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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JORGE M. RAMIREZ, Defendant and Appellant.	B269869 (Los Angeles County Super. Ct. No. BA180902)

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

Zulu Ali, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jorge Ramirez (appellant) appeals from the denial of his motion to set aside his nolo contendere plea to a charge of domestic violence. He contends that the trial judge did not adequately explain to him the immigration consequences of his plea as required by Penal Code section 1016.5, and, therefore, the plea must be set aside under that statute.[1] We conclude that the trial court complied with the legislative mandate when the plea was entered and properly denied appellant's subsequent motion to vacate. Accordingly, we affirm.

PROCEDURAL HISTORY

On March 11, 1999, an information charged appellant with forcible rape (§ 261, subd. (a)(2)), and domestic violence (§ 273.5, subd. (a)). On September 15, 1999, appellant pled nolo contendere to domestic violence and was sentenced to 365 days in county jail. The rape charge was dismissed.

In conjunction with entering his plea, appellant was advised that "a conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States."

Sixteen years later, on August 4, 2015, after he was taken into custody by Immigration and Customs Enforcement, appellant moved to vacate his plea under section 1016.5. He

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1 All further statutory references are to the Penal Code.

stated in a declaration filed with the court that "the Court did not properly advise me that I was subject to detention or possible denial of relief, voluntary departure, bar from reentry, and/or any other consequences if I pled nolo contendere in this case." He further asserted, "[i]f prior counsel or the Court had advised me of the immigration consequences triggered by my plea, I would [ ] not have pled nolo contendere."

After hearing oral argument, the trial court noted that the plea transcript showed appellant was given the following oral advisement, "If you are not a citizen of the United States your plea *will* result in being deported, excluded from admission to the country or denied naturalization." (Italics added.) The court denied the motion finding appellant had been properly advised on the record as required under section 1016.5. Appellant timely appealed.

DISCUSSION

A motion to vacate the judgment is an appealable order under section 1237, subdivision (b). (*People v. Arriaga* (2014) 58 Cal.4th 950, 960 (*Arriaga*).) We review a motion to vacate under section 1016.5 for abuse of discretion. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192.)

Section 1016.5, subdivision (a) provides: "Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated

as infractions under state law, the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Subdivision (b) further provides, "If . . . the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have [adverse immigration] consequences . . . the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea . . . and enter a plea of not guilty."

"To prevail on a section 1016.5 motion, a defendant must establish (1) that the advisements were not given; (2) that the conviction may result in adverse immigration consequences; and (3) that the defendant would not have pled guilty or no contest had proper advisements been given. [Citation.]" (*Arriaga*, *supra*, 58 Cal.4th at p. 957.)

Appellant does not dispute that the trial court advised him he *would be* "deported, excluded from admission to the country or denied naturalization" as a consequence of pleading nolo contendere. He argues that the trial court's advisement of the immigration consequences of his plea was defective because it did

not address additional immigration consequences such as his resulting ineligibility for asylum or cancellation removal. In support of this argument, he relies on "the legislative intent" behind section 1016.5 and the United States Supreme Court's decision in *Padilla v. Kentucky* (2010) 559 U.S. 356 (*Padilla*).

Section 1016.5, subdivision (d) sets forth a statement of legislative intent in enacting the statute: "[I]t is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is also the intent of the Legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency in the event the defendant or the defendant's counsel was unaware of the possibility of deportation, exclusion from admission to the United States, or denial of naturalization as a result of conviction. It is further the intent of the Legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court."

Appellant argues that the statutory advisement set forth in subdivision (a) of section 1016.5 "does not reflect the legislative intent of the statute" which requires the court to advise the defendant of additional immigration consequences that may

result from a plea. However, subdivision (d)'s general statement of legislative intent concerning fairness to noncitizen defendants does not override the express language of subdivision (a). The statute specifically requires the court to advise the defendant of three possible immigration consequences of his plea specified in subdivision (a) and nothing in subdivision (d) adds to these narrow requirements. (See *People v. Arendtsz* (2016) 247 Cal.App.4th 613, 618–619 ["Nothing in section 1016.5 requires more than an advisement of the three major consequences of a plea that are specified in subdivision (a)."]; *People v. Gutierrez* (2003) 106 Cal.App.4th 169, 174, fn. 4 ["[A] trial court does not have an obligation to advise on those immigration consequences that appellant may suffer other than the ones listed in section 1016.5."]; see also *People v. Martinez* (2013) 57 Cal.4th 555, 565 ["[S]ection 1016.5 relief is available *only if* the trial court failed to provide the *statutory advisement* or if the record is silent on that subject . . . ." (Italics added.)] .)

Likewise, the United States Supreme Court's holding in *Padilla* did not alter the trial court's obligation under section 1016.5 to advise the defendant of the immigration consequences of his plea. In *Padilla*, the Court held that a claim of ineffective assistance of counsel may be based on a defense attorney's failure to adequately advise the defendant regarding possible immigration consequences of a plea. (*Padilla*, *supra*, 559 U.S. at

pp. 364–368.) The Court did not address the *court's* duty to advise noncitizen defendants.

Appellant cites to *Padilla's* discussion of judicial recommendations against deportation, arguing that Congress's elimination of that authority in 1990 mandates that "[c]ourts . . . under section 1016.5, [ ] adopt a more engaged role when advising a noncitizen of the potentially harsh immigration consequences that would result from his or her plea." In *Padilla*, the Court recognized that the elimination of judicial discretion to prevent deportation elevated "the importance of accurate legal advice for noncitizens accused of crimes." (*Padilla*, *supra*, 559 U.S. at p. 364.) However, the Court made this observation in connection with the defendant's claim of ineffective assistance of counsel. *Padilla* does not require that the *court* advise a noncitizen defendant of immigration consequences in addition to those specified in section 1016.5, subdivision (a).[2] (See *People v. Arendtsz*, *supra*, 247 Cal.App.4th at p. 619 ["there is nothing in *Padilla* . . . that compels a trial court to specifically advise on asylum or cancellation of removal"].)

Lastly, appellant contends "the record does not provide [1] whether [he] was provided an adequate opportunity to negotiate a non-deportable offense . . . or [2] whether the advisements

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[2] Appellant does not argue his attorney was ineffective, nor may he raise such a claim under section 1016.5. (*People v. Kim* (2009) 45 Cal.4th 1078, 1107, fn. 20.)

regarding immigration consequences were on the record . . . ." It is the appellant's burden to provide an adequate record on appeal. To the extent the record is inadequate, we make all reasonable inferences in favor of the judgment. (*Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794.) Here, appellant has not provided the court with a copy of the reporter's transcript of his plea and, therefore, has not met his burden of showing he was not provided with "an adequate opportunity to negotiate a non-deportable offense." Furthermore, section 1016.5 only provides that the court "shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency *in the event* the defendant or the defendant's counsel *was unaware of the possibility* of deportation, exclusion from admission to the United States, or denial of naturalization as a result of conviction." (§ 1016.5, subd. (d), italics added.) Here, appellant does not claim he or his counsel was unaware of these possibilities when his plea was negotiated. As to appellant's second argument, the minute order of the plea hearing establishes that the trial court's advisement of the immigration consequences of his plea was on the record.

DISPOSITION

The order denying appellant's section 1016.5 motion is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.