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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.

JOSE ABRAHAM RODRIGUEZ,

Defendant and Appellant.

G047426

(Super. Ct. No. 99SF0689)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig E. Robison, Judge. Affirmed.

Ron Boyer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

On September 21, 1999, Defendant Jose Abraham Rodriguez was charged by complaint with two felony counts of making criminal threats (Pen. Code, § 422)¹ and one misdemeanor count of vandalism (§ 594). On October 15, 1999, defendant entered into a plea bargain with the People by which he withdrew his not guilty plea, pleaded guilty to one count of making a criminal threat, the People dismissed the remaining counts, and the court sentenced defendant to state prison for the low term of 16 months. As part of the his plea bargain, defendant signed and initialed a written plea form in which he stated, inter alia, “I understand that if I am not a citizen of the United States the conviction for the offense charge 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.”

Nearly 13 years later, on August 16, 2012, defendant filed a petition for writ of error *coram nobis* alleging his parents brought him to the United States from Mexico when he was five years old, and “at no time did [he] know or remotely understand that he was ‘not a citizen’ or that such a thing even mattered.” Defendant alleged that his 1999 guilty plea “was not intelligent because the information provided to [him] was not complete [H]is plea was not voluntary because he was not advised that he could be deported.” He “was not advised that as a result of his plea of guilty he was subject to deportation.” Defendant further alleged his counsel had been ineffective for three reasons: (1) “Counsel allowed defendant to plead guilty to a charge [he] did not agree that he committed”; “(2) [c]ounsel did not advise [him] that he could be deported as the result of his guilty plea”; and “(3) [c]ounsel allowed [him] to plead to and receive a sentence of over 1 year knowing that the sentence rendered [him] automatically [d]eportable.” Defendant requested the court to vacate his conviction or alternatively reduce the judgment to a misdemeanor pursuant to section 17, subdivision (b)(3).

¹

All statutory references are to the Penal Code.

The court denied the writ of error *coram nobis* for three independent reasons: (1) The petition was untimely; (2) defendant did “not explain and justify his failure to avail himself of other available legal remedies”; and (3) “claims involving alleged errors of law or ineffective assistance of counsel are not subject to review by way of error *coram nobis*.” (Italics added.) Defendant’s request to reduce his conviction to a misdemeanor was denied because “[i]mposition of a prison term, whether or not suspended, renders an offense a straight felony that may not be reduced to a misdemeanor pursuant to [section 17, subdivision (b)].”

Defendant timely filed a notice of appeal. We appointed counsel to represent defendant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against his client, but advised the court no issues were found to argue on defendant’s behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was given 30 days to file written argument in his own behalf. That period has passed, and we have received no communication from him.

Defendant’s counsel on appeal has not identified any issues that are potentially arguable. We likewise have not found any arguable issues on our independent review of the record. The court’s decision was correct for all of its stated reasons, each of which, except for the denial of the request under section 17, subdivision (b) was fully explained by our Supreme Court in *People v. Kim* (2009) 45 Cal.4th 1078. As stated in *Kim*, “with regard to the allegedly new facts on which defendant relies for his petition for the writ of error *coram nobis*, he fails to allege with specificity ‘the time and circumstances under which the facts were discovered’ so as to permit this court to ‘determine as a matter of law whether [defendant] proceeded with due diligence.’” (*Id.* at pp. 1098-1099.) Also, as stated in *Kim*, “defendant could have petitioned for a writ of habeas corpus while he was still in actual or constructive state custody, that is, in prison or on parole.” (*Id.* at p. 1099.) Defendant’s failure “to avail himself of other remedies when he had the chance” dooms his petition for writ of error *coram nobis*. (*Ibid.*) On the

merits, “a claim of ineffective assistance of counsel, which relates more to a mistake of law than of fact, is an inappropriate ground for relief on *coram nobis*.” (*Id.* at p. 1104.)

We note also that *Padilla v. Kentucky* (2010) 559 U.S. ____ [130 S.Ct. 1473] does not provide an additional avenue for relief. (See *People v. Shokur* (2012) 205 Cal.App.4th 1398, 1404-1405.) In *Padilla*, the United States Supreme Court held that a criminal defendant has a Sixth Amendment right to the effective assistance of counsel regarding deportation advice. “[C]ounsel must inform her client whether his plea carries a risk of deportation.” (*Padilla* at p. ____ [130 S.Ct. at p. 1486].) But the Supreme Court was not called upon to address whether a state must provide defendant an *additional* remedy beyond those already made available by the state. In California “[t]he noncitizen defendant who has not been advised of the immigration consequences of a guilty plea may move to withdraw his plea (Pen. Code, §1018), make a statutory motion to vacate the judgment (Pen. Code, § 1016.5), appeal (Pen. Code, § 1237), or file a petition for a writ of habeas corpus raising the issue of ineffective assistance of counsel.” (*Shokur*, at p. 1404.) ““The writ of error *coram nobis* is not a catch-all by which those convicted may litigate and relitigate the propriety of their convictions *ad infinitum*. In the vast majority of cases a trial followed by a motion for a new trial and an appeal affords adequate protection to those accused of crime. The writ of error *coram nobis* serves a limited and useful purpose. It will be used to correct errors of fact which could not be corrected in any other manner. But it is well-settled law in this and in other states that where other and adequate remedies exist the writ is not available.”” (*People v. Kim*, *supra*, 45 Cal.4th at p. 1094.)

Finally, the court was correct in ruling that section 17, subdivision (b) is not available to reduce a felony to a misdemeanor after a state prison sentence has been imposed. “Imposition of a prison term, whether or not suspended, render[s] the offense a felony.” (*People v. Wood* (1998) 62 Cal.App.4th 1262, 1267.)

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.