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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ARNULFO RUTILIO  
LANDAVERDE,

Defendant and Appellant.

B276912

(Los Angeles County  
Super. Ct. No. BA161254)

APPEAL from an order of the Superior Court of Los Angeles County, Lisa B. Lench, Judge. Affirmed.

Law Offices of Michael J. Codner and Michael J. Codner for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

Under Penal Code section 1016.5 (section 1016.5), a trial court is required to advise a defendant of the immigration consequences of a plea prior to taking the plea. Defendant and appellant Arnulfo Rutilio Landaverde claims that he did not receive the necessary advisement and appeals from the denial of his motion to vacate his 1998 conviction. Because a 1998 minute order establishes that defendant was given the necessary advisement, we affirm the denial of defendant's motion to vacate his conviction.

### **BACKGROUND**

A minute order from a hearing July 7, 1998, indicated that defendant pled guilty to one count of committing a lewd act with a minor (Pen. Code, § 288, subd. (a)). The same minute order indicated that prior to the plea, the court warned defendant: "If you are not a citizen, you are hereby 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." Following defendant's guilty plea, the court suspended his sentence and placed him on probation. Apparently, no reporter's transcript of defendant's plea currently is available.

In April 2016, defendant moved to withdraw his guilty plea pursuant to section 1016.5. In his declaration in support of the motion, defendant averred that "[n]either the Court nor my attorney advised me that by pleading guilty, I would or could be removed from the country and/or lose my ability to fight for my legal residence." Defendant further averred that he now faces removal from this country and has exhausted his federal challenges to such removal. Finally, defendant stated that he

would not have pled guilty if he had known of the potential immigration consequences of his conviction. He would have instead “insisted on taking the case to trial.”

The trial court denied defendant’s motion to withdraw his plea, and this appeal followed.<sup>1</sup>

### **DISCUSSION**

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.”

Section 1016.5, subdivision (b) specifies that “[a]bsent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement.” “Section 1016.5 addresses only the duty of trial courts to advise the defendant of the immigration consequences of the plea, and it empowers the court to vacate a conviction and set aside a plea only for the *court’s* failure to fulfill that duty.” (*People v. Aguilar* (2014) 227 Cal.App.4th 60, 71.)

To obtain relief under section 1016.5, a defendant must show that “(1) the court failed to advise the defendant of the immigration consequences as provided by section 1016.5, (2) as a

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<sup>1</sup> The trial court’s order denying defendant’s motion to vacate is appealable. (*People v. Totari* (2002) 28 Cal.4th 876, 887.)

consequence of conviction, the defendant actually faces one or more of the statutorily specified immigration consequences, and (3) the defendant was prejudiced by the court's failure to provide complete advisements." (*People v. Aguilar, supra*, 227 Cal.App.4th at p. 71.) "The advisement need not be in the statutory language, and substantial compliance is all that is required, 'as long as the defendant is specifically advised of all three separate immigration consequences of his plea.'" (*People v. Castro-Vasquez* (2007) 148 Cal.App.4th 1240, 1244.)

We review the trial court's denial of defendant's motion to vacate the judgment of conviction for abuse of discretion. (*People v. Chien* (2008) 159 Cal.App.4th 1283, 1287.) There was no abuse of discretion. The 1998 minute order reflected that defendant was fully advised of the potential immigration consequences of his plea as required by section 1016.5. The advisement recorded in the minute order specifically tracks the language of section 1016.5. That minute order documenting the court's advisement is a part of the record. (*People v. Dubon* (2001) 90 Cal.App.4th 944, 954.) Because there was a record that defendant was advised, the presumption in section 1016.5, subdivision (b) that he was not advised of the immigration consequences of his plea is inapplicable.

Defendant's arguments are not persuasive. First, his reliance on the presumption that absent a record of the advisements he is presumed not to have received them is misplaced. (See § 1016.5, subd. (b) ["Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement."]; see also *People v. Dubon, supra*, 90 Cal.App.4th at

p. 948.) As explained, there was a record—i.e. the court’s minute order.

Second, *People v. Dubon*, *supra*, 90 Cal.App.4th at pages 955 to 956 does not stand for the proposition that a minute order, standing alone, is insufficient. In *Dubon*, the minute order failed to show that the defendant had been given “the required advisement in full, or accurately.” (*Id.* at p. 955.) In contrast here, the trial court’s 1998 minute order indicated that defendant had been accurately advised in full. Therefore, here nothing more was required. The trial court properly relied on the 1998 minute order, notwithstanding defendant’s contrary declaration. (*People v. Gutierrez* (2003) 106 Cal.App.4th 169, 176.)

#### **DISPOSITON**

The order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.