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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A24-0397

A24-1062

State of Minnesota,
Respondent,

vs.

Semir Durgutovic,
Appellant (A24-0397),

Semir Durgutovic, petitioner,
Appellant (A24-1062),

vs.

State of Minnesota,
Respondent.

Filed March 31, 2025

**Affirmed in part, reversed in part and remanded; motion granted in part
Jesson, Judge***

Dakota County District Court

File Nos. 19HA-CR-21-2190, 19HA-CR-22-2742, 19HA-CR-23-682

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appellant)

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

Considered and decided by Bjorkman, Presiding Judge; Harris, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Semir Durgutovic pleaded guilty to interference with an emergency call, felony violation of a domestic abuse no contact order (DANCO), and first-degree burglary.¹ The district court convicted and sentenced him for these violations. In his petitions for postconviction relief, Durgutovic argued that he was entitled to withdraw these guilty pleas because he received ineffective assistance of counsel about the immigration consequences of his pleas. The postconviction court denied the petition without a hearing. Because Durgutovic received adequate warning of the immigration consequences of pleading guilty to interference with an emergency call and felony violation of a domestic abuse no contact order, but did not receive an adequate warning of the immigration consequence of pleading guilty to first-degree burglary, we affirm in part, reverse in part, and remand.

FACTS

Durgutovic is a permanent legal resident but not a citizen of the United States. In October 2021, respondent State of Minnesota charged Durgutovic with three offenses

¹ These charges each arose in separate court files. We note that Durgutovic appealed the burglary and DANCO convictions, and we granted his motion to stay the appeal pending postconviction proceedings. Durgutovic also challenged his interference with an emergency call conviction in postconviction proceedings. This court then consolidated these appeals which we now address.

including interference with an emergency call pursuant to Minnesota Statutes section 609.78, subdivision 2(1) (2020). A year later, Durgutovic petitioned the district court to enter a guilty plea for the interference charge. In his written petition, Durgutovic attested that “I understand that if I am not a citizen of the United States, my plea of guilty may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.” The district court convicted and sentenced Durgutovic on the interference charge and dismissed the other charges.

In November 2022, the state charged Durgutovic with felony violation of a DANCO pursuant to Minnesota Statutes section 629.75, subdivision 2(d)(1) (2020). And in March 2023, the state charged Durgutovic with three additional offenses, including first-degree burglary pursuant to Minnesota Statutes section 609.582, subdivision 1(c) (2022). Durgutovic petitioned to enter guilty pleas for felony violation of a DANCO and first-degree burglary. As part of his plea, Durgutovic signed petitions for both offenses that denote: “My attorney has told me and I understand that if I am not a citizen of the United States, my plea of guilty may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.”

The district court held a hearing on Durgutovic’s plea petitions for the DANCO violation and burglary offenses. During Durgutovic’s plea colloquy, the district court, trial counsel, and Durgutovic had the following exchange about immigration consequences:

DISTRICT COURT: Did you cover enhance[ment] and immigration consequences?

....

TRIAL COUNSEL: Well, Judge—I'll let the Court give the immigration [waiver], because I'm not exactly sure of the wording anyway. I don't usually do it.

DISTRICT COURT: Do you understand that if you're not a United States citizen, that pleading guilty or being convicted of an offense could result in deportation or inability to be reinstated—readmitted to the United States or naturalization as a citizen? Do you understand that?

DURGUTOVIC: I do understand that Your Honor.

The district court then accepted Durgutovic's pleas and convicted him for felony DANCO violation and first-degree burglary.

In April 2024, Durgutovic petitioned for postconviction relief seeking to withdraw his pleas for these three convictions. To support his petition, Durgutovic included an affidavit from an immigration attorney reflecting her conclusions that Durgutovic was not adequately informed of the immigration consequences of his guilty pleas. In this affidavit, the immigration attorney attested that the immigration consequences for pleading guilty to first-degree burglary were "clear and certain" and that the immigration consequence for pleading guilty to a DANCO violation "may have been ambiguous."

The postconviction court denied this petition without a hearing determining that Durgutovic was not entitled to relief. In reaching this determination, the court concluded that the immigration consequences of a burglary conviction were clear and that the immigration consequence of DANCO and interference convictions were "less than clear and definite." The court then concluded that the plea petitions and on-the-record notice

were sufficient to notify Durgutovic of the immigration consequences of his plea for each of the three convictions.

Durgutovic appeals.

DECISION

Durgutovic asserts that he received ineffective assistance of counsel because his trial attorney did not properly advise him of the immigration consequences of his pleas and that in light of this ineffective assistance, he has a right to withdraw his guilty pleas as unintelligently entered. *See Sames v. State*, 805 N.W.2d 565, 567 (Minn. App. 2011) (“A defendant’s guilty plea may be constitutionally invalid if the defendant received ineffective assistance of counsel.” (citing *Hill v. Lockhart*, 474 U.S. 52, 56 (1985))).

We review the postconviction court’s denial of Durgutovic’s petition without an evidentiary hearing—a “summary denial”—for an abuse of discretion. *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

Minnesota law required the postconviction court to conduct an evidentiary hearing concerning Durgutovic’s petition unless it and the record “conclusively show[ed]” he was “entitled to no relief.” *Andersen*, 913 N.W.2d at 422; *see also* Minn. Stat § 590.04, subd. 1 (2020) (“Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the [postconviction] petition.”). And in making this determination, the postconviction

court was to “consider[] the facts alleged in [Durgutovic’s] petition as true and construe[] them in the light most favorable to [Durgutovic].” *Anderson*, 913 N.W.2d at 422-23.

To be entitled to postconviction relief for his ineffective-assistance-of-counsel claim, Durgutovic needed to show that (1) his trial counsel’s performance fell below an objective standard of reasonableness and (2) absent his trial counsel’s unreasonable performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). Here, the postconviction court concluded that Durgutovic failed to meet the first *Strickland* prong and denied his requested relief. We “review a district court’s application of the *Strickland* test de novo because it involves a mixed question of law and fact.” *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

Our review centers on the constitutional obligation of defense counsel, set out in *Padilla v. Kentucky*, to advise a noncitizen defendant of the immigration consequences of a guilty plea—particularly where a risk of removal from the United States is involved. 559 U.S. 356, 366-69 (2010). If defense counsel fails to meet this obligation, their performance falls below an objective standard of reasonableness and a defendant may be entitled to withdraw their plea on these grounds. *Id.*

But, as both the United States Supreme Court and the Minnesota Supreme Court have observed, “[i]mmigration law can be complex.” *Id.* at 369; *Sanchez v. State*, 890 N.W.2d 716, 720 (applying and explaining *Padilla*). However, where the immigration consequence of a particular plea is “succinct and straightforward” or—put another way—“truly clear,” defense counsel must directly advise a defendant that the plea will “subject

[the defendant] to automatic deportation.” *Padilla*, 559 U.S. at 360, 369. Conversely, where the law is unclear, the advice may be more general—that a plea “may carry a risk of adverse immigration consequences.” *Id.* at 369. To determine whether a specific and strongly worded advisory is required, an attorney reviews “the relevant immigration statutes.” *Sanchez*, 890 N.W.2d at 721. If the charged offense is a crime for which deportation is certain, then a general advisory is not sufficient. *Id.*

Below, we consider the clarity—or lack thereof—of the immigration consequences for each of Durgutovic’s convictions. We then turn to the plea advisories provided to assess whether the postconviction court abused its discretion by summarily determining that Durgutovic received advisories that met the standards established in *Padilla*.

The postconviction court abused its discretion by summarily concluding that Durgutovic was not entitled to relief for his burglary plea.

Durgutovic argues that the postconviction court abused its discretion by concluding that he was adequately advised of the immigration consequences of his burglary conviction before he pleaded guilty to that offense. Below, the postconviction court concluded that the immigration consequences of a burglary conviction were “succinct, clear and explicit” but that Durgutovic received a sufficiently clear notice of these immigration consequences.

We agree that the immigration consequences of a burglary conviction are “succinct, clear, and explicit.” A conviction for burglary clearly subjected Durgutovic to removal from the United States and required a specific advisory to that effect. In its brief to this court, the state conceded this conclusion. But in its oral argument, the state changed its

position—arguing that a conviction for burglary did not carry clear immigration consequences and therefore did not require more than a general advisory.²

The state’s original position is correct. The Immigration and Nationality Act establishes that if an alien is convicted of a crime within certain enumerated categories of criminal offenses, that alien is considered “deportable.” 8 U.S.C. § 1227(a)(2) (2018). One such enumerated category of criminal offenses are aggravated felonies which include “burglary offense[s] for which the term of imprisonment [is] at least one year.” *Id.* §§ 1227(a)(2)(iii); 1101(43)(G) (2018) (defining “aggravated felony” under the Immigration and Nationality Act). Here, Durgutovic pleaded guilty to first-degree burglary-assault which carries a presumptive sentence of 48 months’ commitment for an offender with no criminal history score. Minn. Stat. § 609.582, subd. 1(c); Minn. Sent’g Guidelines 4.A (2022). Based on the plain language of the Immigration and Nationality Act and Minnesota statutes, pleading guilty to first-degree burglary clearly subjects Durgutovic to removal from the United States.

With these immigration consequences in mind, we next consider if Durgutovic was advised of this fact before he pleaded guilty to burglary. The postconviction court concluded its notice to Durgutovic that his “guilty pleas ‘could’ result in immigration consequences” was sufficient to meet *Padilla*’s clarity requirement for the burglary

² We note that the state failed to notify this court of its changed position. *See Puce v. City of Burnsville*, 997 N.W.2d 49, 52 n.1 (Minn. 2023) (“We take this opportunity to remind parties to promptly notify the court and opposing counsel if their arguments have changed prior to oral argument to allow adequate time to prepare for, or respond to, a changed position.”).

offense. We disagree. The postconviction court’s on-the-record notice during Durgutovic’s plea colloquy advised him “that pleading guilty or being convicted of *an* offense *could* result in [Durgutovic’s] deportation or inability to be . . . readmitted to the United States or naturalization as a citizen.” (Emphasis added.) This advisory lacks specificity and falls short of the requirement that a criminal defendant receive “specific, definitive advice about the immigration consequences of pleading guilty.” *Sanchez*, 890 N.W.2d at 720.³

Accordingly, the postconviction court erred in concluding that Durgutovic received an adequate warning about the immigration consequences of his plea, and in summarily denying him relief on those grounds. *Andersen*, 913 N.W.2d at 422-23 (noting that a postconviction court “must” hold an evidentiary hearing “unless the [postconviction] petition and the files and records of the proceeding conclusively show that the petitioner is

³ The postconviction court and the state in its oral argument cite *United States v. Ramirez-Jimenez*, to support a conclusion that the district court’s notice was sufficient under *Padilla*, but this case is inapposite. 907 F.3d 1091, 1094 (8th Cir. 2018). In *Ramirez-Jimenez* the defendant’s counsel and the magistrate judge advised the defendant “not only that his guilty plea ‘carries a risk of deportation,’” but “also that deportation was *likely*.” *Id.* (emphasis in original). And the Eighth Circuit court also credited the defendant’s knowledge of the immigration system in concluding that he could not prove that his guilty plea was caused by ineffective assistance of trial counsel. *Id.* But, considering the facts alleged in Durgutovic’s petition as true and construing them in the light most favorable to him, Durgutovic was not warned that deportation was *likely*, only that his pleas “could” result in immigration consequences and received that warning only from the court and not his attorney. See *Anderson*, 913 N.W.2d at 422-23. And the postconviction court made no findings regarding Durgutovic’s knowledge or experience with the immigration system. With these distinctions in mind, we cannot conclude that *Ramirez-Jimenez* supports the district court’s reasoning or the state’s position.

entitled to no relief”). We therefore reverse and remand for the postconviction court to conduct an evidentiary hearing on this claim.⁴

The postconviction court did not abuse its discretion by concluding that Durgutovic was adequately warned about the immigration consequences of his other pleas.

Durgutovic argues that the postconviction court abused its discretion by concluding that he was adequately advised of the immigration consequences of pleading guilty to interference with an emergency call and violation of a DANCO. He contends that his counsel should have provided specific advice that the plea would lead to deportation because the offenses were both “punishable by a year in custody” and “involved the use (or threatened use) of force and/or involved substantial risk that physical force could be used in the course of commission.”

The postconviction court concluded that, because neither violation of a DANCO nor interference with an emergency call are enumerated deportable crimes in the Immigration Nationality Act, the immigration consequences of those convictions were “less than clear and definite” and only required a general immigration warning. We agree.

⁴ Because we conclude that the postconviction court abused its discretion in concluding that Durgutovic did not make the threshold showing required to receive an evidentiary hearing on the first *Strickland* prong, we remand for the court to consider evidence that may include evidence of trial counsel’s performance and Durgutovic’s understanding of the immigration consequences at the time of his pleas. And we note that our opinion in this matter does not reach the second *Strickland* prong which was not considered by the postconviction court and may be contested at the evidentiary hearing. *Strickland*, 466 U.S. at 694 (requiring a postconviction petitioner demonstrate that absent their trial counsel’s unreasonable performance, the result of the proceeding would have been different).

We turn first to Durgutovic’s interference conviction. In contrast to the immigration expert’s opinion that the consequences of Durgutovic’s first-degree burglary plea were clear, her affidavit did not reflect the same assertion regarding his interference plea. Rather, the expert concluded only that he was not adequately informed of any consequences. This distinction between the burglary and interference convictions is reflected in immigration law. Interference with an emergency call is not a “deportable” criminal offense enumerated in 8 U.S.C. § 1227(a)(2) or an “aggravated felony” as defined in 8 U.S.C. § 1101(43). And we are not persuaded by Durgutovic’s argument that the facts included in the document charging him with this offense are clearly sufficient to meet the definition of “aggravated felony” because the offense is a crime of violence. As the state points out, the United States Supreme Court has held that the definition of “crime of violence,” as incorporated into the definition of “aggravated felony” for purposes of determining whether a crime is a deportable offense is unconstitutionally vague. *Sessions v. Dimaya*, 584 U.S. 148, 159-62 (2018). With this in mind, we cannot conclude that under the Immigration Nationality Act a conviction for interference with an emergency call clearly subjected Durgutovic to removal from the United States. *See Sanchez*, 890 N.W.2d at 721 (noting that to determine whether a specific and strongly worded advisory is required we review “the relevant immigration statutes”).

Similarly, Durgutovic’s postconviction petition did not establish that a conviction for violating a DANCO clearly subjected him to removal from the United States. Durgutovic’s own immigration expert asserted that the immigration consequences for pleading guilty to this crime “*may have been ambiguous.*” (Emphasis added.) And his

petition for postconviction relief states that the crime “would likely” be a deportable offense. Likelihood and ambiguity do not meet the test for “truly clear” immigration consequences as established by *Padilla* and *Sanchez*.⁵ 559 U.S. at 369; 890 N.W.2d at 720. On this record, we cannot conclude that the postconviction court abused its discretion by determining that Durgutovic’s postconviction petition did not establish that he was entitled to a specific immigration warning before pleading guilty to violation of a DANCO.

Because Durgutovic’s petition does not establish that he was entitled to a specific warning about possible immigration consequences of his guilty pleas for interference with an emergency call and for violation of a DANCO, “a general advisory warning about the possible immigration consequences of [his] guilty plea[s] [was] sufficient.” *See Sanchez*, 890 N.W.2d at 721. The record reflects that Durgutovic was sufficiently warned in both his plea petition, where he attested that he understood that his plea could have immigration consequences, and during his plea colloquy, where he testified to that effect. *See id* at 718, 726 (concluding that a defendant received a sufficient general immigration advisory where the signed plea petition acknowledged that the plea “may result in deportation,” defense counsel confirmed that the defendant had reviewed the petition, and the defendant agreed under oath that their plea “could result” in deportation) (emphasis omitted)).

In sum, because we conclude that Durgutovic was entitled to a clear and specific warning regarding the immigration consequences of pleading guilty to first-degree

⁵ Durgutovic’s argument that violating a DANCO is an “aggravated felony” because it is a crime of violence is unpersuasive for the same reasons as discussed in our analysis of the interference conviction.

burglary, and his postconviction petition sufficiently demonstrated that he did not receive such a warning before entering his plea, we reverse and remand for an evidentiary hearing regarding this offense. But because we determine that Durgutovic was entitled to, and received, a sufficient general advisory regarding the immigration consequences of pleading guilty to interfering with an emergency call and violating a DANCO, we affirm the postconviction court's summary denial of Durgutovic's petition regarding these offenses.⁶

Affirmed in part, reversed in part, and remanded; motion granted in part.

⁶ We grant the state's motion to strike portions of Durgutovic's addendum in part. The state's assertion that Durgutovic's addendum contained a transcript outside the record on appeal is moot. *See* Minn. R. Civ. App. P. 110.01 (limiting the record on appeal to "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings"). Durgutovic's addendum contains no transcript pages. We agree with the state that page two of Durgutovic's addendum contains a document that was not considered by the postconviction court and does not appear in the record on appeal and therefore grant the state's motion to strike that document.