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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL RANGEL RODRIGUEZ,

Defendant and Appellant.

G044548

(Super. Ct. No. 95CF0410)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, James Odriozola, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Garrett Beaumont and Gil Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

In 1995, defendant Samuel Rangel Rodriguez pleaded guilty to possessing cocaine for sale. (Health & Saf. Code, § 11351.) Fifteen years later, he moved to vacate the conviction and set aside his guilty plea. The trial court denied the motion. Defendant claims the advisement he received about the conviction's immigration consequences when he entered the guilty plea was inadequate because it described those consequences as being merely potential when federal law mandated deportation for his crime. We conclude the trial court complied with the requirements of Penal Code section 1016.5 (all further statutory references are to the Penal Code unless otherwise indicated) in accepting defendant's 1995 guilty plea and affirm the order denying the motion.

FACTS

When defendant entered the guilty plea, he and his attorney completed and signed a preprinted guilty plea form. The form included the following statement: "I understand that if I am not a citizen of the United States the conviction for the offense charged may have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Defendant initialed the box next to this statement and signed the form below a statement confirming he understood and waived each of the rights described in the document.

In 2010, federal officials initiated deportation proceedings against defendant based on his 1995 conviction. Under federal law a conviction for "illicit trafficking in a controlled substance" constitutes an "aggravated felony" (8 U.S.C. § 1101(a)(43)(B)), rendering a noncitizen subject to deportation (8 U.S.C. § 1227(a)(2)(A)(iii)). Defendant filed a motion to vacate his conviction and set aside the guilty plea. He claimed the advisement that his conviction "may" have certain immigration consequences was inadequate because the charge of possessing cocaine for sale subjected him to mandatory deportation. The trial court denied the motion.

DISCUSSION

Section 1016.5, subdivision (a) declares, “Prior to acceptance of a plea of guilty . . . to any offense punishable as a crime under state law, . . . the court shall administer the following advisement on the record to the defendant: [¶] 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 statute further provides if “the court fails to advise the defendant as required . . . and the defendant shows that conviction of the offense to which defendant pleaded guilty . . . 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, on defendant’s motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty . . . and enter a plea of not guilty.” (§ 1016.5, subd. (b).)

“To prevail on a motion to vacate under section 1016.5, a defendant must establish that (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. [Citations.]” (*People v. Totari* (2002) 28 Cal.4th 876, 884.) We review the trial court’s ruling for abuse of discretion. (*People v. Limon* (2009) 179 Cal.App.4th 1514, 1517-1518.)

This case is focused on the first element, whether the trial court adequately advised defendant of the immigration consequences when he entered his guilty plea. Defendant concedes he initialed a statement on the guilty plea form that informed him of all three immigration consequences listed in the statute which he faced by pleading guilty. *People v. Ramirez* (1999) 71 Cal.App.4th 519 held an immigration advisement contained in a plea form can satisfy the statutory requirement. (*Id.* at p. 521.) “So long

as the advisements are given, the language of the advisements appears in the record for appellate consideration of their adequacy, and the trial court satisfies itself that the defendant understood the advisements and had an opportunity to discuss the consequences with counsel, the legislative purpose of section 1016.5 is met. [Citation.]” (*Id.* at p. 522.)

But defendant challenges the sufficiency of the immigration advisement in his guilty plea form, claiming he “was not advised his conviction for possessing cocaine for sale was an aggravated felony under federal immigration law which would result in mandatory deportation” Thus, he argues, “the soft and vague language in th[e] plea form was woefully inadequate”

This argument lacks merit. In *People v. Kim* (2009) 45 Cal.4th 1078, the Supreme Court recognized “the Legislature’s enactment of section 1016.5 . . . reflects that body’s assessment of the need for a remedy when pleading defendants are unaware of the immigration consequences of their pleas” (*id.* at p. 1107, fn. 20), and rejected a claim courts “should expand the scope of that statutory motion to vacate to provide some form of relief for defendant[s]” (*id.* at pp. 1107-1108, fn. 20). As we recently noted in a related context, “[d]efendant has not cited any statute or other legal authority, and we have found none, which would support, much less require, the trial courts to provide the admonishment proposed by defendant. [Citation.]” (*People v. Gari* (2011) 199 Cal.App.4th 510, 518.)

Defendant relies on the United States Supreme Court’s recent decision in *Padilla v. Kentucky* (2010) 599 U.S. ____ [130 S. Ct. 1473, 176 L.Ed.2d 284] to establish he failed to receive a proper advisement of his guilty plea’s immigration consequences. However, *Padilla* concerns the duty of *defense counsel* to provide a defendant with accurate advice concerning the immigration consequences associated with a criminal conviction. The court held that if adverse immigration consequences are clearly determinable, as they are in most felony drug offenses, a criminal defense attorney is

required to properly advise defendants regarding those specific consequences. (*Id.* at p. ____ [130 S.Ct. at p. 1483].) The court’s opinion did not extend those same heightened duties to trial judges.

Defendant asks us to take that next step. But case law recognizes section 1016.5 “allows a court to vacate a conviction only if the *trial court* has failed to advise the defendant of potential adverse immigration consequences at the time of the plea” and “cannot be used to assert *defense counsel’s* failure to provide adequate representation relating to immigration consequences.” (*People v. Chien* (2008) 159 Cal.App.4th 1283, 1285; see also *People v. Kim, supra*, 45 Cal.4th at p. 1108, fn. 20.) A “‘claim’ of ineffective assistance of counsel ‘is not a wrong encompassed by the statute.’ [Citations.]” (*People v. Limon, supra*, 179 Cal.App.4th at p. 1519.) Defendant sought relief only under section 1016.5. Thus, any claim concerning the scope of his attorney’s advice to him at the time of the plea is not before us.

DISPOSITION

The order is affirmed.

RYLAARSDAM, J.

WE CONCUR:

O’LEARY, P. J.

IKOLA, J.