change the defendant's plea calculus, to alert them  
7 when that occurs.

8 I mean, I - - - that's - - - you know, that is  
9 something that's actually been recognized in - - - in the  
10 Appellate Divisions. The Appellate Divisions have rendered  
11 decisions which state that defendant's claims regarding an  
12 enhanced sentence where a fine was imposed that hadn't  
13 previously been announced at the plea proceeding was  
14 unpreserved, and they would - - - they didn't reach the  
15 issue. And so the - - - the concept that a defendant,  
16 again, represented by counsel should - - - that's the  
17 opportunity to call attention to the court - - - call the  
18 court's attention to the problem, again, is something that  
19 other courts have recognized, and - - - and we can  
20 distinguish it from Louree and Turner, because I think the  
21 key language in those two decisions is that, you know, in  
22 Louree, it was said that a defendant can hardly be expected  
23 to - - - to move to withdraw a plea on the ground of which  
24 he or she has no knowledge. And in Turner - - -

25 JUDGE TROUTMAN: So when the court announces that



1 it's imposing this - - - this fine that was never spoken  
2 of, the court is imposing it as the court pronounces it.  
3 How is that a reasonable opportunity when the court is  
4 completing the sentence as it's speaking?

5 MR. KING: Well, again, we're talking about a - -  
6 - a monetary fine, which is something that people  
7 understand. That's not an esoteric legal concept that you  
8 have to be a trained attorney to understand - - -

9 JUDGE WEBBER: No, but it's a concept or  
10 something that the defendant was unaware that he would be  
11 responsible for. He was told that it was five years'  
12 probation. He was not told that there would also be a  
13 fine. So we know what a fine is, yes. But he was unaware  
14 of the fact that he would have to pay these monies as well.

15 MR. KING: And I believe there's a tension in  
16 defendant's claim in that regard because this is a  
17 mandatory fine. It's in the VTL. You have an - - -

18 JUDGE TROUTMAN: That - - -

19 JUDGE CANNATARO: But that cuts both ways. Why  
20 is it that the court - - - if it's mandatory, you know it's  
21 going to be imposed if you're the court, or even the People  
22 in that case? But you know, why isn't that something that  
23 the defendant could have known about at the time that he  
24 was entering into the plea agreement?

25 MR. KING: Well, the court should have informed

1 him - - -

2 JUDGE CANNATARO: Absolutely.

3 MR. KING: - - - during the plea proceeding.

4 That's why it was an enhanced sentence error - - -

5 JUDGE HALLIGAN: I thought - - - I thought the  
6 PRS term in Turner - - -

7 JUDGE RIVERA: Yeah.

8 JUDGE HALLIGAN: - - - was mandatory also.

9 JUDGE WEBBER: Right.

10 MR. KING: Right.

11 JUDGE HALLIGAN: And I thought in Turner - - -  
12 correct me if I have the timing wrong - - - but I thought  
13 that the defendant learned about it during the course of  
14 the sentencing hearing and that - - - that it was  
15 determined that that was not early enough to allow the  
16 defendant to do anything about it. Am I - - - am I wrong  
17 about the - - -

18 MR. KING: No, that's correct. And if I may - -  
19 -

20 JUDGE HALLIGAN: So why isn't - - - go ahead,  
21 please.

22 MR. KING: If I can distinguish it.

23 JUDGE HALLIGAN: Please.

24 MR. KING: I think, again, in this case, we're  
25 talking about a monetary fine, which anyone - - - even a

1 layperson understands what \$500 is.

2 JUDGE HALLIGAN: How does that - - -

3 MR. KING: That doesn't have to be explained to  
4 somebody.

5 JUDGE HALLIGAN: Tell us, if you would, how does  
6 that play out? Does that mean that mandatory fines don't  
7 need to be disclosed?

8 MR. KING: No. Again, it is an enhanced - - - it  
9 is an enhanced sentence error - - -

10 JUDGE HALLIGAN: Right?

11 MR. KING: Absolutely.

12 JUDGE HALLIGAN: Okay. So - - - so I'm not sure  
13 if - - - Turner may be different in that regard, but I'm  
14 not sure if it's a meaningful grounds to distinguish the  
15 case. What about the timing?

16 MR. KING: I believe it is - - - well, if I could  
17 get to the time because I think it - - - this relates to  
18 the timing. Again, this is not a discretionary  
19 enhancement. It's not restitution. It's not something  
20 that - - - that - - -

21 JUDGE HALLIGAN: But so too in Turner, right? It  
22 was mandatory PRS, I believe.

23 MR. KING: Yeah, that's correct. But again, I  
24 think the distinction here is an important one. You know,  
25 with Turner and Louree it was a Catu error, you know,

1 failure to advise on PRS, which was - - - first of all,  
2 it's a much more significant deprivation of - - - of - - -  
3 of, I think, a defendant's rights than the imposition of a  
4 fine - - -

5 JUDGE CANNATARO: Does - - -

6 JUDGE TROUTMAN: But you acknowledge that it was  
7 error, and it enhanced what he was being exposed to.  
8 You're saying because it's money, it means nothing? For  
9 someone who is impoverished - - -

10 MR. KING: No - - -

11 JUDGE TROUTMAN: - - - it does matter.

12 MR. KING: Yes, absolutely, it does. But - - -  
13 but my distinction, if I can, is that this is something - - -  
14 - you have an experienced defense counsel. This is a - - -  
15 this is an experienced legal aid attorney who was  
16 representing defendant. His - - -

17 JUDGE WEBBER: And that was different in Turner?

18 MR. KING: But if I may, Your Honor - - -

19 JUDGE WEBBER: Okay.

20 MR. KING: - - - this attorney takes this plea -  
21 - - takes pleas of this type all the time. Certainly would  
22 have been aware that there's going to be a fine imposed.  
23 That - - - that is done in every single 1192 case, every  
24 single 511 case, because it's mandatory. This creates a  
25 certain tension - - - which I would like to get to in a



1 moment - - - but with - - - with the ineffective assistance  
2 of counsel aspect of this - - - of this claim - - - but - -  
3 -

4 JUDGE TROUTMAN: So the onus is on counsel, not  
5 the court. Is that what you're saying?

6 MR. KING: I - - - I'm saying I think it's - - -  
7 it's reasonable to expect that a defendant - - - again,  
8 represented by counsel - - - when they hear a fine being  
9 imposed - - - a mandatory fine being imposed, can - - - can  
10 make that court aware that - - - that that error is  
11 occurring and - - - and call their attention to it - - -

12 JUDGE RIVERA: But that's true for - - - that's -  
13 - - that's true for the other cases.

14 MR. KING: And the distinction, Your Honor, is  
15 that in the Catu case - - - I would just argue, that is - -  
16 - it's a very specific and kind of unique error. It was -  
17 - - it - - - it came about because there was a change in  
18 the law where - - - where post-release supervision was made  
19 mandatory, and there was a period of time where there were  
20 a tremendous number of cases when even defense counsels  
21 were unaware of - - - of the - - - the fact that - - - that  
22 this needed to be pronounced. It - - - that's why it's  
23 recognized by a name. It's - - - it's an error that has  
24 its own name recognition because of that. And in Louree, I  
25 believe that was two years after that - - - that Catu error

1 was first recognized. And in - - - in Turner, it was - - -  
2 it was somewhat later, I think in 2014. But nevertheless,  
3 I think there's a distinction between - - - I - - -

4 JUDGE RIVERA: But nothing - - - nothing in the  
5 cases supports this view that it was - - - the decision was  
6 discrete and isolated to a Catu problem. Not - - - not a  
7 word.

8 MR. KING: No, but I think what it - - -

9 JUDGE RIVERA: There - - - there's very broad  
10 language in all these cases.

11 MR. KING: But I think what it goes to is what  
12 the cases in Louree and Turner said, which is - - - which  
13 is where it's an error in which a defendant would have no  
14 knowledge or would not be aware. It's - - - I think  
15 there's an element to the Catu error where we can  
16 understand - - -

17 JUDGE CANNATARO: You know, Counsel, you keep  
18 saying that, but what - - - what - - - my response is when  
19 I hear you say is, yes, everyone knows - - - you know,  
20 people know about fines, that - - - that's not interesting,  
21 but what - - - what this defendant didn't know, or there's  
22 a good possibility that he didn't know, is that a fine  
23 would be imposed on him as a result of this conviction,  
24 unless he read the VTL or - - - or something else, which we  
25 don't presume that he did. So that's - - - that's the

1 problem, not the existence of monetary fines.

2 MR. KING: Well, I understand that. But again -  
3 - - there's - - - there - - - it's difficult to understand  
4 how that error would occur - - - again, with - - - with - -  
5 - if counsel is confident at all - - -

6 JUDGE WEBBER: But it did occur. I - - - I - - -  
7 you say it's difficult to understand how it would occur,  
8 but it did occur.

9 MR. KING: Well, it isn't difficult to understand  
10 if you - - - if the plea is voluntary. One reason that the  
11 - - - the counsel wouldn't have brought it this - - - to  
12 the court's attention is because counsel understands the  
13 defendant wants this plea. It's a - - - it's a plea  
14 without a jail sentence, which might be what he wanted.

15 JUDGE WEBBER: And in Turner, I believe the  
16 defendant wanted to plea as well. But again, there was the  
17 failure to - - - to inform the defendant of the post-  
18 release supervision.

19 Now, in this case, I will say, I believe that the  
20 defendant had a prior 511 in 2016.

21 MR. KING: That's correct.

22 JUDGE WEBBER: So are you arguing that he knew  
23 there was a fine - - - a mandatory fine, because when he  
24 pled guilty to the 511 in 2016, a mandatory fine was  
25 imposed?

1 MR. KING: Well, I don't think we could - - -  
2 unfortunately, we can't know what - - - what defendant  
3 knew.

4 JUDGE HALLIGAN: So it seems to me that what  
5 you're asking us to decide is that mandatory fines don't  
6 fall within the Louree-Turner line of cases, that they're  
7 different in kind than PRS.

8 MR. KING: I - - - I - - - my argument - - - in  
9 essence, yes. My argument is - - -

10 JUDGE HALLIGAN: Okay. And so why - - - why is  
11 that? Why should we treat them differently? You've said  
12 that PRS is a more significant intrusion on liberty. Is  
13 there any other reason why we would - - - we would exempt  
14 them from that line of cases? The fines, I mean.

15 MR. KING: Because it's such a simple - - - you  
16 know, it's - - - it's something - - - I - - - I don't think  
17 it's unreasonable, again, to expect that when a defendant  
18 appears in court for sentencing alongside an experienced  
19 attorney, and it's - - - such an obvious enhanced sentence  
20 error occurs on a - - - regarding a condition of the  
21 defendant's sentence that even a layperson would understand  
22 - - -

23 JUDGE TROUTMAN: But isn't it - - - why is it - -  
24 -

25 MR. KING: That it - - -



1 JUDGE TROUTMAN: - - - not reasonable to expect  
2 that the court, who has taken pleas on a regular basis,  
3 would not properly do it?

4 MR. KING: The court should have - - -

5 JUDGE TROUTMAN: And that it's all - - - that the  
6 onus is then on the defendant. But you're suggesting,  
7 well, the defendant just should have known. To - - -

8 JUDGE WEBBER: Right. To - - -

9 JUDGE TROUTMAN: The court made a mistake, but  
10 the defendant just should have known.

11 JUDGE WEBBER: And where in here any case - - -

12 MR. KING: I think defense counsel should have  
13 known - - -

14 JUDGE WEBBER: - - - where - - - where is there  
15 any case that says because a defendant should have known  
16 what the sentence - - - or what the sentence - - -  
17 sentencing could be, or what the sentence in terms of a  
18 mandatory surcharge, that the defendant does not have to be  
19 informed of the same?

20 MR. KING: I think defense counsel should have  
21 known, and I think if defense counsel didn't inform  
22 defendant that it was a mandatory fine, then defense  
23 counsel was ineffective, and that's defendant's claim.  
24 I'll also - - -

25 JUDGE WEBBER: So he should go to his attorney

1 and ask for the \$500?

2 MR. KING: I think that can make a motion or 440,  
3 or defendant can argue on appeal that the counsel is  
4 ineffective for failing to inform him that a \$500 mandatory  
5 fine would be a part of his sentence, and it would be such  
6 an important issue to the defendant that it would have  
7 changed his plea calculus and rendered it involuntary.

8 CHIEF JUDGE WILSON: So do you agree with counsel  
9 that when the court announced the \$500, it was then too  
10 late to withdraw a plea?

11 MR. KING: I wouldn't say it was too late. There  
12 were - - - after that happened, counsel was able to request  
13 from the court that defendant be given time to pay fines,  
14 so there were - - - there were further exchanges that  
15 occurred - - -

16 JUDGE TROUTMAN: When is sentence - - - when is  
17 sentence complete?

18 MR. KING: Well, sentence was complete when it  
19 was pronounced.

20 JUDGE TROUTMAN: Uh-huh.

21 MR. KING: But again, the issue here - - - you  
22 know, it's still possible to call the court's attention to  
23 the problem. The court can - - - if - - - if the court is  
24 - - - if it's pointed out to the court that they've very  
25 clearly enhanced the defendant's sentence, it's clearly a

1 reversible error, and that - - -

2 JUDGE RIVERA: And that - - - okay. All right.  
3 Let's go with it. Lawyer says, oh, wait a minute, you  
4 didn't tell him about the fines? What - - - what would  
5 have happened?

6 MR. KING: Well - - - well - - -

7 JUDGE RIVERA: Uh-huh.

8 MR. KING: I'm - - - I'm sorry. If you could  
9 repeat, Your Honor - - -

10 JUDGE RIVERA: What - - - right. I - - - I  
11 thought your response in part to the Chief Judge's question  
12 was, yes, there was an opportunity because the lawyer could  
13 have said something at the time of imposition of the  
14 sentence, even though sentencing is complete upon  
15 announcement of the sentence. Right?

16 MR. KING: Correct.

17 JUDGE RIVERA: Okay. So if the lawyer then says,  
18 oh, Your Honor, the fines were never mentioned during the  
19 plea. This is the first the defendant hears of this. What  
20 - - - what would have happened there?

21 MR. KING: And - - - and - - -

22 JUDGE RIVERA: Just to be clear.

23 MR. KING: And the plea is involuntary for that  
24 reason.

25 JUDGE RIVERA: Uh-huh.

1 MR. KING: And if the court takes no action at  
2 that point, then I think that the defendant on appeal can  
3 make that argument - - -

4 JUDGE RIVERA: You're saying the judge should  
5 construe that as a motion to withdraw the plea?

6 MR. KING: I think the judge can certainly vacate  
7 the sentence - - -

8 JUDGE RIVERA: Oh, to vacate - - - vacate the  
9 conviction?

10 MR. KING: A judge can - - - has - - - has - - -  
11 the judge can vacate the sentence if the judge has been - -  
12 - if it's made apparent to the judge that a very clear and  
13 obvious reversible error has occurred. And again, now - -  
14 - now we've eliminated the preservation issue out of it,  
15 because the judge has - - - that's been called to the  
16 court's attention. So - - - again, and that's what we  
17 want. That's what we want because we want that to be  
18 resolved right then and there. We don't want to have to go  
19 up to the Appellate Division, and then ultimately the Court  
20 of Appeals, to resolve these kinds of issues. That's - - -  
21 that's the whole purpose for the preservation requirement.

22 And - - - and also, again - - - you know, there  
23 is also an interest of justice jurisdiction. So - - -

24 JUDGE RIVERA: But if the lawyer doesn't do what  
25 we're talking about, doesn't realize it, why not just let

1 it be raised on direct appeal rather than having these  
2 separate motions? Seems a great waste of judicial  
3 resources and - - - and putting an undue burden on - - - on  
4 the defendant.

5 MR. KING: Well, again, the - - - the most direct  
6 way to resolve this is to bring it to the court's attention  
7 while the defendant's in the courtroom. And - - - and if  
8 that can - - - something that can be done, I - - - you  
9 know, that - - - that, I think - - - you know that - - -  
10 that's a sufficient preservation of that argument.

11 If the court's not responsive and says, I don't  
12 want to hear it, well, then I think then you - - - then you  
13 - - - then you have no choice. Now, you are have to go to  
14 the Appellate Division.

15 But the reason that, you know, preservation  
16 matters, and that we enforce preservation rules is because  
17 it's in the court's interest, in everyone's interest to  
18 resolve these issues at the time - - - at - - - you know,  
19 at the first instance when they can be. We - - - we don't  
20 want any undue delay.

21 And - - - and again, if - - - if counsel says  
22 nothing, and defendant says nothing, and then it goes to  
23 appeal and says, well, this is a Louree exception, you  
24 know, where was counsel's role here.

25 And again, there's good - - - one explanation for

1 this is that the reason that there was no objection is  
2 because, again, counsel is well aware that defendant had no  
3 intention of withdrawing his plea, that he was satisfied  
4 with it. And again, that would be competent  
5 representation.

6 So you know - - - and - - - and lastly, again, I  
7 just will touch on it quickly. I mean, this is what the  
8 interest of justice jurisdiction in the Appellate Division  
9 is for. If defendant can go - - -

10 JUDGE TROUTMAN: Which does not have to be  
11 exercised if the - - - if the Appellate Division chooses  
12 not to do so.

13 MR. KING: If they choose not to, but if - - - if  
14 a defendant in this situation can make out a case that I  
15 was prejudiced. I would not have pleaded guilty but for  
16 this fine - - -

17 JUDGE TROUTMAN: But they still don't have to  
18 exercise it.

19 MR. KING: They don't have to, but again, it's -  
20 - - it's another way - - - again, it - - - it isn't as  
21 though, you know, if defendant fails to preserve it, he has  
22 - - - he has no argument to make. That argument can be  
23 made.

24 And in this case, you know, the Appellate  
25 Division did not reach this issue in the interest of



1 justice, and that - - - the reason for that must be  
2 presumed because they did not perceive anything in the  
3 record that suggests this is actually an involuntary plea -  
4 - -

5 CHIEF JUDGE WILSON: Thank you.

6 MR. KING: - - - because there is nothing in the  
7 record to suggest that.

8 CHIEF JUDGE WILSON: Thank you. We get your  
9 point. Thanks.

10 MR. KING: May I - -- Your Honor, if I may  
11 request, just - - - in one minute, just to address the  
12 issue - - -

13 CHIEF JUDGE WILSON: No, you - - - sorry, your  
14 time is up. Thank you.

15 MR. ULGEN: Just - - -

16 JUDGE RIVERA: Counsel, can you address this last  
17 back and forth that we just had regarding what - - - what  
18 would have happened if the lawyer had realized once the  
19 sentence is imposed, once the fines are announced, if the  
20 lawyer had said, judge, you did not - - - you did not raise  
21 the fines issue during the plea, this is the first  
22 defendant hears of it?

23 MR. ULGEN: I think we could only speculate. I  
24 think that quite possibly the court may have said that I've  
25 already imposed sentence at this point, and your

1 defendant's time to move to withdraw his plea has elapsed.  
2 I think that, with regards to speculating as to what  
3 defense counsel may have done, should have done, thoughts  
4 about strategy, the reason why we have the per se defect  
5 rule is because we focus on the defendant's decision making  
6 throughout the entirety of the plea.

7 First, during the plea allocution, when, if  
8 there's an omission on the record of a mandatory fine, the  
9 defendant's decision making is essentially cannot be  
10 knowing at that point - - -

11 JUDGE TROUTMAN: So is that your response to the  
12 prosecution's assertion that a learned defense attorney  
13 would - - - should have known better?

14 MR. ULGEN: I think that even if we were to  
15 assume that a learned defense attorney should have known  
16 better, because - - - the per se defect rule requires an on  
17 the record analysis. Either the defendant knows, or he  
18 doesn't, and we look at that from the omission of the fine  
19 on the record.

20 JUDGE WEBBER: So counsel, you're only asking for  
21 the vacated - - - vacating the 511; is that correct?

22 MR. ULGEN: We're asking for vacatur of all the -  
23 - - excuse me - - - convictions, because the court's  
24 failure to state the mandatory fines with regard to both  
25 the 511 and the 1192 implicates the entire plea bargain.

1 JUDGE CANNATARO: So he gets an opportunity to  
2 renegotiate the entirety of the plea?

3 MR. ULGEN: Yes. Upon vacatur, it would take us  
4 right before the - - - before the plea - - -

5 JUDGE WEBBER: And so he - - - he finishes  
6 probation in a little over a year, July 2016. So  
7 everything goes back, and he's going to be prosecuted again  
8 for these charges. If he's already paid the fines, then he  
9 doesn't get a credit, so he starts all over again, right?

10 MR. ULGEN: Well - - - yes, except the plea based  
11 convictions are now vacated, and he goes back without those  
12 plea based convictions on his record for the time being - -  
13 -

14 JUDGE WEBBER: Right. But he would be prosecuted  
15 again - - - he's subject to prosecution - - - he subject -  
16 - - he's still subject to prosecution on these charges.

17 MR. ULGEN: We would assume that there might be  
18 prosecute - - - yeah, we would assume - - - let's assume  
19 there is prosecution. It is still the defendant's right to  
20 avail himself of his constitutional claims, as we have done  
21 today, and to go back to that time prior to the plea.

22 CHIEF JUDGE WILSON: Thank you.

23 MR. ULGEN: Thank you.

24 (Court is adjourned)

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C E R T I F I C A T I O N

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Juan Padilla-Zuniga, No. 19 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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