U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

Moseley, Thomas E., Esquire
Law Offices of Thomas E. Moseley
One Gateway Center, Suite #2600
Newark, NJ 07102-0000

DHS/ICE Office of Chief Counsel - BOS
P.O. Box 8728
Boston, MA 02114

Name: PATTERSON, DELROY   A035-685-599

<u>Date of this notice:</u> 1/10/2011

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
    Holmes, David B.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

PATTERSON, DELROY (A035 685 599)
400 FAUNCE CORNER ROAD
NORTH DARTMOUTH, MA 02748

DHS/ICE Office of Chief Counsel - BOS
P.O. Box 8728
Boston, MA 02114

Name: PATTERSON, DELROY

A035-685-599

<u>Date</u> of this notice: 1/10/2011

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being
provided to you as a courtesy. Your attorney or representative has been served with this
decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed
from the United States or affirms an Immigration Judge's decision ordering that you be
removed, any petition for review of the attached decision must be filed with and received by the
appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
    Holmes, David B.

File: A035 685 599 - Boston, MA   Date:

In re: DELROY <u>PATTERSON</u>   JAN **1 0** 2011

IN REMOVAL PROCEEDINGS

MOTION

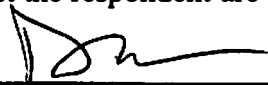ON BEHALF OF RESPONDENT: Thomas E. Moseley, Esquire

ORDER:

The respondent filed a motion to reopen on December 3, 2010. The Board dismissed the respondent's appeal on January 27, 2010, so the motion was untimely filed. Section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R.§ 1003.2(c)(2). The Department of Homeland Security (the "DHS") has not responded to the motion. Although the motion is untimely, we will reopen proceedings under our sua sponte authority at 8 C.F.R. § 1003.2(a).

The respondent was found subject to removal based on two Louisiana convictions for distribution of marijuana, and attempted possession of a firearm with narcotics. The respondent presents evidence that, on October 19, 2010, his request for post conviction relief was granted in state court. The "Memorandum in Support of Application for Post-Conviction Relief" argued that the respondent received ineffective assistance of counsel concerning the immigration consequences of his guilty plea, citing *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), and also argued that the second conviction violated his right to be free of double jeopardy. According to a declaration of criminal counsel, attorneys representing Louisiana filed no opposition to the application for post-conviction relief.

The Board finds that the uncontested evidence presented shows that the underlying convictions which served as the basis for the respondent being subject to removal have been vacated due to a defect in the criminal proceeding. If a court with jurisdiction vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006)(conviction vacated pursuant to Ohio law for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes).

As the respondent is no longer subject to removal from the United States based upon the charges against him, removal proceedings against the respondent are terminated.

_____
FOR THE BOARD