

Area News

Immigrant facing deportation can't fight for son's custody

By Kerry Tesoriero
Staff Writer

An Italian immigrant who served a 20-month prison sentence for a 1991 larceny conviction has spent the past nine months jailed and awaiting deportation for the same crime.

A change in immigration law enacted five years after his guilty plea may force Salvatore Pelle, 28, of Norwalk, along with others convicted of aggravated felonies, to leave the country.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 may also compel Pelle, a green card holder, to leave behind his 7-year-old son, Sal Jr., said his attorney,

Lindy Urso of Stamford.

That's because Pelle has been denied a bond, and thus, a chance to lobby for custody of the boy at a hearing Saturday. Pelle was convicted of second-degree larceny in 1991 for demanding less than \$100 from a man inside a Norwalk supermarket, Urso said. The state's facts were that, while Pelle did not threaten the man or use a weapon, the man relinquished his money out of fear.

The crime was deemed an aggravated felony in 1996 — a deportable offense. It is deportable because he was originally given a three-year suspended prison sentence and three years of probation. Any crime

that results in a sentence of more than one year, suspended or not, is deportable according to the act.

Pelle violated his probation with arrests for threatening and stalking and served the 20 months remaining on his suspended sentence, Urso said.

Pelle was pulled from his bed at 5 a.m. in October by officers of the Immigration and Naturalization Service. Before being detained by INS, Urso had argued a motion in state Superior Court to withdraw the previous guilty plea for the 1991 larceny.

Urso claims that the attorney for the larceny didn't assist Pelle properly so that he would know

the consequences of his plea.

He would have been deported promptly but has won a stay of deportation while he appeals.

Meanwhile, Pelle has been jailed without bond for nine months in Hartford Correctional Center, Urso said.

Pelle, who has lived here legally on a green card since 1977, came to the United States from Italy when he was 3.

In May, during Pelle's continuing jail stay, the mother of his child lost custody of their son because she allegedly abandoned him.

Sal Jr. is a ward of the state. On Saturday, a hearing will be conducted to decide who gets cus-

tody of the boy.

Urso requested that the INS place a bond on Pelle so that he may attend the hearing and try to regain custody of his son. But, last week, Urso received notice that his bond request had been denied.

"They ought to be ashamed," Urso said. "I called them and told them, 'I just don't know how you sleep at night.'"

The family of the boy's mother is likely to petition for custody, Urso said.

INS Boston District Director Steven J. Farquharson said the agency should not be condemned for upholding federal laws.

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other people, he said.

A source close to the investigation said Pelle was discovered by INS officers as the result of a raid in Bridgeport by the federal Drug Enforcement Agency.

Pelle faces no drug charges but was present during the raid, the source said.

An immigration judge ordered him removed from the United States, and the Board of Immigration Appeals upheld that decision, he said.

Urso plans to fight Pelle's deportation on grounds that it is unconstitutional.

The Constitution protects people from being prosecuted for an act that was made illegal after the act was committed.

The law is not necessarily on Pelle's side, though, Urso said.

In previous cases, the U.S. Supreme Court has ruled that protection against such ex post facto penalty does not shelter immigrants from deportation under the 1996 immigration act.

The court ruled that ex post facto law applies to criminal law, and deportation is a civil procedure.

Urso says the logic is unfair.

"No one in their right mind would think it's OK to pass an asset forfeiture law today, then go back to someone picked up on marijuana possession in 1991 and confiscate their house now," Urso said.

Asset forfeiture is also a civil procedure, he said.

Urso is lobbying U.S. senators, urging them to change the law so it can't be imposed retroactively.

Urso has also petitioned for a writ of habeas corpus — that Pelle is being held in violation of the Constitution — in federal district court.

No official ruling has been made on that petition.