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10-30-2001

Francis v. Reno

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Filed October 30, 2001

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-2375

ROBERT FRANCIS,

Petitioner,

v.

JANET RENO, Attorney General;
and DORIS MEISSNER,
Commissioner of the Immigration
and Naturalization Service

Petition for Review of an Order of the
Board of Immigration Appeals
(INS No. A26-458-287)

Before: SCIRICA, McKEE and STAPLETON, Circuit Judges

ORDER AMENDING OPINION

IT IS HEREBY ORDERED, that the Slip Opinion filed in
this case on October 16, 2001, be amended as follows:

On page 3, delete the second paragraph which reads:

"In May of 1993, Francis caused a tragic traffic
accident wherein two people were killed on Interstate
95 in Philadelphia. He was thereafter convicted in state
court of two counts of homicide by vehicle in violation
of 18 Pa. C.S.A. S 3732. That statute defines homicide
by vehicle, and categorizes it as a misdemeanor of the
first degree. Francis was sentenced to two consecutive
sentences of eighteen to sixty months in prison for the
conviction. At the conclusion of that sentence, he was

held on an INS detainer. The INS then initiated removal proceedings based upon its assertion that his state court conviction made him removable as an 'aggravated felon' under the BIA. As noted above, the Immigration Judge terminated the proceedings in Francis' favor, but the INS reversed and ordered his removal. That order of removal is now before us based upon Francis' petition for review."

And, replace it with the following:

"In May of 1993, Francis caused a tragic traffic accident wherein two people were killed on Interstate 95 in Philadelphia. He was thereafter convicted in state court of two counts of homicide by vehicle in violation of 75 Pa. C. S. A. S 3732, which provided at the time of Francis' offenses that

[a]ny person who unintentionally causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic except section 3731 (relating to driving under influence of alcohol or controlled substance) is guilty of homicide by vehicle, a misdemeanor of the first degree, when the violation is the cause of death.

Francis was sentenced to two consecutive sentences of eighteen to sixty months in prison for the conviction. At the conclusion of that sentence, he was held on an INS detainer. The INS then initiated removal proceedings based upon its assertion that his state court conviction made him removable as an 'aggravated felon' under the BIA. As noted above, the Immigration Judge terminated the proceedings in Francis' favor, but the INS reversed and ordered his removal. That order of removal is now before us based upon Francis' petition for review."

In addition, delete footnote number 1 in the second paragraph on page 3 and replace it with the following text as footnote number 1.

"In 2000, the Pennsylvania Legislature amended 75 Pa. C. S. A. S 3732 by substituting 'recklessly or with

gross negligence' for `unintentionally' and increased the offense from a misdemeanor of the first degree to a felony of the third degree."

In addition, delete all references to "18 Pa. C. S. A. S 3732" in the Slip Opinion and replace with "75 Pa. C. S. A. S 3732." Finally, on page 16 replace "18 Pa. C. S. A. S 3731" with "75 Pa. C. S. A. S 3731."

IT IS SO ORDERED.

BY THE COURT:

/s/ Theodore A. McKee Circuit Judge

DATED: 30 October 2001

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit