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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.

ILDER ARRIAZA PACHECO,

Defendant and Appellant.

G049255

(Super. Ct. No. 12HF3099)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

Law Office of Zulu Ali and Zulu Ali for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Ilder Arriaza Pacheco appeals from the superior court's denial of his petition for a writ of error *coram nobis*. He sought to withdraw his guilty plea to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), alleging his attorney failed to advise him of the immigration consequences of such a plea. We affirm the superior court's order denying defendant relief because ineffective assistance of counsel is not a basis for relief in *coram nobis*. (*People v. Kim* (2009) 45 Cal.4th 1078, 1104; *People v. Shokur* (2012) 205 Cal.App.4th 1398.)

I

FACTS

The Orange County District Attorney filed a felony complaint against defendant on October 25, 2012, charging him with one count of possessing of methamphetamine for sale. (Health & Saf. Code, § 11378.) The public defender was appointed to represent defendant. On November 2, 2012, the court granted the prosecutor's motion to amend the felony complaint to add count two, simple possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) Defendant plead guilty to count two. The court then granted the prosecutor's motion to dismiss count one.

The change of plea form defendant signed and initialed contained the following immigration advisement: "I understand if I am not a citizen of the United States, my conviction for the offense charged will have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." The court also advised defendant of the possible immigration consequences of his guilty plea, and after independently advising defendant of his constitutional rights, found defendant intelligently and voluntarily waived those rights in order to plead guilty. The court deferred entry of judgment, ordered defendant to enroll in a diversion drug program pursuant to Penal Code section 1000, and advised him he could withdraw his guilty plea after successfully completing diversion and the charges

would then be dismissed. The court ordered defendant to show proof of enrollment in a drug program by December 3, 2012, and released him on his own recognizance.

Defendant did not appear in court on December 3, 2012. The court issued a bench warrant and terminated diversion proceedings. On July 30, 2013, defendant filed a petition for a writ of *coram nobis* in the superior court. In support of the petition, defendant submitted his declaration in Spanish. The declaration was translated into English by an individual who is competent to translate Spanish into English. Defendant's declaration states he is a citizen of Guatemala, he advised his attorney he was concerned about the immigration consequences of a guilty plea, but his attorney did not advise him he "was subject to mandatory deportation and/or denial of relief, voluntary departure, bar from reentry, and/or any other consequence if [he] pled guilty in this case." He also alleged the court did not properly advise him either. Defendant alleged he would not have pled guilty had he been advised by counsel or the court of the immigration consequences of his guilty plea.

The court conducted a hearing on defendant's petition and denied relief, concluding ineffective assistance of counsel and a court's advise of immigration consequences are not grounds for relief in *coram nobis*, citing our Supreme Court's decision in *People v. Kim, supra*, 45 Cal.4th at page 1104. Defendant filed a timely notice of appeal and the court signed defendant's certificate of probable cause.

II

DISCUSSION

"In *People v. Kim, supra*, 45 Cal.4th 1078, the California Supreme Court held a noncitizen criminal defendant who was not advised by counsel of the immigration consequences of his guilty plea may not seek to vacate the judgment in the criminal case by means of a petition for a writ of error *coram nobis*. (*Id.* at pp. 1108-1109.) The 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. (*In re Resendiz* (2001) 25 Cal.4th 230; see *Strickland v. Washington* [(1984)] 466 U.S. [668,] 687-688 [two-pronged test for actionable ineffective assistance of counsel claim].) “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*.” (*People v. Kim, supra*, 45 Cal.4th at p. 1094.)” (*People v. Shokur, supra*, 205 Cal.App.4th at pp. 1403-1404.)

We are bound by the decision in *People v. Kim, supra*, 45 Cal.4th 1078. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Defendant contends the United States Supreme Court’s opinion in *Padilla v. Kentucky* (2010) 559 U.S. 356, requires a different result. We previously rejected the same argument in *People v. Shokur, supra*, 205 Cal.App.4th at page 1405. In *Padilla v. Kentucky*, “[t]he United States Supreme Court held ‘advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.’ [Citation.] In other words, the two-pronged test of *Strickland v. Washington, supra*, 446 U.S. at pages 687-688, applies to a claim of ineffective assistance of counsel in connection with an immigration consequences advisement. [Citation.] Contrary to defendant’s interpretation, *Padilla* does not require states to provide an avenue for noncitizens to challenge their convictions based on an erroneous immigration advisement when no other remedy is presently available. That issue was not presented to the high court as Kentucky permits a motion to vacate a conviction by ‘[a] prisoner in custody under sentence or a defendant on probation, parole or conditional discharge.’ [Citations.] The Kentucky rule appears to serve the same function as Penal Code section 1473.¹” (*People v. Shokur, supra*, 205 Cal.App.4th at p. 1405.)

¹ “‘Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.’ (Pen. Code, § 1473, subd. (a).)”

Because ineffective assistance of counsel and a trial court's failure to advise of immigration consequences are not grounds for relief in *coram nobis*, we affirm the lower court's order denying relief. We therefore do not reach the issue of whether defendant was properly advised, although we note the advisement given by counsel, and which defendant initialed, stated in no uncertain terms his conviction "*will* have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." (Italics added.)

III

DISPOSITION

The order of the superior court is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.