

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 Appellant,

v.

MIGUEL R. ALDAPE,

Defendant and Respondent.

B291576

(Los Angeles County
Super. Ct. No. BA116623)

APPEAL from an order of the Superior Court of Los Angeles County, Mark S. Arnold, Judge. Reversed.

Jackie Lacey, District Attorney of Los Angeles County,
Matthew Brown, Deputy District Attorney, Kenneth Von
Helmolt, Deputy District Attorney, for Plaintiff and Appellant.

Alan Fenster for Defendant and Respondent.

Miguel Aldape pleaded no contest to three counts of assault with a firearm and was released that day on a time-served basis. Over 20 years later, he moved to vacate those convictions, arguing he did not know the immigration consequences of his plea. The trial court found no legal basis for granting Aldape's motion but granted it on equitable grounds.

We reverse. The trial court rightly found the motion lacked legal support. No equitable discretion exists to depart from the express and specific statutory commands that govern this topic. The Legislature has been active and precise and has occupied the field.

All code citations are to the Penal Code unless otherwise stated.

I

The government showed the following facts at the December 11, 1996 preliminary hearing.

Aldape was an admitted member of the 18th Street Gang. On April 14, 1995, he walked up to Norman Altamirano and a group of others and asked "what gang [Altamirano] was from." Altamirano said he "wasn't involved in those kind of activities." Aldape told Altamirano it was "too fuckin' bad because [Aldape] was from 18th Street." Aldape said, "Fuck Temple Street. This is 18th Street."

Then Aldape walked over to Jose Ruiz and said the same things.

Aldape next approached Alex Castillo and asked the same questions. Aldape "just kept saying, 'Fuck the Temple Street, this is 18th Street.'" Castillo said he wasn't part of any gang, and asked Aldape to leave them alone. Aldape replied, "You better not [belong to any gang], because I will kick your ass." Castillo

said he “didn’t have to be in a gang to kick [Aldape’s] ass.” Aldape “just kept on throwing gang signs, talking.” He seemed “drunk or high on something” and he smelled of alcohol.

Aldape departed and then returned with a gun that he pointed at the group. Everyone ran. Aldape fired six to eight times, hitting nearby cars, as well as a fence two inches from Altamirano.

II

The trial court proceedings began over 20 years ago. On January 13, 1997, the People charged Aldape with three counts of assault with a firearm (§ 245, subd. (a)(2)) and personally using a firearm (§ 12022.5, subds. (a), (d)).

On July 7, 1997, Aldape pleaded no contest to these three counts and admitted personally using a firearm for each count. The record does not reveal whether the prosecution negotiated this plea or whether Aldape pleaded open to the court over the prosecutor’s objection.

The minute order reports that, before Aldape entered his plea, the court advised him: “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.” We do not have the reporter’s transcript for that hearing; subdivision (e) of Government Code section 69955 authorizes destruction of transcripts after 10 years.

Aldape faced 18 years and eight months in prison. The court suspended Aldape’s sentence for all three counts and placed him on formal probation for three years.

The court ordered Aldape to serve 340 days in jail, but gave him credit for 227 days of actual custody and 113 days of good time/work time, for a total of 340 days. The court ordered Aldape released that day.

So far as our record shows, Aldape has been out of custody from July 7, 1997 to the present.

Over a decade later, on December 28, 2007, Aldape moved under section 1016.5 to vacate his convictions. He argued the court failed to ensure he knowingly and intelligently accepted the immigration consequences of his 1997 plea.

Section 1016.5 is a 1977 statute requiring courts to advise defendants of the potential immigration consequences of plea agreements. (§ 1016.5, subd. (a).) If courts do not do so, the statute authorizes courts to vacate the convictions under certain conditions. (§ 1016.5, subd. (b).)

At Aldape's request, the court continued this section 1016.5 motion hearing at least five times. On July 25, 2008, the court took the motion off calendar. Our record does not explain this series of events, which are not the subject of this appeal.

Nearly another decade later, on May 14, 2018, Aldape filed a second motion to vacate his convictions. He argued for the first time he was "not guilty of the charged offenses." He also argued he "was not properly advised of the immigration consequences of his guilty plea" under section 1016.5, which we summarized above.

Aldape added another new ground as well: section 1473.7. Section 1473.7 is a 2016 statute that the Legislature amended in 2018. (The effective date of the 2018 amendments was January 1, 2019.) This statute allows convicts who have served their time to attack their convictions under specified conditions. (§ 1473.7,

subd. (a).) The statute authorizes motions on two grounds: new evidence of actual innocence, or a prejudicial error that damaged a defendant's ability to grasp the immigration consequences of a plea agreement. (*Ibid.*)

Aldape's 2018 motion included a declaration he signed on March 31, 2016. In this declaration Aldape swore he was a Mexican citizen who came to the United States without documents when he was two years old. He stated the Immigration and Naturalization Service granted him temporary residence in the United States after he applied for amnesty, but revoked it after his convictions in this case. Because the Immigration and Naturalization Service allegedly denied Aldape's later petitions for legal status, Aldape "[had] just been living [his] life." Aldape's declaration continued: "All of a sudden, at the end of September, [Immigration and Naturalization Service] agents came to my house looking for me. Luckily I was not home at the time, but now I realize that [the Immigration and Naturalization Service] is definitely looking to deport me."

According to Aldape's declaration, he was "completely innocent" and the witnesses who testified at the preliminary hearing "totally lied about what happened." He also stated his attorney "never said a word about [his] immigration consequences" and he had "no recollection of ever being advised that a guilty plea would require that [he] be deported from the United States." He claimed he "would never have [pleaded] guilty if [he] had known about the immigration consequences."

At the May 25, 2018 hearing, the trial court read the July 7, 1997 minute order, which detailed the July 7, 1997 court's admonition to Aldape regarding the possible immigration

consequences of his plea, and was “satisfied [Aldape] was advised.”

The trial court found no legal basis to grant Aldape’s motion to vacate his convictions. The court said: “I believe legally, the petition—the motion should be denied; but on equitable grounds, I don’t feel it should be denied.” The court reasoned: “It seems like he’s the kind of person that we want to be in the country. You know, he’s working. He’s got a family. He’s got a supportive family.” The court thus denied the motion on legal grounds and granted it on equitable grounds.

The prosecution appealed.

III

This appeal is proper under section 1238, subdivision (a)(5). That statute permits appeals by the prosecution from orders made after judgment that affect the substantial rights of the people. This order was of that character. We requested supplemental briefing on this point, but Aldape’s supplemental brief did not refute the force of section 1238, which properly authorizes the prosecution’s appeal.

IV

Now we tackle the merits.

First we summarize our legal analysis.

The order poses the question whether courts have equitable power to vacate a conviction when no legal ground supports that result. The answer is no. Assuming for the sake of argument some free-ranging equitable power once existed — an assumption Aldape fails to support — we conclude no such equitable power could have survived the Legislature’s actions in this field. Neither can we uphold the order on alternative grounds, for the

trial court correctly ruled no legal support could justify Aldape's motion. Therefore we reverse.

A

We begin with the question of equitable power. We independently review this pure question of law. (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247.)

California's legislation in this field has extinguished any free-floating equitable power that might once have supported this order.

We do not address the deep issue of whether equitable powers at one time existed here. Beyond Aldape's passing and unsupported assertion that equitable powers are "long entrenched in the law," the briefing does not tackle this broad jurisprudential issue. Thus we steer clear. Rather we assume, purely for the sake of argument, that some such equitable power once existed, and we analyze whether that assumed power could have survived the legislative actions in this field. We conclude today's legislative framework is too detailed to be consistent with any such hypothetical equitable power.

Aldape incorrectly argues to the contrary, stating sections 1016.5 and 1473.7 do not "bar relief" on equitable grounds and "the recent amendment to [section 1473.7] provides" such relief.

Legislative intent was squarely against the sort of undefined and unlimited equitable power Aldape advocates.

The Legislature made its intent express. When the Legislature amended section 1473.7 in 2018, it stated its goal was "to provide clarification to the courts regarding Section 1473.7 of the Penal Code to ensure uniformity throughout the state and efficiency in the statute's implementation." (Assem. Bill No. 2867 (2017–2018 Reg. Sess.) §1, subd. (b) (AB 2867).)

An assumed equitable power would violate this expressed intent to clarify the law and to achieve efficiency. Rather, a new announcement of extrastatutory equitable power would generate uncertainty and would mire the criminal justice system in an array of new motions and hearings.

For instance, a hypothetical equitable power would create procedural uncertainty. Can equitable factors obviate a statute's timing requirements? If a court finds a section 1473.7 motion untimely because the defendant did not file it with the requisite reasonable diligence, could a court nonetheless grant the motion on equitable grounds?

A supposed equitable power would create substantive uncertainty. The grounds on which courts can vacate convictions under sections 1016.5 and 1473.7 are clear. Under section 1016.5, moving parties must prove (1) the court failed to advise them of the immigration consequences; and (2) their pleas may have those immigration consequences. (§ 1016.5, subd. (b).) Under section 1473.7, they must show (1) a prejudicial error that damaged their abilities to understand the immigration consequences of a plea; or (2) newly discovered evidence of their innocence. (§ 1473.7, subd. (a).) If some equitable power exists, are there other grounds on which courts can vacate convictions? Would there be any substantive limits at all?

An equitable power would create remedial uncertainty. Does a court's equitable power extend beyond the remedies specified in the statutes? Can a court vacate a conviction and prohibit the People from prosecuting the case again? Under what circumstances?

Creating this uncertainty would defeat the Legislature's goal of eliminating uncertainty. If some general equitable power

preexisted the statutes, the details of these statutes have abolished it. (Cf. *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 635–636 [if the statute specifies exemptions, judges may not imply additional exemptions unless there is a clear legislative intent to the contrary].)

There is another statute of possible relevance. Aldape cites section 1385 in the last sentence of his response brief. He again cites section 1385 in supplemental briefing, although the statute does not relate to our specific request for supplemental briefing on appealability.

Section 1385 is consistent with our analysis. Passed in 1872, it allows a court to dismiss a criminal action “in furtherance of justice” on its own motion or at the prosecution’s request. (§ 1385, subd. (a).) This statute expressly circumscribes the court’s discretion. Courts must state the reasons for dismissing an action on the record. (§ 1385, subd. (a).) This is to prevent judicial discretion from erasing governing laws and to protect the public from improper dismissals. (*People v. Orin* (1975) 13 Cal.3d 937, 944.) This equitable power under section 1385 is statutory and may be withdrawn by the Legislature. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504.)

Section 1385 did not create an undefined and unbounded equitable power that would support this order. Had it done so, sections 1016.5 and 1473.7 would have been unnecessary and today would be nugatory. (Cf. *People v. Chavez* (2016) 5 Cal.App.5th 110, 119 [the Legislature could not have intended to preserve the court’s discretionary power to dismiss under section 1385 when it required the same result in a later-enacted statute that specifically addressed dismissing accusations against successful probationers].) To read this section 1385 as Aldape

prefers would be to ascribe considerable and pointless effort to the Legislature, which we will not do. Any presumed equitable power under section 1385 or otherwise could not have survived the statutory details of sections 1016.5 and 1473.7.

There are many cases like Aldape's, and each one involves prosecutors, defendants, judges, and others. These people all have important interests in consistency and efficiency. The statutory details create a clear framework within which the parties work toward justice. To allow courts on equitable grounds to disregard what is specified in the statutes would diminish the clarity and efficiency the Legislature sought to promote.

Aldape notes section 1473.7 is to be "interpreted in the interests of justice." (See AB 2867 §1, subd. (c).) True. But ignoring statutory text is misinterpretation, not interpretation in the interests of justice.

The trial court based its decision on the life Aldape established after his convictions: his lack of criminal activity in the following years, his continued employment, and his wife, two sons, and supportive family. We acknowledge the court's comment Aldape is "the kind of person that we want to be in the country" and the court's desire to show mercy. But the Legislature has occupied the field here. Legislation leaves trial courts no extrastatutory power to vacate convictions on nonstatutory terms.

No equitable power supports the trial court's order. Assuming such power once might have existed, it does not anymore.

B

In the alternative, we reverse the order because the trial court correctly determined sections 1016.5 and 1473.7 required denial of Aldape's motion.

1

We review an order vacating a conviction under section 1016.5 for abuse of discretion. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192.)

Section 1016.5 requires a court to advise defendants of immigration consequences before accepting a guilty or no contest plea. (§ 1016.5, subd. (a).) The July 7, 1997 minute order shows the court did properly advise Aldape under section 1016.5. The court used the exact language in the statute, except for adding the word "a" in front of "conviction." This minute order convinced the trial court Aldape had been properly advised. The minute order was sufficient to prove compliance with section 1016.5. (See *People v. Aguilar* (2014) 227 Cal.App.4th 60, 71 [the record "affirmatively" showed the court gave the advice required by section 1016.5 based on a minute order detailing the court's statements].)

Aldape argues "a minute order does not necessarily reflect the actual ruling" but this minute order indeed recorded the court's precise language. The trial court found the July 7, 1997 court advised Aldape of the plea's immigration consequences, resolving any question of fact regarding this detailed record.

There was no abuse of discretion. Aldape had no claim under section 1016.5.

2

We independently review an order vacating a conviction under section 1473.7 where defendants claim their counsel failed

to advise them of the plea's immigration consequences. (*People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 76.) We defer to the trial court's factual determinations if supported by substantial evidence but independently review whether the facts demonstrate prejudice. (*Ibid.*) We do not reevaluate witness credibility or reweigh the evidence. (*People v. Tapia* (2018) 26 Cal.App.5th 942, 951.)

We already have described section 1473.7. Aldape's motion included his declaration, which stated his attorney "never said a word about [his] immigration consequences" and he "would never have pled guilty if [he] had known about the immigration consequences." Aldape argues he has established grounds for relief under section 1473.7 because the People "produced no evidence [contradicting Aldape's] declaration about what he told his lawyer or what his lawyer told him."

This argument fails. It was Aldape's burden to prove he was entitled to relief under section 1473.7 by a preponderance of the evidence. (§ 1473.7, subd. (e)(1).) To meet this burden, he had to persuade the trial court he would have chosen to give up the benefits of the plea bargain had he known the potential immigration consequences. (See Evid. Code, § 115.)

Aldape's declaration did not convince the trial court. At the hearing, Aldape's counsel argued Aldape would not have pleaded if he "realized that this was a one-way ticket to Mexico." The trial court responded: "I don't believe that. I don't believe it. He was facing a long prison sentence, and he got a time served, probationary sentence. And you're telling me that if he was told that this could result or would result in his deportation that he would have gone to trial and risked a lengthy prison sentence? I don't believe that."

We defer to the trial court's determination that Aldape's declaration was not credible. (*People v. Tapia, supra*, 26 Cal.App.5th at p. 951.) We independently review whether Aldape established prejudice under section 1473.7 and find he did not. (*People v. Ogunmowo, supra*, 23 Cal.App.5th at p. 76.) Aldape faced over 18 years in prison. By pleading no contest, Aldape secured his release without additional custody time. When he accepted the plea offer in 1997, Aldape was 26 years old, was not married, and had no children. Other than his declaration, Aldape presented no evidence he would have gone to trial if his attorney had advised him of the plea's immigration consequences. He did not show prejudice.

Even if Aldape's counsel failed to advise him of his plea's immigration consequences, Aldape suffered no prejudice because the trial court advised him before accepting his plea.

Aldape's claim under section 1473.7 fails.

DISPOSITION

The order is reversed.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.