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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

THE PEOPLE, Plaintiff and Respondent, v. ENA JANETH VILLALOBOS, Defendant and Appellant.	B277707 (Los Angeles County Super. Ct. No. BA327163)

APPEAL from a judgment of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Affirmed.

Jonathan B. LaFrance for Defendant and Appellant.

Xavier Becerra, Attorney General, Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel and Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Ena Janeth Villalobos challenges the trial court's denial of her motion to withdraw her 2007 guilty plea to charges of robbery and assault with a deadly weapon. She contends that the trial court did not adequately advise her regarding the immigration consequences of her appeal. We affirm.

FACTS AND PROCEEDINGS BELOW

Villalobos asserts that she is a citizen of El Salvador but has been a lawful permanent resident of the United States since 1993. In 2007, she pled guilty to one count of robbery, in violation of Penal Code section 211,[1] and one count of assault with a deadly weapon, in violation of section 245, subdivision (a)(1). Prior to entering her plea, the court informed her, pursuant to section 1016.5, as follows: "If you're not a citizen, your plea 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." Villalobos answered that she understood. She also signed and initialed a written agreement that contained the same advisement. The court imposed a suspended sentence of six years imprisonment, pending completion of five years of felony probation.

According to Villalobos, she successfully completed her probation and moved to New York. She states that she applied for United States citizenship, and that federal immigration authorities arrested her and initiated removal proceedings. While in custody, Villalobos filed a motion to withdraw or modify her plea on the ground that she had not been properly advised of,

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[1] Unless otherwise specified, subsequent statutory references are to the Penal Code.

and did not fully understand, the immigration consequences of her guilty plea. She stated that, because the court told her that her "plea *may* have the consequence[] of deportation" (italics added), she concluded that it was also possible that her plea also might *not* result in her deportation. Villalobos claims she found out only years later that her plea carried a consequence of automatic deportation.

After a hearing, the trial court denied the motion.

DISCUSSION

Villalobos contends that the trial court in 2007 failed to advise her sufficiently regarding the immigration consequences of her guilty plea, and consequently, that the court erred when it denied her motion to withdraw her plea. We review the trial court's denial of a defendant's motion to withdraw a plea for abuse of discretion. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495–496.)

Section 1016.5 provides that, prior to accepting a guilty plea to any offense greater than an infraction, the court must advise a defendant on the record as follows: "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." (*Id.*, subd. (a).) If a court fails to advise a defendant regarding the immigration consequences of a guilty plea that may result in the defendant's deportation, the defendant may move to withdraw the plea. (*People v. Totari* (2002) 28 Cal.4th 876, 881; § 1016.5, subd. (b).)

"To prevail on a motion to vacate 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) 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) he or she was prejudiced by the nonadvisement." (*People v. Totari*, *supra*, 28 Cal.4th at p. 884.)

In this case, the record demonstrates that the trial court advised Villalobos about the possible immigration consequences of her guilty plea. The advisement was sufficient because it warned Villalobos specifically of the three possible adverse consequences addressed in section 1016.5—deportation, exclusion from admission to the United States, or denial of naturalization. (See *People v. Ramirez* (1999) 71 Cal.App.4th 519, 522.) Although the court's language varied slightly from the text of the statute, the advisement substantially complied with section 1016.5 and was therefore adequate. (See *People v. Gutierrez* (2003) 106 Cal.App.4th 169, 173-174.)

Nevertheless, Villalobos contends that the advisements were insufficient because the court failed to inquire more fully into her actual understanding of the consequences of a guilty plea. According to Villalobos, two additional sections of the Penal Code, sections 1016.2 and 1016.3, create an "additional statutory duty to look deeper" into a defendant's actual knowledge of the consequences of a guilty plea. (Italics omitted.) We are not persuaded.

The Legislature enacted sections 1016.2 and 1016.3 in 2015 to address issues facing defendants whose plea bargains might affect their immigration status. Section 1016.2 notes that "[i]n *Padilla v. Kentucky* [(2010)] 559 U.S. 356 [(*Padilla*)] . . . , the United States Supreme Court held that the Sixth Amendment

requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. California courts also have held that defense counsel must investigate and advise regarding the immigration consequences of the available dispositions, and should, when consistent with the goals of and informed consent of the defendant, and as consistent with professional standards, defend against adverse immigration consequences." (*Id.*, subd. (a), italics added.) The section goes on to state that deportation "may be by far the most serious penalty flowing from the conviction" (*id.*, subd. (c)), and that in *Padilla*, "the United States Supreme Court sanctioned the consideration of immigration consequences by both parties in the plea negotiating process." (*Id.*, subd. (b).) The section notes further that "[w]ith an accurate understanding of immigration consequences, many noncitizen defendants are able to plead to a conviction and sentence that satisfy the prosecution and court, but that have no, or fewer, adverse immigration consequences than the original charge." (*Id.*, subd. (d).) The section concludes as follows: "It is the intent of the Legislature to codify *Padilla* . . . and related California case law and to encourage the growth of such case law in furtherance of justice and the findings and declarations of this section." (*Id.*, subd. (h), italics added.)

Section 1016.3 establishes specific duties for defense counsel and prosecutors in dealing with potential immigration consequences. It states that "[d]efense counsel shall provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the defendant, and consistent with professional standards, defend against those

consequences." (*Id.*, subd. (a).) Section 1016.3 also provides that "[t]his code section shall not be interpreted to change the requirements of Section 1016.5." (*Id.*, subd. (c).)

Sections 1016.2 and 1016.3 do not aid Villalobos for two reasons. First, these two sections were not enacted until 2015, eight years after Villalobos's 2007 guilty plea. (Stats. 2015, ch. 705.) *Padilla*, the case that section 1016.2 cites and codifies, was not decided until 2010, and the United States Supreme Court has held that it does not apply retroactively. (See *Chaidez v. United States* (2013) 568 U.S. ___ , ___ [133 S.Ct. 1103, 1105].) Villalobos makes no argument, and we see no reason, that sections 1016.2 and 1016.3 should apply retroactively either.

Furthermore, even if sections 1016.2 and 1016.3 had been in effect at the time of Villalobos's plea, they would not change our analysis of the court's responsibility to advise Villalobos of the immigration consequences of her plea. Although these sections show that the Legislature was concerned with the potential dangers to immigrants in plea bargaining, nothing in the text indicates that they altered the court's duties with regard to accepting guilty pleas. Indeed, subdivision (c) of section 1016.3 states explicitly that "[t]his code section shall not be interpreted to change the requirements of Section 1016.5." Section 1016.2 contains no operative effect, other than the stated intent "to codify *Padilla* . . . and related California case law and to encourage the growth of such case law in furtherance of justice and the findings and declarations of this section." (*Id.*, subd. (h), italics added.) Villalobos identifies no case law requiring trial courts to go beyond the text of section 1016.5 in inquiring as to a defendant's understanding of immigration consequences. As the court noted in another case alleging a failure to advise

a defendant regarding the immigration consequences of a guilty plea, "[t]he United States Supreme Court's holding in *Padilla* has no material bearing on this case. *Padilla* concerned ineffectiveness of counsel. *Padilla* did not address a trial court's duty to advise noncitizen defendants." (*People v. Arendtsz* (2016) 247 Cal.App.4th 613, 619 (*Arendtsz*).) Villalobos has not raised a claim of ineffective assistance of counsel. We decline Villalobos's invitation to interpret section 1016.2's invocation of the "furtherance of justice" (*id.*, subd. (h)) as creating a new duty, beyond what is already required in section 1016.5, subdivision (a), for trial courts to advise defendants of the immigration consequences of their plea bargains. (See *Arendtsz*, *supra*, 247 Cal.App.4th at p. 618 [broader fairness concerns "do not override the express language of section 1016.5, subdivision (a)"].)

There is no evidence in the record that the trial court fell short of its duty under section 1016.5 to advise Villalobos regarding the potential immigration consequences of her guilty plea, and Villalobos has not cited any other source of law, be it federal or state, statutory or constitutional, that alters or expands the trial court's duty.

Consequently, the trial court did not abuse its discretion by denying Villalobos's petition to withdraw her guilty plea.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.