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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE GERRARDO MEZA,

Defendant and Appellant.

F069257

(Super. Ct. No. SUF30152)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Mark V. Bacciarini, Judge.

Scott Levy for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Poochigian, J. and Peña, J.

Defendant Jose Gerrardo Meza appeals from a 2014 order denying his Penal Code section 1016.5¹ motion to vacate his October 25, 2006 convictions in Merced County Superior Court case No. 30152 for transportation of methamphetamine (Health & Saf. Code, § 11379), driving while unlicensed (Veh. Code, § 12500, subd. (a)), and providing a false name to a police officer (§ 148.9, subd. (a)). Meza contends the court erred in denying his motion to vacate because during the change of plea proceeding, the court did not question him or his attorney regarding the change of plea form. We affirm the trial court's order denying Meza's motion to vacate the judgment.

FACTS

On March 10, 2005, in Merced County Superior Court case No. 29381, Meza was convicted of transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)) and evading a police officer (Veh. Code, § 2800.2) and subsequently placed on probation.

On May 15, 2006, a Merced County sheriff's deputy saw a car driven by Meza fail to come to a complete stop at a stop sign. After the deputy turned on his emergency lights to effect a stop, Meza threw three plastic baggies containing methamphetamine out of the driver's window. Meza did not have a driver's license on him and initially provided the deputy with a false name (case No. 30152). Meza was still on probation in case No. 29381 at the time and he was subsequently arrested.

On July 13, 2006, the district attorney filed an information charging Meza with transportation of methamphetamine (count 1/Health & Saf. Code, § 11379), possession of methamphetamine (count 2/Health & Saf. Code, § 11377, subd. (a)), providing a false name to a police officer (count 3/§ 148.9, subd. (a)), and driving without a valid driver's license (count 4/Veh. Code, § 12500, subd. (a)), and a prior conviction enhancement (Health & Saf. Code, § 11370.2, subd. (c)) in count 1.

¹ All further statutory references are to the Penal Code unless otherwise specified.

On October 25, 2006, in case No. 30152, Meza pled no contest to transportation of methamphetamine (Health & Saf. Code, § 11379), guilty to providing a false name to a police officer (§ 148.9, subd. (a)), and driving without a valid driver's license (Veh. Code, § 12500, subd. (a)), and he admitted a prior conviction enhancement (Health & Saf. Code, § 11370.2, subd. (c)). Meza also admitted violating his probation in case No. 29381.

Prior to entering his plea in case No. 30152, Meza filled out a change of plea form that contained the following admonishment regarding the immigration consequences of his plea: "I understand that if I am not a citizen, my guilty or no contest plea will result in my deportation (removal), exclusion from admission to the United States, and denial of naturalization."

Meza initialed a box next to this admonition and he signed the following acknowledgement at the end of the form: "I have personally initialed the above items. I have discussed all of the above with my attorney and my attorney has answered all of the questions I have about this plea."

Meza's attorney signed an acknowledgement that he explained the consequences of his plea to Meza; an interpreter signed an acknowledgement that he translated the form into Spanish for Meza.

The following colloquy occurred during the October 25, 2006 court hearing:

"THE COURT: ... Mr. Meza in Case Number 30152 I've been handed a four-page change of plea form[.] I'm showing that to you now. There [are] initials on the first three pages, are those your initials?"

"THE DEFENDANT: Yes, [y]our Honor.

"THE COURT: And did you read or did - - let's put it this way, you're being assisted by the court certified interpreter Pedro Fuentes. Did Mr. Fuentes read what was in each of those boxes to you?"

"THE DEFENDANT: Yes.

“THE COURT: Did you understand what he read?

“THE DEFENDANT: Yes.

“THE COURT: If you had any questions about what he read did you talk to your attorney Mr. Hegland?

“THE DEFENDANT: No, it’s fine, [y]our Honor.”

After Meza waived time for sentencing, the court sentenced him to a suspended, aggregate term of nine years eight months in both cases, placed him on probation for three years and ordered him to serve one year in jail on his providing a false name and driving without a license convictions.

On November 20, 2013, pursuant to section 1016.5, Meza filed a motion to vacate the judgment asking the court to vacate the convictions in case No. 30152. In the moving papers, Meza alleged he was unaware of the immigration consequences of his plea until earlier that year when Meza inquired about a residency application he had pending. At that time, Meza was informed that the application could not be processed until “the instant conviction” was vacated. Meza also alleged the court did not advise him that his plea could result in “problems with his immigration status” and had he known of the immigration consequences of his plea, he would not have pled no contest to the charges. Instead, he would have taken the case to trial or tried to reach an agreement to plead to a “non-deportable offense.”

On February 3, 2014, Meza filed an amended motion to vacate judgment asking the court to vacate his March 10, 2005 guilty plea in case No. 29381 to evading a police officer (Veh. Code, § 2800.2, subd. (a)) and transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)). The moving papers alleged that when he pled guilty to these offenses,² Meza’s attorney was not questioned about whether he went over

² Meza’s moving papers also alleged he pled guilty to driving with a blood alcohol content of .08 or greater. However, this conviction is not mentioned elsewhere in the record.

the change of plea form with Meza. However, Meza's amended motion to vacate the judgment in case No. 29381 cited to the transcript of the October 25, 2006 change of plea proceedings in case No. 30152. It argued that the motion should be granted with respect to case No. 29381, because the court did not question Meza's counsel regarding the change of plea form and Meza's responses to the court's questions indicated he did not discuss the change of plea form with his counsel.

On February 18, 2014, at a hearing on Meza's motion to set aside the judgment, the court treated it as two motions. At the beginning of the hearing, the court stated it had reviewed the files in each case and in each case there was a signed advisement of rights form,³ confirming Meza had been advised of the consequences of his plea. During the hearing, Meza's counsel cited the last question and answer in the above quoted colloquy from October 25, 2006, to argue that Meza's defense counsel at the time had not gone over the change of plea form with Meza. The prosecutor argued that in each case the language of the change of plea form and the signed statement of counsel that they had read and explained the change of plea form to Meza was sufficient to comply with the immigration advisement requirements of section 1016.5. The court denied the motions finding that the written acknowledgements on the change of plea forms were sufficient to comply with section 1016.5.

DISCUSSION

Meza challenges only the court's denial of his motion to vacate with respect to his October 25, 2006 plea in case No. 30152. We will reject Meza's claim that in that case the court did not properly admonish him of the immigration consequences of his plea. However, even if the court had vacated that plea, Meza would still face the same immigration consequences because of his conviction for transportation of a controlled substance in case No. 29381, which he did not effectively challenge in the trial court or at

³ The change of plea form for case No. 29381 is not included in the record.

all on appeal. Thus, we also conclude that Meza was not prejudiced by the denial of his motion to vacate his plea in case No. 30152.

“Penal Code section 1016.5, subdivision (a), requires that a trial court, prior to accepting a defendant’s plea of guilty or nolo contendere to an offense punishable as a crime under California law, advise the defendant that: ‘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.’ Subdivision (b) of section 1016.5 provides in pertinent part: ‘If, after January 1, 1978, the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant’s motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. *Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement.*” (*People v. Dubon* (2001) 90 Cal.App.4th 944, 951 (*Dubon*).)

“To prevail on a motion brought pursuant to Penal Code section 1016.5, a defendant must establish: (1) he or she was not properly advised of the immigration consequences as provided by the statute; (2) there exists, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified adverse immigration consequences; and (3) he or she was prejudiced by the nonadvisement, i.e., if properly advised, he or she would not have pleaded guilty or nolo contendere.” (*Dubon, supra*, 90 Cal.App.4th at pp. 951-952.)

“Our state Supreme Court has held a validly executed waiver form is a proper substitute for verbal admonishment by the trial court. (*In re Ibarra* (1983) 34 Cal.3d 277, 285-286.) Particularly, in *Ibarra*, the court addressed constitutionally mandated advisements required under *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122. It also stated in *Ibarra*: ‘A sufficient waiver form can be a great aid to a defendant in outlining [a defendant’s] rights. The defense attorney, who is already subject to a duty to explain the constitutional rights outlined in a proper waiver form to his client prior to the client’s entering a plea, may even find it desirable to refer to such a form. Thus, a defendant who has signed a

waiver form upon competent advice of his attorney has little need to hear a ritual recitation of his rights by a trial judge. The judge need only determine whether defendant had read and understood the contents of the form, and had discussed them with his attorney.” (*People v. Ramirez* (1999) 71 Cal.App.4th 519, 521-522 (*Ramirez*).

In case No. 30152, Meza executed a change of plea form that contained a stronger admonishment than the one required by section 1016.5, in that it stated that his conviction *would* result in his deportation, exclusion from admission to the United States, or denial of naturalization. On the change of plea form, Meza signed an acknowledgement that he read and understood it, the interpreter signed an acknowledgement that he translated it into Spanish for Meza, and his attorney signed an acknowledgement that he explained the consequences of his plea and answered all of Meza’s questions. Additionally, during the change of plea proceedings, in response to questioning by the court, Meza acknowledged that he initialed the boxes on the change of plea form, that the interpreter read “what was in each box” to him, and that he understood what was read to him.

Meza contends that the foregoing did not comply with section 1016.5 because the court did not question his attorney to ensure that Meza actually read and understood the change of plea form or the interpreter to ensure he accurately interpreted the form to Meza. Meza is wrong. “[T]he dispositive question is whether the defendant has been advised of the immigration consequences of his plea as required by the statute, not who gave the admonition. ‘The critical issue under section 1016.5 is whether a defendant has been advised that his guilty plea may have immigration consequences.’” (*People v. Quesada* (1991) 230 Cal.App.3d 525, 536.) Since it is undisputed that Meza was advised of these consequences, we conclude that the court complied with section 1016.5 when it took his plea in case No. 30152. (*Ramirez, supra*, 71 Cal.App.4th at p. 523.)

In any case, Meza failed to show in the trial court that he was prejudiced by the denial of his motion to vacate his convictions in case No. 30152. Meza claimed in his moving papers that had he known of the immigration consequences of his plea in case

No. 30152, he would have been “willing to fight [his] case or plead to a different offense.” However, since Meza did not make any bona fide arguments in support of his motion to vacate his convictions in case No. 29381, which included a conviction for transportation of a controlled substance, the record supports the court’s denial of his motion to vacate as to case No. 29381. Further, his transportation conviction in case No. 29381 subjected him to the same negative immigration consequences as his transportation conviction in the present case. (8 U.S.C. § 1227(a)(2)(B)(i).) Consequently, Meza could not have been prejudiced by a failure in case No. 30152 to advise him of the immigration consequences of his plea because these consequences would not have served as an inducement for Meza to “fight” the charges in that case. Accordingly, we conclude that the court did not abuse its discretion when it denied Meza’s motion to vacate his convictions in case No. 30152.

DISPOSITION

The order denying Meza’s motion to vacate his convictions in Merced County Superior Court case No. 30152 is affirmed.