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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0689**

State of Minnesota, petitioner,
Appellant,

vs.

Junting He,
Respondent.

**Filed May 4, 2020
Reversed
Kalitowski, Judge***

Anoka County District Court
File No. 02-CR-17-988

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

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Attorney, Anoka, Minnesota (for appellant)

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Dongfa Zhou, Hongfa Law Office, Eagan, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Slieter, Judge; and
Kalitowski, Judge.

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant State of Minnesota challenges the district court's order allowing respondent Junting He to withdraw his guilty plea. Because respondent received effective assistance of counsel and entered a valid guilty plea, we reverse.

FACTS

In February 2017, the state charged respondent with one count of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(o) (2016). His case proceeded to a jury trial, which ended in a mistrial when the jury deadlocked. After the mistrial, respondent retained a new lawyer (plea counsel), who negotiated a plea agreement with the state. Based on the agreement, respondent would enter an *Alford*¹ plea to an amended charge of fifth-degree criminal sexual conduct under Minn. Stat. § 609.3451, subd. 1(1) (2016). In exchange for respondent's plea to this gross-misdemeanor offense, the state agreed to a 179-day jail cap.

At the plea hearing, plea counsel noted that the agreement had specific terms due to constant communication with respondent's immigration lawyer because respondent is not a United States citizen. Respondent signed a plea petition that included this language: "I understand that if I am not a citizen of the United States, my plea of guilty to this crime may result in deportation . . . I have discussed the ramifications of this plea of guilty with

¹ When a defendant enters an *Alford* plea, he maintains his innocence but admits that the state possesses sufficient evidence for a jury to find him guilty at trial. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (citing *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970)).

my immigration attorney.” Respondent is originally from China. An interpreter certified in Mandarin Chinese appeared at the plea hearing. The district court questioned respondent about the plea petition:

Q: And it looks like you[r] lawyer, I believe, went through a rights petition with you?

A: Yes.

A: Do you see that piece of paper in front of you?

A: Yes.

Q: That piece of paper outlines your rights.

A: Yes.

Q: Did you go through those rights with your lawyer with the assistance of an interpreter?

A: Yes.

Q: Do you feel like you understand those rights?

A: Yes.

Upon questioning from plea counsel, respondent affirmed that he had reviewed each line of the plea petition and that he was satisfied with the plea agreement. Respondent and plea counsel then had this colloquy:

Q: Have you had enough time to talk with your immigration attorney?

A: Yes.

Q: Your immigration attorney is [M.B.]?

A: Yes.

Q: And you and I and [M.B.] have had a phone conference on several occasions?

A: Correct.

Q: And you’re not a United States citizen?

A: No, I’m not.

Q: And that’s why we need to talk to [an] immigration attorney?

A: Yes.

Q: And he has advised you fully on the consequences of the plea agreement?

A: Yes.

After respondent waived his rights and a sufficient factual basis was offered, the district court accepted respondent's guilty plea and followed the plea agreement in imposing sentence.

About one month after respondent pleaded guilty, Immigration and Customs Enforcement agents arrested him at his residence. Respondent then moved to withdraw his plea, arguing that it lacked voluntariness and intelligence. In an affidavit supporting his motion, respondent stated that his conviction led to adverse immigration consequences.

After the parties appeared for a hearing on respondent's motion, the district court issued an order granting the motion. The state filed a notice of appeal to this court, but then moved to stay the appeal after moving the district court to reconsider its decision. We granted the stay pending the district court's decision on the reconsideration motion.

At the hearing on the reconsideration motion, the state called plea counsel to testify. He confirmed that he went through the plea petition with respondent line-by-line, but otherwise declined to answer questions based on attorney-client privilege. Plea counsel did acknowledge that an immigration attorney was involved in respondent's case. Following this hearing, the district court issued another order reaffirming its earlier decision to grant respondent's plea withdrawal. We then granted the state's motion to reinstate the appeal.

D E C I S I O N

A district court's decision to allow plea withdrawal is reviewed for an abuse of discretion. *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). But the validity of a guilty plea presents a legal question subject to de novo review. *Nelson v. State*, 880 N.W.2d 852,

858 (Minn. 2016). And a claim for ineffective assistance of counsel presents a mixed question of law and fact that we review de novo. *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

Criminal defendants do not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a district court must allow plea withdrawal at any time upon a timely motion to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice exists when a guilty plea is invalid. *Raleigh*, 778 N.W.2d at 94. A valid guilty plea must be accurate, voluntary, and intelligent. *Nelson*, 880 N.W.2d at 858.

The district court held that respondent did not enter an intelligent plea, requiring plea withdrawal. “The intelligence requirement ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea.” *Raleigh*, 778 N.W.2d at 96. Here, because the intelligence of respondent’s plea relates to plea counsel’s performance, we must determine whether plea counsel provided effective representation.

Criminal defendants have a constitutional right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984). To succeed on an ineffective-assistance-of-counsel claim, a defendant must show that his attorney performed deficiently and that this deficient performance caused prejudice. *Id.* at 687, 104 S. Ct. at 2064. The two-prong *Strickland* test applies to ineffective-assistance claims involving guilty pleas. *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S. Ct. 366, 371 (1985).

The first *Strickland* prong requires a defendant to show that his attorney's performance fell below an objective standard of reasonableness. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). In *Padilla v. Kentucky*, the United States Supreme Court established baseline standards for criminal defense attorneys when advising clients of immigration consequences. 559 U.S. 356, 130 S. Ct. 1473 (2010). First, criminal defense attorneys must advise their clients of immigration consequences when those consequences are "truly clear." *Id.* at 369, 130 S. Ct. at 1483. Second, when a plea does not carry clear or certain immigration consequences, an attorney need only advise a client that adverse consequences may exist. *Id.* In establishing these standards, *Padilla* recognized that "[i]mmigration law can be complex, and it is a legal specialty of its own." *Id.*

The Minnesota Supreme Court interpreted *Padilla* in *Sanchez v. State* and further explained the scope of a criminal-defense attorney's duties to provide effective representation. 890 N.W.2d 716 (Minn. 2017). Sanchez pleaded guilty to one count of third-degree criminal sexual conduct. *Id.* at 718. Sanchez signed a plea petition acknowledging potential deportation consequences and affirmed at the plea hearing that potential immigration consequences existed. *Id.* After immigration officials took him into custody and issued a final removal order, Sanchez moved to withdraw his plea. *Id.* at 718-19.

On appeal, the supreme court considered whether Sanchez's case fell into *Padilla*'s "truly clear" or "unclear" category. *Id.* at 721-22. After analyzing federal statutes and caselaw, the supreme court held that the immigration consequences of Sanchez's plea were

not “truly clear.” *Id.* at 723. Thus, the supreme court concluded that Sanchez’s counsel satisfied his obligation. *Id.*

Here, like *Sanchez*, the immigration consequences of respondent’s plea to fifth-degree criminal sexual conduct were not “truly clear.” The parties do not dispute this point. And because respondent’s guilty plea did not carry “truly clear” immigration consequences, plea counsel needed only to warn him of adverse immigration consequences. *See Padilla*, 559 U.S. at 369, 130 S. Ct. at 1483.

The record reflects that respondent was advised regarding immigration consequences. First, respondent signed a plea petition acknowledging that his plea could lead to deportation and affirming that he had discussed potential consequences with his immigration attorney. Second, respondent affirmed at the plea hearing that he had gone through the plea petition line-by-line with plea counsel. Third, respondent affirmed that he had spoken with an immigration attorney who had explained the consequences of his guilty plea. These facts show that plea counsel complied with *Padilla*’s lower requirement to provide a general immigration warning. And this compliance with *Padilla* indicates that plea counsel performed reasonably under *Strickland*’s first prong. Thus, respondent received effective assistance of counsel.²

We recognize, as did the district court, that respondent pleaded guilty to avoid deportation. But the state did not breach the plea agreement. Rather, Immigration and Customs Enforcement officials, who were not a party to the agreement, chose to apprehend

² We need not address the second prong under *Strickland* if the first is determinative. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

respondent. Notwithstanding respondent's expectations, we are compelled to conclude that this subsequent event does not undermine the validity of respondent's guilty plea, given the record facts showing that plea counsel provided reasonable representation under *Padilla* and *Sanchez*.

Reversed.