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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. BLANCA ESTELA GALAN, Defendant and Appellant.	B290208 (Los Angeles County Super. Ct. No. VA109859)

APPEAL from an order of the Superior Court of Los Angeles County, Michael A. Cowell, Judge. Affirmed.

William J. Baker, under appointment by the Court of Appeal, 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 Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

In the underlying action, the trial court denied appellant Blanca Estela Galan's motion to vacate her convictions, which contended she did not understand the consequences of the guilty pleas she entered for her immigration status. We reject her challenges to that ruling and affirm.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Appellant is a citizen of El Salvador. In March 2009, an information was filed in the underlying action, charging appellant with two counts of unlawful sexual intercourse with a minor (Pen. Code, § 261.5, subd.(c)).[1] In June 2009, appellant entered guilty pleas to the charges, and the trial court sentenced her to three years of formal probation.

When appellant sought to adjust her immigration status, the United States Department of Homeland Security began removal proceedings to deport appellant. In those proceedings, appellant conceded that she was removable as an alien present in the United States without being lawfully admitted, but requested cancellation of removal. An immigration judge denied that request, concluding that appellant's 2009 offenses were crimes of moral turpitude.[2]

In January 2018, appellant filed a motion to vacate her convictions, asserting that she was not adequately informed

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[1] All further statutory citations are to the Penal Code.

[2] Generally, "an alien is ineligible for cancellation of removal if he has been convicted of certain offenses, including a conviction of a crime involving moral turpitude." (*Juarez v. Mukasey* (9th Cir. 2008) 530 F.3d 1020, 1022; 8 U.S.C. § 1229b(b)(1)(C).)

regarding the consequences of her guilty pleas for her immigration status (§§ 1016.5, 1473.7). Appellant contended that but for the 2009 convictions, she was eligible for relief from removal through the acquisition of "temporary protected status" (8 U.S.C. § 1254a(a)(1)(A)), for which El Salvador citizens are candidates.

The trial court denied the motion, concluding that appellant, in entering the pleas, was fully advised regarding their immigration consequences, and acknowledged her understanding of those consequences. This appeal followed.

DISCUSSION

Appellant contends the trial court erred in declining to set aside her convictions. As explained below, we disagree.

A. *Governing Principles*

Appellant's motion relied on sections 1016.5 and 1473.7, which set forth distinct but related grounds for vacating a conviction based upon a guilty plea.

Section 1016.5, subdivision (a), requires that the defendant, before entering a guilty plea, be given the following advisement on the record: "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." That advisement is properly administered by "any of the numerous individuals acting on behalf of [the court], including the judge, [the] counsel, the court reporter, or the clerk." (*People v. Quesada* (1991) 230 Cal.App.3d 525, 535-536.)

To prevail on a motion under section 1016.5, "a defendant

must establish that (1) he or she was not properly advised of the immigration consequences as provided by the statute; (2) [that] there exists, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified adverse immigration consequences; and (3) [that] he or she was prejudiced by the nonadvisement. [Citations.]" (*People v. Totari* (2002) 28 Cal.4th 876, 884.) The trial court's ruling is reviewed for an abuse of discretion. (*People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 192.)

"Section 1473.7 provides: 'A person no longer imprisoned or restrained may prosecute a motion to vacate a conviction or sentence' for one of two reasons, including that '[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.' (§ 1473.7, subd. (a)(1).) The motion must be made with 'reasonable diligence' after the party receives notice of pending immigration proceedings or a removal order. (§ 1473.7, subd. (b).) The court must hold a hearing on the motion, and if the moving party establishes by a preponderance of the evidence that he or she is entitled to relief, the court must allow the person to withdraw his or her plea. (§ 1473.7, subd. (e).)" (*People v. Perez* (2018) 19 Cal.App.5th 818, 824 (*Perez*).)

The standard of review applicable to the denial of a section 1473.7 motion is unsettled, insofar as the appellant claims a deprivation of the constitutional right to effective assistance of counsel. To the extent the motion asserts statutory error or a deprivation of statutory rights, the denial is reviewed for an abuse of discretion. (See *People v. Gonzalez* (2018) 27

Cal.App.5th 738, 746-747 (*Gonzalez*); *People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 76 (*Ogunmowo*).) However, to the extent the motion asserts ineffective assistance of counsel, there is a division among the appellate courts whether the denial is reviewed under the "abuse of discretion" standard or the less deferential standard applicable to "'a mixed question of fact and law.'"[3] (*Gonzalez*, *supra*, at p. 747; *Ogunmowo*, *supra*, at p. 76.) Here, it is unnecessary to resolve that dispute because – as discussed further below (see pt.C.1., *post*) – appellant's challenge fails under the standard for a mixed question of fact and law, which is more favorable to appellant.

B. *Underlying Proceedings*

1. *2009 Guilty Pleas*

On June 18, 2009, appellant pleaded guilty to both counts of unlawful sexual intercourse with a minor. Prior to entering those pleas, appellant completed a waiver of rights form, which contained several advisements and statements. Appellant placed her initials in a box accompanying the following advisement: "Immigration Consequences – I understand that if I am not a citizen of the United States, I must expect my plea of guilty . . . will result in my deportation, exclusion from admission

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[3] Under the latter standard, "[w]e accord deference to the trial court's factual determinations if supported by substantial evidence in the record, but exercise our independent judgment in deciding whether the facts demonstrate trial counsel's deficient performance and resulting prejudice to the defendant. [Citations.]" (*Ogunmowo*, *supra*, 23 Cal.App.5th at p. 76.) Furthermore, when the trial court heard no live testimony, we independently examine the written evidence in order to determine the facts it establishes, and need not defer to the trial court's findings. (*Id*. at pp. 79-80.)

or reentry to the United States, and denial of naturalization and amnesty." Appellant also placed her initials in the boxes accompanying the following statements: "Prior to entering his plea, I have had a full opportunity to discuss with my attorney . . . the consequences of my plea. [¶] . . . I offer my plea of guilty . . . freely and voluntarily and with full understanding of all the matters set forth in the pleading and in this form." Appellant signed the form under an affirmation stating: "I have read and initialed each of the paragraphs above and discussed them with my attorney. My initials mean that I have read, underst[ood], and agree with what is stated in the paragraph."

The form was also executed by defense counsel and a translator. Above counsel's signature was the statement: "I have . . . discussed the facts of the case with the defendant, and explained . . . the consequences of the plea." Above the translator's signature was the statement": "I . . . certify that I [have] translated this form to the defendant in [Spanish]. The defendant stated that . . . she understood the contents on the form, and then initialed and signed the form."

At the plea hearing, in response to the prosecutor's inquiries, appellant stated that the waiver of rights form had been translated for her, that she had had an opportunity to discuss the form with her attorney, and that she understood "the information in [the] document." When the prosecutor asked whether appellant had any questions regarding the form, she replied, "No." Before taking appellant's pleas, the prosecutor stated: "[T]he consequences of the plea are as follows: If you are not a citizen of the United States, you will be -- will result in your deportation, denial of naturalization, denial of reentry into the country." The prosecutor then asked whether she understood the

consequences, and whether she still wished to enter guilty pleas to the charges, "keeping in mind the possible consequences." To each question, appellant replied, "Yes."

After appellant entered the guilty pleas, the trial court sentenced her to three years of formal probation. In explaining the conditions of probation, the court stated: "If you leave the country, you're not to reenter the United States illegally. If you do return, you are to . . . present documentation which proves you are in the United States legally."

2. *Appellant's Motion*

On January 29, 2018, appellant filed her motion to vacate the 2009 convictions under sections 1016.5 and 1473.7, contending she was not adequately informed of the immigration consequences of the plea. Accompanying the motion was appellant's declaration, which stated that in 2009, she hired an attorney to defend her against the charged offenses. Regarding her pleas, she stated: "I believe the attorney filled out some court papers. I understood the court papers were to plead guilty. The attorney spent a few moments going over the court papers with me. I do not believe the attorney read the entire form to me. I believe I then initialed and signed the papers. . . . I did not read the papers because I could not read English. I relied upon the attorney's explanation. I do not believe I would have understood the papers even if I could read them."

Appellant further stated: "I do not remember the attorney explaining to me the immigration consequences of my guilty plea. The attorney did say I could have immigration 'problems.' But the attorney did not explain what type of problems. The attorney did not explain to me that the conviction could lead to my deportation and render me inadmissible. The attorney did not

warn me [that] the conviction was a crime involving moral turpitude. . . . The attorney did not explain to me that the conviction could lead to a denial of temporary protected status. I do not remember the judge warning me about the immigration consequences of the guilty plea."

3. *Opposition*

The Los Angeles District Attorney contended that appellant's motion was untimely, and that the record of the 2009 hearing established that she was fully advised regarding the immigration consequences of her pleas.

4. *Hearing*

At the hearing on appellant's motion, defense counsel acknowledged that appellant, prior to entering the guilty pleas, received advisements sufficient to satisfy section 1016.5. Counsel stated, "I basically withdraw that portion of the motion." Counsel nonetheless maintained that appellant was entitled to relief under section 1473.7, arguing that she was not told that her conviction "would be a crime involving moral turpitude . . . that would disqualify her from attempting to fight her deportation through cancel[l]ation." In response, the district attorney contended appellant's declaration was insufficient to show that she was inadequately advised regarding her pleas.

In denying the motion, the trial court concluded that the record of the 2009 hearing established appellant's understanding of the immigration consequences of her pleas. The court remarked that vacating appellant's convictions on such a record would "invite[] chaos." The court also rejected appellant's contention that section 1473.7 required an advisement that her convictions involved crimes of moral turpitude, stating: "Moral turpitude is the legal underpinning for the consequences of her

plea. She was advised of the consequences. She does not have to be advised of the legal theory or doctrine that underlies those consequences."

C. *Analysis*

As explained below, we see no error in the trial court's ruling. Our focus is on section 1473.7, as appellant forfeited any contention of error relating to section 1016.5, in view of defense counsel's withdrawal of the motion to the extent it relied on that statute. (*People v. Reed* (2018) 4 Cal.5th 989, 1011.)[4]

1. *No Ineffective Assistance of Counsel*

We begin with appellant's contention that her counsel rendered ineffective assistance regarding the immigration consequences of her pleas. "In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel's performance was 'deficient' because his 'representation fell below an objective standard of reasonableness . . . under prevailing professional norms.' [Citations.] Second, he must also show prejudice flowing from counsel's performance or lack thereof. [Citations.]" (*People v. Jennings* (1991) 53 Cal.3d 334, 357.)

Appellant's contention fails, as no professional norm obliging defense counsel to advise regarding immigration consequences existed when appellant entered her pleas. In *Padilla v. Kentucky* (2010) 559 U.S. 356, 367 (*Padilla*), the United States Supreme Court recognized a Sixth Amendment duty to advise regarding immigration consequences, but later

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[4] We would reject any such contention of error were we to address it because appellant received advisements sufficient to satisfy section 1016.5. (*People v. Olvera* (2018) 24 Cal.App.5th 1112, 1116 (*Olvera*) [advisement complying with section 1016.5 was provided by waiver of rights form signed by defendant].)

held that *Padilla* was not to be applied retroactively (*Chaidez v. United States* (2013) 568 U.S. 342, 344, 350). In *Gonzalez, supra,* 27 Cal.App.5th at pages 748-751, the appellate court concluded that prior to *Padilla*, California law imposed no independent duty on defense counsel to advise regarding immigration consequences.

Furthermore, had any such norm existed, it would have been satisfied under the circumstances presented here. In *Olvera*, *supra*, 24 Cal.App.5th at page 1114, the defendant pleaded no contest to drug-related charges in 2005. Prior to the plea, he signed a "plea form" stating, "'I hereby expressly assume that my plea . . . will, now or later, result in my deportation, exclusion from admission or readmission,' and 'denial of naturalization and citizenship.'" (*Id*. at p. 1115.) The form further stated that the defendant had discussed the form with his counsel, who explained the consequences of the plea. (*Ibid*.) At the plea hearing, there was no specific colloquy regarding immigration consequences, but the defendant acknowledged that he had discussed the form with his counsel and a translator. (*Ibid*.) Later, the defendant filed a section 1473.7 motion, alleging ineffective assistance of counsel. (*Id*. at p. 1115.) The motion relied on the defendant's declaration, which asserted that although he had reviewed the waiver of rights form with defense counsel, he could not recall discussing the specific immigration consequences of the plea. (*Ibid*.) After the trial court denied the motion, the appellate court affirmed under the standard for a mixed question of law and fact. (*Id*. at pp. 1116-1117.) The court concluded that the admonition in the waiver of rights form satisfied any duty imposed on defense counsel to advise the defendant regarding immigration consequences, remarking: "The

admonition was boilerplate, but it was unequivocal and accurate." (*Id*. at p. 1117.)

In *People v. Tapia* (2018) 26 Cal.App.5th 942 (*Tapia*), the appellate court reached a similar conclusion on similar facts. There, in 2012, the defendant pleaded no contest to several drug-related offenses. (*Id*. at p. 944.) Prior to the plea hearing, the defendant completed a plea form stating: "'[I]f not a citizen, my plea may have the consequence of my deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States.'" (*Id*. at p. 945.) The defendant placed his initials next to that statement, and signed the form beneath an affirmation that he had read the form, discussed it with his counsel, and understood it; defense counsel and a translator also signed the form. (*Ibid*.) At the plea hearing, the trial court inquired, "'[D]o you understand [that] if you're not a citizen of the United States and you enter a plea of . . . no contest, it *will* result in your being deported to your country of origin and never being allowed to legally return to this country and never being allowed to become a legal citizen of this country.'" (*Id*. at p. 946.) The defendant replied, "Yes." (*Ibid*.) Later, the defendant filed a section 1473.7 motion based on ineffective assistance of counsel, and submitted a declaration stating that he was not told that his conviction could lead to deportation. (*Id*. at p. 947.) In affirming the denial of the motion under the standard applicable to a mixed question of law and fact, the appellate court declined to accept the defendant's "self-serving" declaration. (*Id*. at pp. 953, 955.)

Olvera and *Tapia* are dispositive here. Appellant's waiver of rights form stated that she "*must expect* [her] plea of guilty . . . will result in [her] deportation, exclusion from

admission or reentry to the United States, and denial of naturalization and amnesty." (Italics added.) In addition to appellant's express acknowledgment that she had had an opportunity to discuss those consequences with defense counsel and understood them, the form contained similar acknowledgments by defense counsel and a translator. At the plea hearing, when the prosecutor asked appellant whether she understood that her plea "will" result in her "deportation, denial of naturalization, denial of reentry into the country," she replied, "Yes." Under these circumstances, appellant's "self-serving claim" in her declaration that defense counsel failed to advise her regarding immigration consequences is not reasonably credited. (*Tapia*, *supra*, 26 Cal.App.5th at p. 955.) Accordingly, appellant has demonstrated no ineffective assistance of counsel.

2. *No Statutory "Prejudicial Error"*

We turn to appellant's contention that there was "prejudicial error damaging [her] ability to meaningfully understand" the immigration consequences of her pleas, to the extent she presents a statutory claim (§ 1473.7, subd. (a)(1)). That contention necessarily fails, as the record shows that appellant was informed of those consequences by the waiver of rights form, defense counsel, and the prosecutor, and that she repeatedly affirmed her understanding of those consequences. (*Perez*, *supra*, 19 Cal.App.5th at pp. 829-830 [for purposes of section 1473.7, defendant failed to show lack of "meaningful[] understand[ing]" of immigration consequences because plea form, defense counsel, and trial court described those consequences and defendant stated that he understood them].)

Appellant suggests that she lacked the requisite meaningful understanding because no one warned her that the

convictions following her pleas would be for crimes of moral turpitude disqualifying her from cancellation of removal. However, subdivision (a)(1) of section 1473.7 requires only a meaningful understanding of "the actual or potential adverse immigration consequences of a plea," not an understanding of *how* those consequences might transpire. As noted in *Olvera*, the requisite understanding is established when the defendant comprehends the "boilerplate" admonition that the plea "will" result in deportation, exclusion from admission or readmission, and denial of naturalization and citizenship. (*Olvera*, *supra*, 24 Cal.App.5th at p. 1117.) Because the record demonstrates that appellant had that measure of understanding, she has shown no error in the denial of her section 1473.7 motion.

DISPOSITION

The order of the trial court is affirmed.

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MANELLA, P. J.

We concur:

COLLINS, J. DUNNING, J.*

*Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.