

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MOHAMMED ABDELSALAM,

Defendant and Appellant.

B293116

(Los Angeles County
Super. Ct. No. KA115170)

APPEAL from an order of the Superior Court of Los Angeles County, Rogelio G. Delgado, Judge. Reversed and remanded with directions.

Myra Sun, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General of California, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Analee J. Brodie, Deputy Attorney General, for Plaintiff and Respondent.

Mohammed Abdelsalam pleaded no contest to one count of making criminal threats. Abdelsalam moved to vacate his conviction while in Immigration and Customs Enforcement custody, arguing he did not know the immigration consequences of his plea and his counsel was ineffective. The trial court denied the motion.

On appeal, Abdelsalam argues the trial court held an improper hearing on his motion. We reverse and instruct the trial court to appoint counsel for Abdelsalam if the court determines he is indigent and to hold a hearing that complies with Penal Code section 1473.7, subdivision (d). We do not reach Abdelsalam's other arguments. Code citations are to the Penal Code.

I

Abdelsalam is from Egypt. He came to the United States in January 2017 on a 90-day fiancé visa. Abdelsalam's fiancée ended the engagement when she learned he intended to marry her, "become legal," then divorce her.

In August 2017, Abdelsalam pleaded no contest to one count of making criminal threats. An Arabic interpreter helped Abdelsalam at the hearing. Abdelsalam signed and initialed the plea form, which stated: "I understand that if I am not a citizen of the United States, I must expect my plea of guilty or no contest will result in my deportation, exclusion from admission or reentry to the United States, and denial of naturalization and amnesty." The district attorney advised Abdelsalam of the same immigration consequences, and Abdelsalam responded: "Yes, I understand. But I'm just going to wait for immigration."

On October 20, 2017, Immigration and Customs Enforcement detained Abdelsalam. On September 6, 2018, while

still in custody, Abdelsalam filed a motion to vacate his conviction under section 1473.7, arguing he did not know the immigration consequences of his plea and his counsel was ineffective. The trial court denied the motion. Abdelsalam was not at the motion hearing and did not have an attorney.

II

Abdelsalam and the People rightly request we remand the case because the trial court improperly held the hearing in Abdelsalam's absence.

Section 1473.7, subdivision (d) states, in part: "All motions shall be entitled to a hearing. Upon the request of the moving party, the court may hold the hearing without the personal presence of the moving party provided that it finds good cause as to why the moving party cannot be present."

In his motion, Abdelsalam requested the court hold the hearing without him because he was detained by Immigration and Customs Enforcement. He also stated he was "indigent and unable to afford an attorney." There is no record showing the trial court found good cause for Abdelsalam's absence, as required by section 1473.7, subdivision (d). Nor is there any record showing the trial court found Abdelsalam was not entitled to appointed counsel. The trial court thus did not comply with section 1473.7, subdivision (d). (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 978.) If Abdelsalam were indigent and good cause excused his presence at the hearing, then the trial court was required to appoint counsel for him. (*Id.* at pp. 983–84.) Not doing so deprived Abdelsalam of a proper hearing under section 1473.7, subdivision (d) because he did not have an opportunity to present his case and respond to any arguments against his motion. (*Id.* at p. 983.)

DISPOSITION

The order denying Abdelsalam's motion to vacate his conviction is reversed and the case is remanded with directions to determine whether good cause excuses Abdelsalam's presence at the hearing and to appoint counsel for Abdelsalam if the trial court finds he is indigent. The court must address the motion on its merits at a new hearing.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.