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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JUAN CARLOS AQUINO, Defendant and Appellant.	B289438 (Los Angeles County Super. Ct. No. BA317136)

APPEAL from an order of the Superior Court of Los Angeles County, Laura F. Priver, Judge. Affirmed.

David M. Thompson, under appointment of the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a negotiated plea agreement, Juan Carlos Aquino pleaded no contest in 2007 to two counts of second degree robbery and admitted he had personally used a firearm in the commission of those offenses. Aquino's counsel advised him during the plea hearing that Aquino could lose his legal residency and be deported as a consequence of his plea. In 2018, following completion of his state prison sentence and placement in federal custody on an immigration hold, Aquino moved pursuant to Penal Code section 1473.7[1] to vacate his convictions, arguing his trial counsel was constitutionally ineffective in failing to warn him that deportation was a mandatory, rather than simply a possible, consequence of his plea. The trial court denied the motion on the ground his counsel's warning was adequate and, in any event, Aquino had not shown prejudice. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Aquino's Negotiated Plea Agreement*

Aquino, a Mexican citizen, had been living in the United States as a legal permanent resident in 2007 when he was arrested and charged with nine counts of second degree robbery with specially alleged firearm-use enhancements. On the first day of his trial, with voir dire of prospective jurors set to begin, the court asked Aquino's appointed counsel, John E. Myers, about settlement negotiations. Myers stated he had advised Aquino of the substantial evidence against him and had urged him to accept a negotiated plea agreement that, at the time it was offered, would have resulted in a 10-year, rather than a possible 49-year, state prison term. Myers told the court that Aquino had refused the People's offer, against Myers's advice, and the offer

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[1] Statutory references are to this code.

had since been withdrawn. The latest offer by the People was a 12-year prison term in exchange for a plea to two counts and admission of a firearm-use enhancement allegation. Aquino had again refused the proffered deal in favor of continued negotiations that, in Aquino's view, would yield less prison time. Following Myers's summary of the parties' discussions, the court directed Aquino to consult with his counsel off the record before announcing whether he was ready to begin the trial. When they were finished, Myers expressed frustration to the court that Aquino continued to think there was some room for further negotiation. He urged the court to ask Aquino directly whether he wanted to accept a plea.

The court told Aquino, "That is the offer. I understand this is hard. This is not easy. I am not trying to back you in the corner. I am trying to give you the parameters, the borderline of the area you have to deal with. This is the deal. I understand it is 12 years. I understand it remains open, and it's up to you, sir, whatever you say." Myers and Aquino again conferred off the record. This time, Myers informed the court Aquino now wished to plead no contest to two counts of second degree robbery and admit the truth of the firearm-use allegation. Asked by the court to confirm that he wanted to accept the People's plea bargain, Aquino answered, "Yes."

The prosecutor then questioned Aquino as to the factual basis for his plea. Asked whether he admitted to personally using a gun, Aquino replied that he did not understand. Myers explained personal use of a firearm did not mean he had discharged the firearm. The record does not indicate Aquino responded to Myers. Apparently exasperated by Aquino's ambivalence or silence, Myers stopped further colloquy and told

Aquino, "Let's call in the jury, okay. [You are] making the biggest mistake of your life. Your one chance, you blew it." Aquino repeated that he did not understand; he believed he was entering a plea. The court again ordered Aquino to consult with his counsel. When they finished, the court stated, "It is clear that Mr. Aquino isn't accepting this offer. He doesn't want to go through with this offer. He would rather have his trial. I understand it absolutely. Let's bring in the jury. Hand out the questionnaire. We will try this case."

Myers, apparently directing his comments to Aquino, stated, "You do want to take the offer? Then, you have to answer the questions appropriately. When I tell you to say something, you say it in order to get it, understand? . . . I am sick of this game playing. Let's go." The court told Aquino, "I am not forcing you to do anything. When you say, yes, I want to accept the offer, I have to be convinced. . . . Right now I am not going to force you to do something you don't want to do. . . . If you don't want to do it, that is fine. If you do want to do it, I need to be convinced that you are doing this willingly and voluntarily." Aquino stated he wanted to proceed with the plea.

The prosecutor then admonished Aquino, "If you are not a citizen of the United States, your plea here today in this case will result in your being denied entry, denied naturalization, deported and denied amnesty to the United States, understand that?" In response, the following colloquy occurred:

"[Aquino]: I have a question.

"The Court: Go ahead.

"[Aquino]: I have a green card. Is that going to—are they going to revoke it?

"Mr. Myers: It's possible.

"[Aquino]:	Well, what are the chances?
"Mr. Myers:	I don't know.
"The Court:	I think we have to be more explicit on that.
"Mr. Myers:	Well, I am telling him that the consequence of entering [the] plea might be that he loses his status here. [¶] . . . [¶]
"The Court:	Do you [Aquino] have any questions about that?
"[Aquino]:	Um, no. It is going to affect me, so.
"The Court:	Yes, they are telling you if you have a green card, if you enter into this plea, it may result in your deportation, loss of citizenship, loss of the right to be here. That is a consequence. Do you understand that? Do you have any questions about that? No?"

Aquino's response is not contained in the record. Later, after the prosecutor asked Aquino more questions directed to the factual basis for his plea, the court stated, "Let me touch base again. I may have been a little unclear on the immigration consequences. . . . One of the consequences [of your plea] might be you may be deported from or denied entry or denied naturalization under the laws of the United States. Do you understand that?" Aquino replied, "Yeah, I understand that." After further nonimmigration related questions and admonishments, the court accepted Aquino's plea.

2. *Aquino's Request at Sentencing To Vacate His Plea; the Court's Denial of His Request; Aquino's Appeal*

At his sentencing hearing Aquino, representing himself, moved to withdraw his plea, arguing he did not know or understand the offenses to which he pleaded because his attorney had not provided him with police reports. The court denied the motion. In accordance with the negotiated plea agreement, the court sentenced Aquino to an aggregate term of 12 years in state prison.

Aquino obtained a certificate of probable cause and appealed, arguing the trial court abused its discretion in denying his request, made on the first day of trial, to represent himself. We affirmed Aquino's conviction on appeal. (*People v. Aquino* (Mar. 18, 2009, B206926) [nonpub. opn.].)

3. *Aquino's Petitions for Writ of Habeas Corpus*

On May 18, 2010 Aquino filed a petition for writ of habeas corpus in the trial court alleging several instances of ineffective assistance of his trial and appellate counsel. Among other things, Aquino argued Myers's failure to advise him that deportation was a mandatory, rather than a possible, consequence of his plea amounted to ineffective assistance of counsel in violation of the Sixth Amendment. The trial court denied the petition.

On August 13, 2010 Aquino filed a petition for writ of habeas corpus in this court making the same arguments as he had in the trial court. On August 19, 2010 we summarily denied the petition.

4. *Aquino's Petition To Vacate His Convictions*

On January 10, 2018 Aquino, representing himself, moved pursuant to section 1473.7 to vacate his conviction on the ground

his counsel's advisement concerning the immigration consequences of his plea was both deficient and prejudicial.

On January 29, 2018 the trial court appointed counsel for Aquino; and on January 29, 2018 Aquino's appointed counsel filed a supplemental section 1473.7 motion.

On March 28, 2018, following a hearing, the trial court denied the motion, ruling Aquino was "appropriately advised" of the immigration consequences of his plea. In addition, the court ruled, Aquino had not demonstrated prejudice. The court found Aquino's assertion that he would not have taken the plea had he known he would be deported not credible.

Aquino filed both a petition for writ of mandate and a notice of appeal from the court's order denying his section 1473.7 motion. On July 3, 2018 we summarily denied the writ petition. (See § 1473.7, subd. (f) [order denying section 1473.7 motion is appealable].)

DISCUSSION

1. *Governing Law and Standard of Review*

Section 1473.7, subdivision (a), authorizes an individual "no longer imprisoned or restrained" to prosecute a motion to vacate a conviction or sentence when "(1) [t]he conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere." The moving party bears the burden of proving entitlement to relief by a preponderance of the evidence. (§ 1473.7, subd. (a)(1).) If the

motion is granted, the court must allow the moving party to withdraw the plea. (§ 1473.7, subd. (e)(3).)[2]

"The Sixth Amendment guarantees a defendant the effective assistance of counsel at 'critical stages of a criminal proceeding,' including when he enters a guilty plea. [Citations.] To demonstrate that counsel was constitutionally ineffective, a defendant must show that counsel's representation 'fell below an objective standard of reasonableness' and that he was prejudiced as a result." (*Lee v. United States* (2017) __ U.S. __ [137 S.Ct. 1958, 1964, 198 L.Ed.2d 476]; accord, *Strickland v. Washington* (1984) 466 U.S. 668, 688, 692 [104 S.Ct. 2052, 80 L.Ed.2d 674].) Ordinarily, in connection with ineffective assistance of counsel claims, prejudice is established by demonstrating a reasonable probability the defendant would have received a more favorable outcome absent counsel's error. (*Strickland,* at p. 692.) However, when, as here, a defendant alleges his or her counsel's deficient performance led him or her to accept a guilty plea rather than go

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[2] Section 1473.7, which became effective January 1, 2017 (Stats. 2016, ch. 739, § 1), was intended to provide individuals no longer imprisoned or restrained, and thus not able to utilize the remedy of habeas corpus, a vehicle to vacate a conviction upon either (1) proof of error that prejudicially affected a defendant's knowledge or understanding of the immigration consequences of his or her plea or (2) proof of newly discovered evidence of actual innocence. (See Legis. Counsel's Dig., Assem. Bill No. 813 (2015-2016 Reg. Sess.) ["[u]nder existing law, although persons not presently restrained of liberty may seek certain types of relief from the disabilities of a conviction, the writ of habeas corpus is generally not available to them"; "[t]his bill would create an explicit right" to vacate the conviction or sentence]; *People v. Perez* (2018) 19 Cal.App.5th 818, 827 [same].)

to trial, the relevant prejudice inquiry is whether there is a "'reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and insisted on going to trial.'" (*Lee,* at p. 1964; accord, *Hill v. Lockhart* (1985) 474 U.S. 52, 59 [106 S.Ct. 366, 88 L.Ed.2d 203].)

A section 1473.7 motion based on a violation of the constitutional right to effective assistance of counsel presents a mixed question of fact and law subject to de novo review. (*People v. Tapia* (2018) 26 Cal.App.5th 942, 950; *People v. Olvera* (2018) 24 Cal.App.5th 1112, 1116; *People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 77; cf. *In re Resendiz* (2001) 25 Cal.4th 230, 249 (*Resendiz*) [ineffective assistance of counsel claim alleged in habeas corpus petition to withdraw plea presented a mixed question of law and fact].) Under this standard, we defer to the trial court's factual determinations if supported by substantial evidence, but decide independently whether the facts demonstrate trial counsel's performance was constitutionally deficient. (*Resendiz,* at p. 249; *Olvera,* at p. 1116; *Ogunmowo,* at p. 76; cf. *People v. Gonzalez* (Sept. 27, 2018, D073436) __Cal.App.5th __ [2018 Cal.App. LEXIS 868] [affirming trial court's denial of the defendant's section 1473.7 petition on ground trial court's factual findings that defense counsel was credible and defendant was not were supported by substantial evidence].)[3]

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[3] The People assert for the first time on appeal that Aquino, released from state prison in February 2017, was "likely" on parole at the time he filed his section 1473.7 motion in January 2018 and thus did not qualify under the statute as a "person no longer imprisoned or restrained." (§ 1473.7; see *People v. Villa* (2009) 45 Cal.4th 1063, 1069 [individual on parole is considered in "constructive custody"]; cf. *People v. Cruz-Lopez* (2018)

2. *Counsel's Sixth Amendment Obligation To Advise on the Immigration Consequences of a Plea Before and After Padilla v. Kentucky*

a. *Padilla v. Kentucky*

In *Padilla v. Kentucky* (2010) 559 U.S. 356, 370 [130 S.Ct. 1473, 176 L.Ed.2d 284] (*Padilla*) the United States Supreme Court held that criminal defense counsel's Sixth Amendment obligations include properly advising his or her client of the immigration consequences of a guilty or no contest plea. The Court recognized that federal immigration law is often complex; many times, deportation as a consequence of a conviction is neither clear nor certain. In those cases, the Court held, the most the Sixth Amendment may require of defense counsel concerning immigration consequences is a warning that a criminal conviction "'may' have adverse immigration consequences." (*People v. Patterson* (2017) 2 Cal.5th 885, 897-898, quoting *Padilla*, at p. 369.) However, when, as was the case in *Padilla,* federal immigration law specifies in "'succinct, clear, and explicit'" terms that a conviction will result in deportation, the Sixth Amendment requires the criminal defense attorney to "accurately advise his or her client of that consequence before the client enters a guilty plea." (*Patterson*, at p. 898, quoting *Padilla,* at pp. 368-369.)

Prior to *Padilla* the federal and state courts had been divided on counsel's Sixth Amendment obligation to advise on the

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27 Cal.App.5th 212, 221 [section 1473.7 did not apply to defendant who was on supervised probation].) Aquino averred in his petition that he had completed his sentence and was no longer in state custody. The People's belated response that Aquino was "likely" on parole in January 2018 is insufficient, without more, to rebut Aquino's standing under section 1473.7.

immigration consequences of a conviction. A majority of courts had concluded no such obligation existed at all. (See *Chaidez v. United States* (2013) 568 U.S. 342, 352 [133 S.Ct. 1103, 185 L.Ed.2d 149] [prior to *Padilla* state and federal courts "almost unanimously concluded that the Sixth Amendment does not require attorneys to inform their clients of a conviction's collateral consequences, including deportation"].) The few courts that had recognized ineffective assistance of counsel claims involving immigration advice limited their holdings to affirmative misstatements by counsel, declining to reach the question whether a mere failure to warn of immigration consequences could also result in a finding of ineffective assistance. (See *Padilla, supra,* 559 U.S. at p. 369 [citing cases]; *Resendiz, supra,* 25 Cal.4th at p. 240.)

Recognizing that "deportation is an integral part—indeed sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes" (*Padilla, supra,* 559 U.S. at p. 364), the *Padilla* Court found no justification for application of the collateral consequences doctrine to bar ineffective assistance of counsel claims and no reason to distinguish between counsel's affirmative misstatement of the immigration consequences of a conviction, on the one hand, and a failure-to-warn, on the other. (See *id.* at p. 370 [finding no relevant difference "'between an act of commission and an act of omission'" for purposes of ineffective assistance of counsel claims]; *Chaidez v. United States, supra,* 568 U.S. at p. 352 [*Padilla* "answered a question about the Sixth Amendment's reach that we had left open in a way that altered the law of most jurisdictions"].)

As both Aquino and the Attorney General acknowledge, *Padilla*'s holding is not retroactive. (*Chaidez v. United States, supra,* 568 U.S. at p. 358 ["defendants whose convictions became final prior to *Padilla* therefore cannot benefit from its holding"].) Accordingly, Aquino's ineffective assistance of counsel claim is governed by the Sixth Amendment obligation as it existed at the time of Aquino's plea in 2007. (See *People v. Olvera, supra,* 24 Cal.App.5th at p. 1115 [defendant's section 1473.7 petition alleging ineffective assistance of counsel at the time he entered a plea in 2005 was governed by pre-*Padilla* interpretations of the scope of the Sixth Amendment].)

b. *Defense Counsel's Sixth Amendment Obligation Before Padilla*

Unlike a majority of jurisdictions, California had rejected the collateral consequences doctrine as a bar to ineffective assistance of counsel claims for immigration-related advice well before *Padilla*. (See *Resendiz, supra,* 25 Cal.4th at p. 240 ["The Attorney General, relying primarily on out-of-state and federal court decisions, urges us to announce a categorical bar to immigration-based ineffective assistance claims. . . . [W]e decline to impose such a categorical bar"].) Observing that "[p]lea bargaining and pleading are critical stages in the criminal process at which a defendant is entitled, under both the Sixth Amendment to the federal Constitution and article I, section 15 of the California Constitution, to the effective assistance of counsel" and that deportation could be more significant to the defendant than the risk of a longer prison sentence if the defendant were to go to trial, the Supreme Court in 2001 in *Resendiz* held that "affirmative misadvice regarding immigration consequences can

in certain circumstances constitute ineffective assistance of counsel." (*Resendiz,* at p. 240.)

In *Resendiz* the defendant, a legal permanent resident of the United States, asked his counsel whether his plea to a drug trafficking charge, an aggravated felony, would affect his legal residency. According to the defendant's petition for writ of habeas corpus, his counsel had assured him at the time he entered his plea he would have "'no problems with immigration'" except that he would not be able to become a United States citizen. In a declaration submitted by the Attorney General in response to the defendant's petition for writ of habeas corpus, the defendant's trial counsel stated he did not remember what he had actually told the defendant but that it was his custom and practice to explain to noncitizen clients "'that a guilty plea is likely to [a]ffect . . . the client's ability to become a citizen. I also tell these clients that I make the assumption that the federal government is always wanting to deport non-citizen felons. I explain to them they should assume the government has a policy to deport people in their position.'" (*Id.* at p. 238.)

The *Resendiz* Court began its analysis by addressing the conflict in the evidence concerning defense counsel's representations. Had defense counsel advised the defendant in accordance with his custom and practice that he should assume he would be deported, the Court suggested such an advisement would have satisfied counsel's obligation under the Sixth Amendment. (*Resendiz, supra,* 25 Cal.4th at p. 252.) However, the Court continued, it need not actually decide that question. Even if counsel had affirmatively misadvised the defendant, reversal was not required because the defendant failed to

demonstrate prejudice, that is, that he would have rejected the plea had he been properly warned. (*Id.* at pp. 253-254.)

The *Resendiz* Court expressly declined to reach "whether a mere failure to advise could also constitute ineffective assistance." (*Resendiz, supra,* 25 Cal.4th at p. 240.) Because the issue was not squarely before it, the *Resendiz* Court also declined to address defense counsel's obligation to research immigration consequences, though it expressly doubted the Sixth Amendment imposed "a blanket obligation on defense counsel, when advising pleading defendants, to investigate immigration consequences or research immigration law." (*Id.* at pp. 249-250.)

Aquino contends that a question left unaddressed in *Resendiz*, and presented in his petition—whether a warning that deportation was a possibility when it was clear that deportation was mandatory constituted ineffective assistance of counsel—was squarely decided by the court of appeal two decades prior to *Resendiz* in *People v. Soriano* (1987) 194 Cal.App.3d 1470. Like Aquino, the defendant in *Soriano* specifically inquired of his counsel whether he would lose his status as a legal permanent resident if he pleaded guilty to assault with a firearm. In his declaration submitted with his petition for writ of habeas corpus, filed together with his appeal, the defendant averred his counsel had assured him he would not be deported, and only after receiving that assurance did he agree to plead guilty. The defendant's trial counsel's declaration was more equivocal. She stated she had advised the defendant deportation "'could result'" if he pleaded guilty. She also conceded she had not investigated the immigration consequences of his plea and had not understood he could have avoided deportation had she been able to negotiate a slightly lesser sentence. Quoting commentary from the

American Bar Association Standards for Criminal Justice, the court of appeal observed that, when "'the defendant raises a specific question concerning collateral consequences (as where the defendant inquires about the possibility of deportation), counsel should fully advise the defendant of these consequences.'" (*Soriano,* at p. 1481.) A warning that "deportation could result" in response to the defendant's express inquiry concerning his legal status was, the court held, "insufficient. By [counsel's] own admission she merely warned defendant that his plea might have immigration consequences. Had she researched the matter she would have known that his guilty plea, absent a recommendation from the sentencing court against deportation, made him deportable . . . ." (*Id.* at p. 1482.)

c. *Aquino has failed to demonstrate prejudice, an essential element of his ineffective assistance of counsel claim*

Relying on *Soriano* Aquino contends that mandatory deportation as the consequence of his no-contest plea to second degree robbery with a firearm-use enhancement was clear (a characterization of federal immigration law the Attorney General disputes), and his counsel would have discovered as much if he had done any research. And, Aquino continues, while the *Resendiz* Court, which did not mention *Soriano*, strongly suggested the Sixth Amendment did not impose on defense counsel a blanket obligation to research the federal immigration consequences of a criminal conviction, neither did the Court foreclose the idea that such an obligation would exist when, as here and in *Soriano,* the defendant had expressly inquired about it.

At the threshold we have some doubt whether defense counsel's advisement at the time of the 2007 plea constituted ineffective assistance of counsel under then-governing law as expressed in *Resendiz*, *supra,* 25 Cal.4th 230. Unlike in *Resendiz,* Myers did not affirmatively misrepresent the immigration consequences of Aquino's plea. (*Resendiz,* at p. 240; see *People v. Ogunmowo, supra,* 23 Cal.App.5th at p. 77 ["affirmatively misadvising a client that he will not face immigration consequences as a result of a guilty plea in a drug trafficking case—when the law states otherwise—is objectively deficient performance" under prevailing professional norms in 1989].) Nor are we convinced the *Resendiz* Court would have agreed with *Soriano*'s conclusion that further research of the immigration consequences of the plea was required to satisfy counsel's Sixth Amendment obligation. (See *Resendiz,* at pp. 249-250.)[4]

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[4] Aquino's reliance on *People v. Espinoza* (Sept. 28, 2018, E068282) __ Cal.App.5th ___ [2018 Cal.App. LEXIS 875]), which found defense counsel's warning of possible deportation constitutionally inadequate when federal immigration law made clear that deportation was mandatory, is misplaced. The defendant's plea in *Espinoza*, unlike Aquino's, was entered two years after the Court's decision in *Padilla* and is governed by post-*Padilla* standards. In addition, the court in *Espinoza* identified a variety of factors that corroborated statements in the defendant's declaration. (See *Espinoza,* at pp. __.) As we discuss in the text below, the corroborating evidence required to upend a plea (see *Lee v. United States, supra,* 137 S.Ct. at p. 1967) is absent here.

Certainly, Myers would have done better, as the *Resendiz* Court suggested, to have advised Aquino not only that deportation was a possible consequence of his plea, but also that he should assume that consequence would occur. (*Resendiz, supra,* 25 Cal.4th at p. 252; see *People v. Olvera, supra,* 24 Cal.App.5th at p. 1116 [counsel was not deficient when it warned defendant in 2005 of possibility of deportation as a consequence of plea and advised him in writing "to assume that the plea 'will' have deportation consequences"].) Nonetheless, we need not decide whether Aquino's counsel's advice was constitutionally deficient. Even if Myers's statement that deportation was a possible consequence of Aquino's plea were too equivocal a response to Aquino's specific inquiry to pass Sixth Amendment muster in 2007, Aquino has failed to demonstrate the requisite prejudice to be entitled to the relief he seeks.

Aquino's assertion in his motion, filed without a supporting declaration, that he would not have entered the plea had he known deportation was inevitable is belied by the record. (See *Lee v. United States, supra,* 137 S.Ct. at p. 1967 ["Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences"]; see also *Resendiz, supra,* 25 Cal.4th at p. 253 ["petitioner's assertion he would not have pled guilty if given competent advice 'must be corroborated independently by objective evidence'"]; *In re Alvernaz* (1992) 2 Cal.4th 924, 938 [same].) The prosecutor unambiguously warned Aquino his plea "will result" in deportation. (Cf. *People v. Perez* (2018) 19 Cal.App.5th 818, 830 [defendant failed to prove he was entitled to relief under

section 1473.7: "This was not a situation where the court informed a defendant that there was 'a high likelihood' that he would face deportation. [Citation.] The court below left no doubt . . . Perez would be deported if he pled guilty"].) That admonition prompted Aquino to inquire whether his green card would be revoked. Defense counsel told him it could be. Given the opportunity for further inquiry and discussion on the effect of his plea on his legal residency, Aquino did more than simply decline that invitation. He expressly acknowledged the plea "is going to affect me, so . . ." and then immediately went ahead and entered his plea. In contrast to the defendant in *Lee* who insisted at the time of the plea that loss of his lawful permanent residency in the United States would affect his decision to plead guilty (see *Lee,* at p. 1969 ["Lee's claim that he would not have accepted a plea had he known it would lead to deportation is backed by substantial and uncontroverted evidence"]), Aquino made clear that the adverse effect of his plea on his legal residency was not a decisive factor to his entry of the plea.

Under *Lee v. United States, supra,* 137 S.Ct. at page 1967, *In re Alvarnez, supra,* 2 Cal.4th at page 938 and *Resendiz, supra,* 25 Cal.4th at page 253, Aquino's bare assertion that he would not have accepted the plea if he had been properly advised, without more, is legally insufficient to demonstrate prejudice. The trial court did not err in concluding there is no reasonable probability that Aquino would have declined the plea and gone to trial had his counsel told him more specifically that deportation was a mandatory consequence of his plea.

DISPOSITION

The court's order denying Aquino's section 1473.7 motion to vacate his convictions is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.