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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ROMO OYARZABAL,

Defendant and Appellant.

B280965

(Los Angeles County
Super. Ct. No. KA031953)

APPEAL from an order of the Superior Court of
Los Angeles County, Thomas C. Falls, Judge. Affirmed.

Law Offices of Ricardo Chavez and Ricardo Alan Chavez
for Defendant and Appellant.

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

In or about 1996, the People charged appellant Daniel Oyarzabal with deliberate premeditated attempted murder with a deadly weapon, which carried a potential sentence of life imprisonment. In 1996, appellant pled guilty to one count of assault with a deadly weapon by means of force likely to cause great bodily injury, and the trial court sentenced him to prison for two years. He asserts that as a result of his plea, he was deported to Mexico in 1999.

In 2016, appellant petitioned the trial court for writ of *coram nobis* to withdraw his plea on the grounds that his defense counsel at the time of his plea provided ineffective assistance of counsel. We conclude that appellant's argument is not cognizable in a writ of *coram nobis* and affirm the trial court's order denying writ relief.

FACTUAL AND PROCEDURAL BACKGROUND

In or about 1996, appellant was charged with willful, deliberate, premeditated attempted murder, assault with a deadly weapon, and aiding a principal after a felony was committed.¹ Appellant concedes that at the time of his plea, he faced a life sentence if the jury had convicted him of these charges.

In August 1996, appellant pled no contest to assault with a deadly weapon by means of force likely to cause great bodily injury and was sentenced to prison for two years. The remaining charges, including the attempted murder charge, were dismissed as part of the plea agreement.

¹ The record does not contain the original information. We base our description of the information on the trial court's own description, which the parties do not dispute.

Prior to pleading no contest, appellant acknowledged the following: “I understand that if I am not a citizen of the United States, the conviction for the offense 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.” The trial court further advised appellant: “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.” Appellant indicated that he understood those “consequences.” The trial court imposed sentence on August 21, 1996.

In 2016, more than 20 years after his conviction and 17 years after his deportation, appellant filed his petition for writ of *coram nobis* claiming that his plea was the product of ineffective assistance of counsel. Appellant asserts that had he known the immigration consequences of his plea, he would not have pled no contest to the assault. The trial court denied the petition for writ of *coram nobis*. This appeal followed.

DISCUSSION

Respondent argues, and appellant does not dispute, that an ineffective assistance of counsel claim is not cognizable in a petition for writ of *coram nobis*. In *People v. Aguilar* (2014) 227 Cal.App.4th 60 (*Aguilar*) this Division held: “A writ of error *coram nobis*, based on a claim of ineffective assistance of counsel for failure to advise the defendant of the immigration consequences of his or her plea, cannot be used to challenge a conviction or withdraw the plea.” (*Id.* at p. 68; see also *People v. Kim* (2009) 45 Cal.4th 1078, 1095; *People v. Mbaabu*

(2013) 213 Cal.App.4th 1139, 1147.) Such a claim may be raised only in an appeal, in a statutory motion to vacate the judgment, and in a habeas corpus petition. (*Aguilar, supra*, 227 Cal.App.4th at p. 75.)

Although Penal Code section 1473.7 now provides a vehicle for a defendant who is no longer incarcerated to raise a claim of ineffective assistance of counsel, that statute was not effective when defendant brought his motion. The trial court could not apply a then-nonexistent statute. As our high court explained: “It has been uniformly held in this state that a statute has no force whatever until it goes into effect pursuant to the law relating to legislative enactments. It speaks from the date it takes effect and not before. Until that time it is not a law and has no force for any purpose.” (*People v. Righthouse* (1937) 10 Cal.2d 86, 88.) In short, appellant demonstrates no error in the trial court’s denial of his petition for writ of *coram nobis*.²

DISPOSITION

The order denying appellant’s petition for writ of *coram nobis* is affirmed.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

² Our opinion is without prejudice to appellant filing a motion pursuant to Penal Code section 1473.7.