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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

VIDAL ALVARADO SOTELO,

Defendant and Appellant.

E059083

(Super.Ct.No. INF045089)

OPINION

APPEAL from the Superior Court of Riverside County. David B. Downing, Judge. (Retired Judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Paul E. Zellerbach, District Attorney, and Natalie M. Pitre, Deputy District Attorney, for Plaintiff and Appellant.

Susan K. Massey, under appointment by the Court of Appeal, for Defendant and Respondent.

I

INTRODUCTION

In 2003, a complaint charged defendant and appellant Vidal Alvarado Sotelo with felony possession for sale of methamphetamine under Health and Safety Code section 11378 (count 1); and misdemeanor possession of a pipe under Health and Safety Code section 11364 (count 2). Defendant pled guilty to count 1 and was sentenced accordingly. Ten years later, defendant filed a motion to vacate his guilty plea due to his pending deportation purportedly based on his conviction under Penal Code section 1016.5. At the hearing on the motion to vacate, the trial court found that defendant was not aware of the immigration consequences when he pled guilty and vacated defendant's guilty plea. The People appeal. The trial court's ruling was dependent on its resolution of credibility issues. Because of the deference that must be given to the trier of fact on such issues, we affirm the trial court's ruling.

II

STATEMENT OF FACTS

In 2003, defendant was living with his parents and working as a massage therapist at several hotels and resorts in Palm Springs. In early August, defendant's parents abruptly threw defendant out of their home after discovering defendant was gay. Needing a temporary place to live, defendant went to stay at the home of a friend who was leaving town for a week. The friend lived in a house he shared with roommates, and the roommates had guests of their own coming and going from the home. On the

morning of August 15, 2003, when defendant had been at the house for a day or two, police arrived with an arrest warrant for a man named Jon Lucca. Police found defendant asleep in one of the bedrooms. Some drugs and paraphernalia were discovered in the room. Although defendant denied ownership of the items, he was arrested and taken into custody. At this time, defendant was 21 years old. He had never been arrested and had no prior experience with law enforcement or the criminal justice system.

On August 19, 2003, a complaint charged defendant with felony possession for sale of methamphetamine under Health and Safety Code section 11378 (count 1); and misdemeanor possession of a pipe under Health and Safety Code section 11364 (count 2). The same day, defendant pled guilty to count 1, pursuant to a negotiated plea agreement. Prior to entering his guilty plea, defendant placed his initials all long the left side of the plea form, under the headings of “Advisement of Rights,” “Consequences of Plea,” and “Defendant’s Statement.” One of the paragraphs under “Consequences of Plea” was paragraph number five, which stated as follows:

“If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

Defendant placed his initials, “VS,” directly below that paragraph, next to the statement, “*I have read and understand each of the above listed consequences.*”

Moreover, under “Defendant’s Statement,” defendant signed and dated next to the following statement: “The initials that appear above and on the back of this form are my

own. I have read and understand each statement that I have initialed.” Immediately underneath defendant’s signature, defense counsel signed her name under the following statement:

“I am the attorney for the above named defendant. I am satisfied that 1) the defendant understands his/her constitutional rights and understands that a guilty plea would be a waiver of these rights; 2) that the defendant has had an adequate opportunity to discuss his/her case with me, including any defense he/she may have to the charges; 3) that the defendant understands the consequences of his/her guilty plea. Furthermore, I join in the decision of the defendant to enter a guilty plea at this time.”

Furthermore, at the bottom of the second page of the plea form, defendant placed his initials next to a series of statements, which included the following: “I understand the terms of the plea agreement,” and “I have had an adequate time to discuss my case with my attorney, including time to discuss 1) my constitutional rights, 2) the consequences of any guilty plea, and 3) any defense I may have to the charges against me.”

According to the court minutes, pursuant to the terms of the plea agreement, the trial court ordered defendant to serve eight days in county jail with credit for time served, and be placed on 36 months of summary probation. However, the plea form states that probation was denied. This discrepancy was never resolved. Moreover, defendant pled guilty to an irreducible felony charge, but was placed on summary probation. Defendant did not file a notice of appeal.

Almost ten years later, on April 16, 2013, defendant filed a motion to vacate judgment under Penal Code section 1016.5. In the motion, defendant claimed that he was not aware of the adverse immigration consequences of his guilty plea. Defendant submitted two signed declarations as exhibits in support of his motion; one signed by defendant and the other signed by his immigration attorney, Alberto A. Cayetano.

On April 30, 2013, the People filed an opposition to the motion to vacate. The People argued that the motion was untimely and that defendant had failed to establish due diligence to explain the delay. The People also argued that defendant's claim was without merit because he received the immigration consequences admonition required under Penal Code section 1016.5, and that a claim of ineffective assistance of counsel (IAC) was not cognizable in the instant motion.

On May 6, 2013, the trial court conducted an evidentiary hearing on the motion. The court took testimony from defendant, trial counsel (Schwartz), and defendant's sister (Norma Nava Sotelo). The court also admitted three exhibits: (1) a copy of the plea form in this case; (2) a copy of a letter from defendant's current employer; and (3) a copy of the plea form in case No. INM175173, a misdemeanor conviction defendant sustained for driving under the influence under Vehicle Code section 23152.

At the hearing, defendant testified about the difficulty he has in reading, writing and understanding. He explained how he attended special education courses while in middle and high school because of a dyslexia diagnosis. He stated that back in 2003, no one informed him that he could end up being deported. He stated that he has to read a

document out loud multiple times to understand its contents. He claimed that he did not understand that he would face immigration consequences as a result of his plea because he did not have an opportunity to carefully read the plea form out loud to understand it.

Defendant also testified that he graduated from high school, currently works as an assistant to a real estate agent, currently attends Gold Coast Real Estate School in Florida, and had previously attended the Med Van Institute for Radiology. He claimed that he had been unable to graduate from either Gold Coast Real Estate School or Med Van Institute for Radiology because he was unable to pass the exams.

Defendant testified that he did not learn that he potentially could be deported as a result of his guilty plea until 2013. Defendant stated that he was permitted to renew his green card in 2004 without incident. Defendant also testified that neither his trial counsel in this case (Schwartz), nor his trial counsel in the misdemeanor case, explained that he could face immigration consequences as a result of either guilty plea, despite signing the acknowledgment in both plea forms. Defendant stated that, when he entered his guilty plea in this case, Schwartz told him to sign the plea forms without providing any explanation. Defendant stated that he only became aware of the immigration consequences of his guilty plea when he was detained by Immigration and Customs Enforcement (ICE) when he returned from a vacation to the Bahamas in February 2013.

On cross-examination, defendant admitted that he successfully graduated from high school, passed the required exam to become a licensed massage therapist, and assisted his current employer by communicating with customers in both English and

Spanish. Defendant also admitted that he failed to inform his counsel or the court of his problems comprehending the consequences of his plea, despite being directly questioned by the court, because he was embarrassed.

Next, Schwartz testified telephonically. She stated that in August 2003, she was employed as a supervising deputy public defender with Riverside County. She stated that she did not have an independent recollection of representing defendant in August 2003. She, however, testified as to her standard practice and custom. She explained that it is and always was her practice to read every single line of a plea form to a client entering a guilty plea because some of them do not know how to read. Schwartz also testified that had she known or suspected that a client was having difficulty understanding the consequences of the plea form, she would have taken additional time to ensure the plea form was understood.

The last person to testify was defendant's sister, Norma Nava Sotelo. She testified about what she witnessed sitting in the courtroom when defendant entered his guilty plea in 2003. Nava admitted that she did not overhear defendant's conversation with his attorney or view the forms he signed. She, however, recalled that the trial court never mentioned immigration consequences. Nava admitted that the court did ask defendant whether he understood the consequences of his guilty plea. She heard defendant acknowledge that he did.

After hearing the three testimonies, the court heard argument from both sides. Thereafter, the court vacated defendant's guilty plea and reinstated the criminal proceedings.

III

ANALYSIS

The People contend that the trial court erred in granting defendant's motion to vacate his guilty plea and reinstating the criminal proceedings.

Under Penal Code section 1016.5, a defendant can obtain relief if he or she "demonstrate[s] that (1) the court taking the plea failed to advise the defendant of the immigration consequences as provided by section 1016.5, (2) as a consequence of conviction, the defendant actually faces one or more of the statutorily specified immigration consequences, and (3) the defendant was prejudiced by the court's failure to provide complete advisements." (*People v. Chien* (2008) 159 Cal.App.4th 1283, 1287, citing *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199-200; *People v. Totari* (2002) 28 Cal.4th 876, 884.)

Penal Code section 1016.5, subdivision (a), requires the following admonishment be given to any defendant entering a guilty plea: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States."

The court is not necessarily required to provide the above warning orally. However, it must appear on the record, and it must be given by the court. (*People v. Gutierrez* (2003) 106 Cal.App.4th 169, 175; *People v. Ramirez* (1999) 71 Cal.App.4th 519, 521.)

In this case, the advisement provided above was clearly printed on the plea form defendant initialed and signed. In the plea form, under “Consequences of Plea[,]” it stated: “If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” Defendant initialed next to a line immediately below this statement, which stated: “*I have read and understand each of the above listed consequences.*” Thereafter, under a heading entitled “Defendant’s Statement[,]” the form stated, “The initials that appear above and on the back of this form are my own. I have read and understand each statement that I have initialed.” Immediately below this statement, defendant dated the document, “8/20/03[,]” and signed the document with his signature. Thereafter, defense counsel dated and signed immediately below this statement: “I am the attorney for the above named defendant. I am satisfied that 1) the defendant understands his/her constitutional rights and understands that a guilty plea would be a waiver of these rights; 2) that the defendant has had an adequate opportunity to discuss his/her case with me, including any defense he/she may have to the charges; 3) that the defendant understands the consequences of

his/her guilty plea. Furthermore, I join in the decision of the defendant to enter a guilty plea at this time.”

Despite the appearance of the written statement on defendant’s plea form, the trial court credited defendant’s assertions that he did not actually know what the writing stated, and that he was never orally advised about the immigration consequences of his plea. A trial court’s ruling on a Penal Code section 1016.5 motion will withstand appellate review unless the record shows a clear abuse of discretion. (*People v. Superior Court (Zamudio)*, *supra*, 23 Cal.4th 183, 192.)

The trial court’s ruling in this case turns upon its assessment of the credibility of the witnesses. The crux of the matter is whether the trial court, under the appropriate standard of review, clearly abused its discretion in assessing the credibility as it did (*People v. Superior Court (Zamudio)*, *supra*, 23 Cal.4th 183, 192), i.e., whether it can be said that the trial court’s credibility determinations were “arbitrary, capricious, or patently absurd,” in such a way that they “result[ed] in a manifest miscarriage of justice” (*People v. Limon* (2009) 179 Cal.App.4th 1514, 1518, citing *People v. Shaw* (1998) 64 Cal.App.4th 492, 496). No such abuse of discretion has been shown on this record.

Here, the trial court heard the witnesses testify, and was in the best position to assess their credibility.

Defendant testified at the hearing that he was dyslexic and had difficulties processing written information. Defendant also had a history of attendance in special education classes in school. He reported that his reading comprehension was limited and

that he needed to read a written statement aloud several times in order to understand it. He was unable to pursue some career opportunities because he was unable to pass the written examinations.

Defendant also said that his time with his attorney at the plea hearing was limited and he did not have the opportunity to conduct a repetitive reading of the immigration admonition, as he customarily needed to comprehend written material; he testified in essence that he did not know of the admonition he signed. The trial court expressly found defendant's testimony credible.

Defendant's trial counsel testified, on the other hand, that it was her custom and practice to read the plea form to her clients, word for word. She had no specific memory as to defendant's case however. Defendant's plea form also contained other discrepancies that were never explained, such as the notation that defendant was given credit for eight days of time served and admitted to probation, together with a circled provision stating that probation was denied. The attorney also failed to mark the provision that defendant would have to register as a drug offender, even though his offense was one that would require registration. As to the provision indicating whether defendant waived or did not waive his right to appeal, the attorney neglected to mark either option.

The court stated that it believed the testimony of each witness, including the defense attorney, but relied on other circumstances such as the errors in the plea form; counsel's lack of any actual recollection of defendant's case; and the court's own

experience of the high volume of activity in the drug court setting to conclude that, despite the attorney's testimony, she had processed defendant's plea hurriedly. There was no reporter's transcript of the plea hearing to determine whether any oral admonition had been given, and the court's minutes did not reflect any specific mention of immigration consequences with respect to defendant's plea. Taking account of all the evidence, the trial court declared it had "little doubt" that, when defendant signed the plea form, "immigration consequences were nowhere in his mind."

The court was plainly aware of the discretion it was exercising in making its determinations. The court stated that, "most times," a defendant's signature on a plea form would indicate a valid acknowledgement of the advisements contained in the form. The instant case was different because, "there are too many mistakes here." The plea was taken at the end of a very busy calendar, the defense attorney was in a hurry, she had made mistakes, and she had no present memory of defendant's case in particular. The court therefore found by clear and convincing evidence that defendant was not in fact aware of the immigration consequences of his plea on the day his plea was taken.

In properly applying the standard of review, an appellate court must uphold the trial court's reasonable inferences and resolution of factual conflicts if supported by substantial evidence, viewed in the light most favorable to the ruling, and must also accept the court's credibility determinations. (*People v. Quesada* (1991) 230 Cal.App.3d 525, 533.) The trial court's inferences and conclusions here are supported by substantial evidence.

Another trier of fact might have heard the same evidence and reached the opposite conclusion. For example, defendant admitted that, when he had been asked by the sentencing court whether he understood his waivers and the consequences of his guilty plea, he said that he did. However, we are bound to view the evidence in the light most favorable to the trial court's conclusion. As the trial court noted, there is no reporter's transcript to ascertain whether defendant was asked specifically about any particular waiver or consequence, such as immigration consequences of the plea. For all the record shows, defendant was asked only generically whether he understood the provisions of the form he had signed. He may have believed that he did—and so responded affirmatively—yet still have been actually unaware of the specific immigration consequences of his plea.

Nothing in the language of Penal Code section 1016.5, or in case law, explicitly requires that the record of an immigration consequences admonishment be expressly noted in the court's minutes. However, even if no express record on the minutes is necessarily *required*, the absence of any mention in the minutes does provide some evidentiary support for a conclusion that no such admonition was in fact given. That conclusion, reached by the trial court hearing the motion, is further supported by the absence of any oral record of the proceedings and by defendant's affirmative testimony that no mention of immigration consequences was made to him, by either his attorney or the court, as well as his sister's testimony that she never heard the court give such an admonition during the oral proceedings. Although a court "*may* rely upon a defendant's

validly executed waiver form as a proper substitute for a personal admonishment,” (*People v. Panizzon* (1996) 13 Cal.4th 68, 83), and probably will in most cases, it is not necessarily required to do so. The trial court acknowledged that “most times,” he would consider a signed plea form to be valid, and that he would not “usually reverse these because my view is that you sign, you’re stuck with it. But here, the evidence is to the contrary.” The court was convinced that, in this instance, defendant “did not know about the immigration consequences when he signed.”

Our resolution of the issue might be thought to raise the specter of defendants who have pled guilty having the ability to challenge the finality of their convictions simply by asserting that they did not understand their waivers, despite the trial court’s inquiries at the time of any plea. We find such fears illusory.

First, the key factor in this case is the trial court’s assessment of credibility. The court conducting a hearing on a motion to vacate the plea is fully competent to assess whether or not to believe a defendant’s assertion that he or she did not understand the waivers or consequences at issue, despite statements that he or she did understand.

Second, on a related point of credibility, it is presumably a rare case in which the trial court would find that the defendant did not in fact know of the immigration consequences of the plea; in most cases the plea will not be vacated. As the trial court here itself acknowledged, in most cases the court hearing the motion would not find self-serving assertions credible. In this unusual case, the assertions were not simply assertions; they were supported by other evidence and circumstances.

Third, there is a difference between answering “yes” to a generic question (such as “do you understand the rights you are giving up?” or “do you understand the consequences of your plea?” without further elaboration), and responding affirmatively to inquiries about the individual rights and consequences involved (e.g., “do you understand that you are giving up your right to a jury trial?” or “do you understand that you could be deported, or denied entry into the United States, or denied citizenship, if you plead guilty?”). The specificity of the inquiry provides a context to determine whether or not a competent defendant has “truly” understood the consequences of a plea. A defendant might well believe that he or she understands the waivers of rights or consequences of a plea, and yet be mistaken through inadvertence or other reasonable cause. Such a defendant could truthfully (though mistakenly) answer “yes,” when asked in general terms if he or she understands the “rights being waived” or “consequences of the plea,” without having an actual understanding of all the rights or consequences at issue. The possibility of misunderstanding can easily be avoided or minimized, however, by making specific, rather than general, inquiries and by providing a full record of the proceedings.

For these reasons, we find any fears of uncertainty in plea proceedings—and a flood of meritless motions as a consequence—are unwarranted. We are constrained to view the evidence in the light most favorable to the trial court’s ruling, to uphold the trial court’s inferences and resolution of factual conflicts, and to accept the trial court’s determinations of credibility. (*People v. Quesada, supra*, 230 Cal.App.3d 525, 533.) There is nothing in the record here to show that the trial court’s determinations were

arbitrary, capricious, or patently absurd. The trial court plainly knew the difference between (most) cases, in which a defendant's assertion that he or she did not understand the provisions of the plea form does not withstand scrutiny, and the unusual circumstances of this case, in which it found defendant's assertions believable.

The People urge that we should reject defendant's petition here, on the basis that it is an improper claim of IAC. *People v. Chien, supra*, 159 Cal.App.4th 1283, the case cited for the proposition that a motion under Penal Code section 1016.5 will not lie to review an IAC claim, is clearly distinguishable.

In *Chien*, in contrast to the instant case, there was a record of the plea proceedings, which affirmatively showed that the trial court had fulfilled its statutory duty to admonish the defendant of the immigration consequences of his plea. The admonishment given by the court did not, however, go on to specify that the particular offense to which the defendant was pleading no contest was an offense that would require mandatory permanent deportation. The defendant first moved to vacate the conviction based on the lack of specificity in the immigration warning given by the court. The trial court treated the matter as a petition for writ of error *coram nobis* and denied the petition without a hearing. The defendant then brought a motion to vacate the plea under Penal Code section 1016.5, based solely on the ground of IAC. The defendant alleged that his trial counsel knew that his client was not a citizen but failed to investigate any immigration matters, never advised the defendant of the immigration consequences of the particular plea, and never defended the case with any actual knowledge of immigration

consequences dependent upon the filed charge. The trial court denied the motion, determining that it did not have jurisdiction to review a claim of IAC under the provisions of Penal Code section 1016.5, which deal with the court's obligation to admonish a defendant of the immigration consequences of a guilty or no contest plea. (*People v. Chien, supra*, 159 Cal.App.4th 1283, 1286-1287.)

It was in that context that the appellate court stated, "Missing from defendant's [Penal Code] section 1016.5 motion is any allegation that the trial court failed to provide the requisite advisement; indeed, it is undisputed that the trial court fulfilled its duty to advise under section 1016.5. Defendant instead argues that the statutory remedy established in section 1016.5 should extend to a failure not specified in the statute—counsel's failure to provide competent representation relating to the potential immigration consequences of conviction." (*People v. Chien, supra*, 159 Cal.App.4th 1283, 1288.)

Here, by contrast, defendant's motion under Penal Code section 1016.5 addresses the trial court's failure to fulfill its duty to admonish defendant of the immigration consequences of the plea. The evidence here fails to show that the trial court made an affirmative admonishment of immigration consequences orally when taking defendant's plea. The only evidence that defendant received an admonition as to immigration consequences was the written provision on the plea form; defendant presented evidence, credited by the trier of fact, that he did not actually receive that alternate admonition because of his learning disabilities. The errors committed by trial counsel were not

evidence of IAC, but rather indicated that the circumstances of the plea proceeding were hurried. If trial counsel overlooked several other matters, then it was more plausible to believe that she may also have neglected to follow her usual practice with respect to reading all provisions (including the immigration admonition) to defendant. The matter tendered for the trial court's decision was not whether a motion under Penal Code section 1016.5 may reach a matter—IAC—not provided for in the statute; rather, the evidence went to the heart of the statutory provision: whether defendant in this case actually received any immigration admonition from the court. The trial court here found that he did not. That finding was supported by substantial evidence. While this is not the decision we would have made on this cold record, it is not our decision to make, and we cannot substitute our discretion for that of the trial court. The appellant has failed to demonstrate that the trial court abused its discretion in making its ruling.

IV

DISPOSITION

For the reasons stated, the trial court's ruling is affirmed.

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McKINSTER

Acting P. J.

I concur:

MILLER

J.

RICHLI, J., Concurring.

I concur in the result because there is a theoretical evidentiary basis for the conclusion. However, I disagree with the trial court relying on facts outside the record in reaching its decision.

Under Penal Code section 1016.5, a defendant can obtain relief if he or she “demonstrate[s] that (1) the court taking the plea failed to advise the defendant of the immigration consequences as provided by section 1016.5, (2) as a consequence of conviction, the defendant actually faces one or more of the statutorily specified immigration consequences, and (3) the defendant was prejudiced by the court’s failure to provide complete advisements.” (*People v. Chien* (2008) 159 Cal.App.4th 1283, 1287, citing *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199-200; *People v. Totari* (2002) 28 Cal.4th 876, 884.)

Penal Code section 1016.5, subdivision (a), requires the following admonishment be given to any defendant entering a guilty plea:

“If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

The court is not required to provide the above warning orally. It simply must appear on the record and must be given by the court. (*People v. Gutierrez* (2003) 106 Cal.App.4th 169, 175; *People v. Ramirez* (1999) 71 Cal.App.4th 519, 521.)

In this case, it is undisputed that the advisement provided above was clearly printed on the plea form defendant initialed and signed. In the plea form, under “CONSEQUENCES OF PLEA[,]” it stated: “If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” Defendant initialed next to a line immediately below this statement, which stated: *“I have read and understand each of the above listed consequences.”* Thereafter, under a heading entitled “DEFENDANT’S STATEMENT[,]” the form stated: “The initials that appear above and on the back of this form are my own. I have read and understand each statement that I have initialed.” Immediately below this statement, defendant dated the document, “8/20/03[,]” and signed the document with his signature. Thereafter, defense counsel dated and signed immediately below this statement: “I am the attorney for the above named defendant. I am satisfied that 1) the defendant understands his/her constitutional rights and understands that a guilty plea would be a waiver of these rights; 2) that the defendant has had an adequate opportunity to discuss his/her case with me, including any defense he/she may have to the charges; 3) that the defendant understands the consequences of his/her guilty plea. Furthermore, I join in the decision of the defendant to enter a guilty plea at this time.”

The plea form, therefore, shows that defendant received the required admonition under Penal Code section 1016.5. Notwithstanding, the trial court believed defendant’s testimony that he did not understand what he was signing on the day he pled guilty because of defendant’s learning disability. The trial court also believed the testimony of

defendant's sister who testified that she never heard immigration consequences being discussed at the hearing. Moreover, the court believed defendant's trial counsel who testified that it is her custom and practice to read the plea form to her clients, word for word. However, the trial court noted that defendant's plea form contained discrepancies that defense counsel could not explain. The court, therefore, concluded that defendant signed the plea form without being aware of his immigration consequences. I note these discrepancies were not related in any way to the immigration advisement.

When making its decision, the trial court noted that the day of the plea, August 20, 2003, which was almost 10 years prior to the hearing on the motion to vacate, "was a busy day," hence, the plea was "rushed through[.]" Therefore, the court concluded that defendant's trial counsel must have processed defendant's plea hurriedly. However, there is nothing in the record to indicate that the trial judge who heard the motion to vacate was serving at the same court in August 2003, or had personal knowledge of the volume of cases the court heard at the time. Instead, the court assumed that the trial court was busy on August 20, 2003, and defendant's case was rushed through. I find this assumption to be inappropriate.

Based on the plea form and defense counsel's testimony, I believe that the weight of the evidence supports that defendant did understand the immigration consequences of his plea. However, I recognize that an appellate court must uphold the trial court's reasonable inferences and resolution of factual conflicts if supported by substantial evidence, viewed in the light most favorable to the ruling, and must also accept the court's credibility determinations. (*People v. Quesada* (1991) 230 Cal.App.3d 525, 533.)

Here, although the trial court considered facts outside the record, we must accept the court's credibility determinations in believing defendant's and his sister's testimony. Therefore, I agree that there is sufficient evidence – viewed in the light most favorable to the ruling – to support the trial court's finding. Because a trial court's ruling will withstand appellate review unless it has clearly abused its discretion (see *People v. Superior Court (Zamudio)*, *supra*, 23 Cal.4th at p. 192), I concur in the majority's conclusion.

RICHLI

J.