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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0436**

State of Minnesota,
Respondent,

vs.

Raymundo Zeferino-Sanchez,
Appellant.

**Filed April 15, 2019
Affirmed
Jesson, Judge**

Scott County District Court
File No. 70-CR-17-1279

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Wesley J. Abrahamson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Bruce Rivers, Rivers Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Smith,
John P., Judge.¹

¹ Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JESSON, Judge

After a court trial on stipulated evidence, the district court found appellant Raymundo Zeferino-Sanchez guilty of second-degree criminal sexual conduct for sexually abusing his stepdaughter. Zeferino-Sanchez challenges this determination on the basis that he received ineffective assistance of counsel because his attorney did not advise him of the immigration consequences of waiving a jury trial. Because we conclude that Zeferino-Sanchez's counsel's performance was not deficient, we affirm.

FACTS

In December 2016, L.R. (age 11 at the time) told her friend at school that her stepfather, appellant Raymundo Zeferino-Sanchez, had been touching her inappropriately since she was four years old. After receiving a child-protection report, police interviewed L.R. at her home.

During the interview, L.R. told police that Zeferino-Sanchez touched her vaginal area under her clothing and offered her a treat if she did not tell anyone. L.R. also disclosed to police that Zeferino-Sanchez touched her breasts more than once when she was seven or eight years old. Finally, L.R. told police that Zeferino-Sanchez tried to get her to sleep in his bed with him and said he would not be able to protect her from zombies if she did not.

Zeferino-Sanchez voluntarily spoke with police about L.R.'s allegations against him. Initially, and for much of the interview, he denied touching L.R. inappropriately. According to Zeferino-Sanchez, he would sometimes tickle L.R., but was only playing with her. But as the conversation progressed, Zeferino-Sanchez admitted to police that he put

his hands down the front part of L.R.'s pants and underwear after she made a comment about having "butt hair." Zeferino-Sanchez also told police that he offered L.R. a donut if she did not tell her mom what happened. Zeferino-Sanchez also admitted that he touched L.R.'s bare breast on two occasions, but stated that he did not do it with the intention of molesting her. Based on L.R.'s statements and Zeferino-Sanchez's admissions, the state charged Zeferino-Sanchez with three counts of second-degree criminal sexual conduct.²

On the day Zeferino-Sanchez's trial was scheduled to begin, Zeferino-Sanchez waived his right to a jury trial, and both parties agreed that the district court would decide the case based on stipulated evidence pursuant to rule 26.01 of the Minnesota Rules of Criminal Procedure. The stipulated evidence consisted of police records about L.R.'s allegations, including the incident report and child protection intake summaries, a transcript of L.R.'s statement to police, a brief summary of an interview of L.R. conducted by defense counsel,³ and a transcript of Zeferino-Sanchez's statement to police. Based on this evidence, the district court found Zeferino-Sanchez guilty of all three counts of criminal sexual conduct.

At sentencing, the district court followed the parties' agreement and sentenced Zeferino-Sanchez to a stay of adjudication with no additional jail time and up to five years of probation. Zeferino-Sanchez appeals.

² In violation of Minn. Stat. § 609.343, subd. 1(a) (2016).

³ In this summary, defense counsel asserted that L.R. recanted her allegations against Zeferino-Sanchez and asserted that she made up the allegations against him because she was mad at him for grounding her and preventing her from using her cell phone.

DECISION

Zeferino-Sanchez argues that he is entitled to a new trial on the basis that he received ineffective assistance of counsel because his counsel failed to adequately advise him regarding the immigration consequences of waiving a jury trial and agreeing to a trial based upon stipulated evidence.

When an ineffective-assistance-of-counsel claim is properly raised in a direct appeal, we review the claim under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). *State v. Ellis-Strong*, 899 N.W.2d 531, 535 (Minn. App. 2017). That test requires an appellant to show that (1) “counsel’s representation fell below an objective standard of reasonableness” and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 688, 694, 104 S. Ct. at 2064, 2068. In evaluating ineffective-assistance claims, there is a strong presumption that counsel’s performance was reasonable. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016). And in cases where a claim fails to satisfy one prong of the *Strickland* test, this court does not have to consider both prongs to determine that the claim fails. *Id.*

First, we note that Zeferino-Sanchez does not argue that his waiver of his right to a jury trial was somehow defective. Under Rule 26.01, subdivision 1(2)(a) of the Minnesota Rules of Criminal Procedure, a defendant may waive his right to a jury trial on the issue of guilt, but must do so on the record after an opportunity to consult with counsel and being advised of the right to a trial by jury. Further, parties may agree that the issue of guilt may be tried by the court on the basis of stipulated evidence, provided that after an opportunity

to consult with counsel the defendant, on the record, waives his right to a jury trial and his rights to testify, have prosecution witnesses testify in court, question those witnesses, and present his own witnesses. Minn. R. Crim. P. 26.01, subd. 3(a)-(c). Here, Zeferino-Sanchez waived his right to a jury trial on the record after stating he consulted with counsel and knew about his right to a trial by jury. Zeferino-Sanchez further agreed to the stipulated evidence, waived each of the stated rights, and told the court he did not have any questions about the rights he was giving up. Nothing about the jury-waiver process suggests that Zeferino-Sanchez did not receive effective assistance of counsel.

But Zeferino-Sanchez argues that his counsel's failure to advise him regarding the immigration consequences of waiving a jury trial constituted ineffective assistance of counsel and that his waiver of his right to a jury trial was inadequate under *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473 (2010), because it contained no acknowledgement of collateral consequences.⁴

In *Padilla*, the Supreme Court established that one aspect of constitutionally effective representation requires defense counsel to advise noncitizen defendants regarding

⁴ At oral argument, Zeferino-Sanchez's counsel asserted that a stipulated-facts trial is the functional equivalent of a guilty plea. But counsel admitted that no caselaw supports this proposition. In fact, we have rejected the assertion that a stipulated-facts trial is the functional equivalent of a guilty plea. *State v. Johnson*, 689 N.W.2d 247, 253 (Minn. App. 2004), *review denied* (Minn. Jan. 20, 2005). And we note that although not required in a stipulated-facts trial, the district court was presented with evidence—namely the summary of the defense interview of L.R. alleging that she recanted her accusations against Zeferino-Sanchez—that could have supported a finding that Zeferino-Sanchez was not guilty. Even if we adopted the argument that a stipulated-facts trial *could* serve as the functional equivalent of a guilty plea, the stipulated-facts trial in this case did not operate as such.

the immigration consequences of a guilty plea, particularly the risk of being removed from the United States. *Padilla*, 559 U.S. at 374, 130 S. Ct. at 1486. Applying *Padilla*, the Minnesota Supreme Court has outlined defense counsel's obligations as follows:

Padilla establishes that criminal-defense attorneys must take some affirmative steps before allowing a noncitizen client to accept a plea deal. First, at a minimum, an attorney must review the relevant immigration statutes to determine whether a conviction will subject the defendant to a risk of removal from the United States. Second, if conviction of the charged offense clearly subjects the defendant to removal from the United States, the attorney has a constitutional obligation to advise the defendant of this fact before he or she enters a guilty plea. If it does not, then a general advisory warning about the possible immigration consequences of a guilty plea is sufficient.

Sanchez v. State, 890 N.W.2d 716, 721 (Minn. 2017).

But *Padilla* is not applicable to this case. Zeferino-Sanchez did not plead guilty to the charged offenses; he waived his right to a jury trial and asked the district court to determine his guilt or innocence based on stipulated evidence. *Padilla* and Minnesota cases applying *Padilla*'s holding all reference an attorney's obligations when a client *pleads guilty*. *Padilla*, 559 U.S. at 374, 130 S. Ct. at 1486; *Sanchez*, 890 N.W.2d at 721. Nothing in *Padilla* or Minnesota caselaw establishes that an attorney must advise a client regarding the immigration consequences of waiving a jury trial. In fact, Zeferino-Sanchez has failed to identify *any* caselaw that suggests that attorneys have a duty to advise clients regarding the immigration consequences of waiving a jury trial. Further, Zeferino-Sanchez fails to identify any difference between a jury trial and a court trial that would warrant an

immigration-consequences warning when a defendant waives a jury trial.⁵ Accordingly, we conclude that Zeferino-Sanchez's attorney was not required to advise him about the immigration consequences of waiving a jury trial in order to provide him with effective assistance of counsel.

Because *Padilla* is inapplicable since Zeferino-Sanchez did not plead guilty and because his counsel and the district court followed the proper procedure for waiver of a jury trial and for a court trial on stipulated evidence, we affirm.

Affirmed.

⁵ Although Zeferino-Sanchez cites rule 11 of the Federal Rules of Criminal Procedure and the All-Writs Act, these authorities only apply in federal court. See 28 U.S.C. § 1651; *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 33, 123 S. Ct. 366, 370 (2002) (determining that the All-Writs Act does not confer the original jurisdiction required to support removal). Further, the analogous state rule, rule 15 of the Minnesota Rules of Criminal Procedure, requires the district court to advise noncitizen defendants that “a *guilty plea* may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.” Minn. R. Crim. P. 15.01, subd. 1(6)(l) (emphasis added). Again, Zeferino-Sanchez did not plead guilty, so the district court was not required to advise him regarding collateral immigration consequences.