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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0678**

State of Minnesota,
Respondent,

vs.

Isidro Carranza,
Appellant.

**Filed October 22, 2018
Affirmed
Smith, Tracy M., Judge**

Winona County District Court
File No. 85-CR-17-1805

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Karin L. Sonneman, Winona County Attorney, Christina M. Galewski, Assistant County Attorney, Winona, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In this direct appeal of his conviction for second-degree controlled-substance crime, appellant Isidro Carranza argues that he should be permitted to withdraw his guilty plea

because neither his counsel nor the district court adequately informed him of the deportation consequences of his plea. Because we conclude that (1) the record is insufficient to determine whether Carranza was prejudiced by any ineffectiveness of counsel and (2) the law does not support Carranza's argument that the district court was obligated to inform him of the immigration consequences of his plea, we affirm Carranza's conviction without prejudice to his ability to seek postconviction relief.

FACTS

Carranza was stopped for a traffic violation, and a search of the car he was driving revealed over 25 kilograms of marijuana in the trunk. He was charged with and pleaded guilty to controlled-substance crime in the second degree, admitting to possession of at least ten kilograms of marijuana. Carranza signed a plea petition containing the standard acknowledgement that his attorney had advised him that, if he was not a U.S. citizen, his guilty plea "may result in deportation." During the plea hearing, the court asked Carranza directly whether a conviction would make him deportable. Carranza answered, "No." The district court asked his public defender to confirm Carranza's statement. The public defender stated that, because Carranza has "resident status," neither he nor the public defender's immigration attorneys inquired into the immigration effects of a conviction. He indicated that this noninquiry was consistent with the public defender's "checklist." The day after sentencing, Carranza was taken into custody by Immigration and Customs Enforcement (ICE) for deportation proceedings.

Carranza did not file a petition for postconviction relief. Instead, he brings this direct appeal.

DECISION

I. The record is insufficient to determine whether Carranza's plea is invalid due to ineffective assistance of counsel.

Carranza argues that his guilty plea was invalid because his counsel failed to inform him that he was almost certain to be deported if convicted of a second-degree controlled-substance crime.

To be valid, a guilty plea must be “accurate, voluntary, and intelligent.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). “Ineffective assistance of counsel renders a guilty plea involuntary and unintelligent.” *Sanchez v. State*, 868 N.W.2d 282, 286 (Minn. App. 2015), *aff'd*, 890 N.W.2d 716 (Minn. 2017). To establish inadequate assistance of counsel, a defendant must show two elements: first, that counsel’s representation “fell below an objective standard of reasonableness”; and, second, that there was “a reasonable probability” that, “but for . . . counsel’s unprofessional error, the outcome would have been different.” *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064 (1984)) (other citations omitted). The validity of a guilty plea is a question of law, and a claim of ineffective assistance of counsel is a mixed question of law and fact; both are reviewed de novo. *Raleigh*, 778 N.W.2d at 94; *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

A. Counsel’s performance

Carranza argues that his counsel’s representation was objectively unreasonable because the law was clear that the controlled-substance conviction would subject him, as a non-citizen, to automatic deportation. When the immigration consequences of a guilty plea

are “truly clear,” counsel has a duty to provide correct advice about those consequences. *Padilla v. Kentucky*, 559 U.S. 356, 369, 130 S. Ct. 1473, 1483 (2010). Failure to provide such advice is an error that is sufficiently serious to satisfy the first prong of *Strickland*. *Id.*

The state does not attempt to rebut Carranza’s argument that the law was clear. Instead, in its letter submission to this court, the state asks that the case be remanded to the district court for an evidentiary hearing regarding what Carranza represented to his counsel that led counsel to describe him as having “resident status.” Specifically, the state suggests that Carranza told his lawyer that he was a naturalized citizen. The state’s request implies an argument that, if Carranza represented himself as being a naturalized citizen, counsel’s performance might not have been objectively unreasonable.

We need not resolve the parties’ arguments concerning the first *Strickland* prong if Carranza has not established the second prong. *See Sanchez v. State*, 890 N.W.2d 716, 720 (Minn. 2017) (“[Appellate courts] need not analyze both elements of the *Strickland* test if one or the other is determinative.”). We therefore turn to the prejudice prong.

B. Prejudice

A defendant who is challenging a guilty plea may satisfy the prejudice prong of *Strickland* by showing a “reasonable probability” that he would not have pleaded guilty but for counsel’s errors. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). Success on this prong requires that the record contain “facts fully explaining the reasons for [the defendant’s] decision to plead guilty.” *State v. Ellis-Strong*, 899 N.W.2d 531, 540 (Minn. App. 2017).

Carranza challenges his counsel's effectiveness on direct appeal, rather than by a postconviction petition to withdraw his guilty plea. "Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal." *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). But a postconviction petition is not mandatory. *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989). Defendants may appeal directly, basing their claims on the facts in "the record made at the time the plea was entered." *Id.*

Carranza argues that the record contains four pieces of evidence that prove that he would not have pleaded guilty but for counsel's error. First, exchanges at the plea hearing demonstrate that defense counsel, the prosecutor, the judge, and Carranza himself all believed that he would not be deported. Second, his appellate counsel's request for hearing transcripts reflects that Carranza contacted the appellate public defender's office to challenge his plea after ICE took him into custody. Third, the presentence investigation (PSI) reflects that Carranza has been in the country for over twenty years. Finally, the PSI also reflects that Carranza has family in the country.¹

While this evidence may show why Carranza could have wanted to stay in the country, it is insufficient to establish a reasonable probability that Carranza would have rejected the plea had he known of its deportation consequences at the time. Notably, the record contains no affidavit or testimony from Carranza that he would not have pleaded

¹ In its letter submission, the state does not challenge the existence of prejudice but instead states that it is willing to stipulate to Carranza having his conviction reversed and withdrawing his plea if an evidentiary hearing establishes that he did not tell his lawyer he was a naturalized citizen.

guilty but for his lawyer's misadvice. *See Ellis-Strong*, 899 N.W.2d at 540 (declining to find prejudice where the defendant "never submitted an affidavit or testified that he would not have pleaded guilty but for the misadvice").

Because the record is inadequate to evaluate Carranza's ineffective-assistance-of-counsel claim on direct appeal, we reject it, but without prejudice to Carranza's right to pursue postconviction relief in accordance with the law and rules governing postconviction proceedings. *See Gustafson*, 610 N.W.2d at 321 (affirming appellant's conviction without prejudice to appellant's right to raise claims of ineffective assistance of counsel and invalid guilty plea in a postconviction proceeding).

II. The district court was not obligated to inform Carranza of the immigration consequences of his plea.

Carranza also argues that the district court had a duty to ensure that his plea was voluntary and intelligent, and that the district court breached this duty by failing to advise him of the specific immigration consequences of his plea when his lawyer failed to do so.

A guilty plea unsupported by a record showing that it was voluntary and intelligent is a manifest injustice warranting withdrawal of the plea. *See Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Before accepting a guilty plea, the Minnesota Rules of Criminal Procedure obligate the district court to question the defendant under oath to ensure, among other things, that defense counsel has told the defendant and the defendant understands that "[i]f the defendant is not a citizen of the United States, 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).

Here, Carranza signed a plea petition acknowledging that his counsel had advised him that he may face deportation as a result of his plea, and the district court at the plea hearing directly inquired of Carranza and of his counsel regarding possible deportation. Carranza, however, argues that the district court had a broader duty: he asserts that, to ensure that his plea was voluntary and intelligent, the district court was obligated to advise him of the immigration consequences of his plea with the same degree of clarity as is required of defense counsel under *Padilla*. As Carranza acknowledges, no binding Minnesota case has applied the requirements of *Padilla* to a district court.

A district court must inform a defendant of the direct consequences of his guilty plea, but need not inform a defendant of collateral consequences. *Kaiser v. State*, 641 N.W.2d 900, 903-04, 907 (Minn. 2002). Failure to inform a defendant of direct consequences renders a plea involuntary and unintelligent. *Id.* Direct consequences are those punitive consequences that are “definite, immediate, or automatic.” *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998); see *Kaiser*, 641 N.W.2d at 904 (clarifying *Alanis*’s definition to exclude nonpunitive consequences).

Carranza argues that, under the reasoning of *Padilla*, deportation is a direct consequence, not a collateral one, and therefore the district court was obligated to advise him that he would be deported upon conviction. Carranza relies on *Padilla*’s description of deportation as “nearly an automatic result” of conviction for many crimes. 559 U.S. at 366, 130 S. Ct. at 1481. However, that is only one statement out of a decision that expressly declined to classify deportation as either a direct or a collateral consequence. *Padilla*, 559 U.S. at 365-66, 130 S. Ct. at 1481-82 (“Deportation as a consequence of a criminal

conviction is . . . uniquely difficult to classify as either a direct or a collateral consequence.”). And, since *Padilla*, neither the United States Supreme Court nor the Minnesota Supreme Court has held that deportation is a direct consequence of a conviction. See *Taylor v. State*, 887 N.W.2d 821, 824 (Minn. 2016) (reiterating that *Padilla* neither classified immigration consequences as direct or collateral nor destroyed the “direct-versus-collateral distinction”). We decline to so hold here. See *State v. Anderson*, 603 N.W.2d 354, 357 (Minn. App. 1999) (stating that extension of the law is for the legislature or the supreme court), *review denied* (Minn. Mar. 14, 2000).

Carranza also argues that, regardless of whether deportation is a direct or collateral consequence, *Padilla* holds that deportation advice is necessary to make a guilty plea voluntary and intelligent, and therefore the district court must provide it when counsel fails to do so. This argument, too, is unsupported by caselaw. In the pre-*Padilla* case of *Alanis*, the Minnesota Supreme Court held that neither counsel nor the district court had a duty to inform a defendant of the deportation consequences of his plea. 583 N.W.2d at 578. The United States Supreme Court decision in *Padilla* later abrogated the *Alanis* court’s holding that defense counsel has no duty to inform a defendant of the deportation consequences of a plea. See *Campos v. State*, 816 N.W.2d 480, 486 (Minn. 2012). But *Padilla* did not require district courts to inform defendants about the consequence of deportation, and the Minnesota Supreme Court has not overruled that part of *Alanis*’s holding. See *id.* at 499 n.11. We cannot overrule our supreme court’s precedent and are bound by that court’s decisions. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010).

Finally, Carranza cites to a decision from a foreign jurisdiction to support his argument that the district court was required to ascertain and inform him of the immigration consequences of his plea. Beyond the fact that a foreign decision can only serve as persuasive authority for this court, the case Carranza cites is not persuasive as to his argument. In *People v. Peque*, a New York appellate court held that district courts must notify a defendant that deportation *may* be a consequence of a guilty plea. 3 N.E.3d 617, 637 (N.Y. 2013) (“The trial court must provide a short, straightforward statement on the record notifying the defendant that . . . if the defendant is not a United States citizen, he or she may be deported upon a guilty plea.”). The substance of the warning is nothing more than what Minnesota Rule of Criminal Procedure 15.01 already requires and what Carranza received.

Carranza’s claim that the district court violated its duty to inform him of the deportation consequence of his plea, rendering it invalid, lacks support in the law. Accordingly, we reject that challenge to his conviction.

Affirmed.