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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.

POMPEYO BERNAL GARCIA,

Defendant and Appellant.

B287313

(Los Angeles County
Super. Ct. No. BA288871)

APPEAL from an order of the Superior Court of Los Angeles, Kathleen Kennedy, Judge. Affirmed.

Pamela J. Voich, 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.

BACKGROUND

In 2006, Defendant and Appellant Pompeyo Garcia (Garcia) pleaded guilty to unlawful possession of money over \$100,000. (Health & Saf. Code, § 11370.6, subd. (a).) Pursuant to the plea, the trial court imposed the maximum sentence of four years imprisonment, but suspended execution of the sentence and placed Garcia on five years of formal probation with the first 364 days to be spent in county jail. Garcia successfully completed probation and obtained dismissal of his conviction pursuant to Penal Code section 1203.4 in 2011.¹ Shortly thereafter, Garcia received notice that deportation proceedings had been initiated against him. Garcia was ordered removed from the United States to Guatemala on November 27, 2015.²

On November 13, 2017, Garcia filed a motion pursuant to Penal Code section 1473.7, alleging he “was not fully advised and thus did not knowingly waive the adverse immigration consequences of his plea.” The court denied the motion on November 16, 2017.

DISCUSSION

On January 1, 2017, Penal Code section 1473.7 went into effect; the section allows a person “no longer imprisoned or restrained [to] prosecute a motion to vacate a conviction or

¹ Penal Code section 1203.4 allows a court to dismiss the accusations or information against a defendant when he or she has fulfilled the conditions of probation. Dismissal releases the defendant from “all penalties and disabilities resulting from the offense.”

² Although he was ordered removed, Garcia is challenging the order in the Ninth Circuit; he thus currently remains in the United States.

sentence” upon a showing that the 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.”

On appeal, Garcia contends the prejudicial error he suffered was the trial court’s failure to sufficiently advise him of “real and immediate” immigration consequences of a guilty plea. Garcia’s argument is belied by the record.

At the plea and sentencing hearing the trial court advised Garcia as follows: “If [you are] not a citizen of this country, this conviction will lead to your deportation, denial of naturalization, denial of legal right to re-enter the United States, or denial of amnesty.” Shortly thereafter, the trial court asked Garcia if he had sufficient time to confer with his attorney with regard to the charges against him, to which he replied, “Yes.” The court then asked, “[d]o you feel [it is] in your best interest to plead to the charge against you at this time and accept the disposition [that has] been offered to you?” Garcia replied, “Yes, Your Honor.” Garcia then pleaded guilty to violating Health and Safety Code section 11370.6. In delivering Garcia’s sentence and explaining the terms of his probation, the court further advised Garcia: “If you are deported from the United States, do not enter illegally. If you do re-enter the United States, report to the probation officer within 72 hours of your re-entry to this country.” Shortly thereafter, the trial court asked, “Mr. Garcia, do you understand and accept the terms of probation in this case, Sir.” Garcia replied, “Yes.”

Garcia contends that court’s “boilerplate” admonition only “vaguely referenced” the immigration consequences of pleading

guilty. We disagree. The court's admonition was clear, direct, and unambiguous. If Garcia did not fully understand the consequences of his plea, he was given an opportunity to further confer with his attorney; he informed the court he had already sufficiently discussed the charges with his attorney. Garcia affirmatively stated he believed it was in his best interest to accept the consequences of pleading guilty. Furthermore, the Court gave Garcia explicit instructions on how to proceed if he were deported while on probation, and Garcia unequivocally accepted these terms.

Garcia also argues that if he had known he could be "immediately deported," he would have pursued other plea alternatives or taken the case to trial. Garcia does not explain why or how he came to believe that he was only subject to deportation at some point in the future rather than immediately. The court explicitly informed Garcia that he would be deported from the United States if he entered a guilty plea. We find nothing in the court's admonition that would lead a reasonable person to believe he or she would not be subject to immediate deportation. We are aware of no legal authority requiring a trial court to specifically admonish a defendant that he or she is subject to immediate deportation; nor does Garcia provide any.

Garcia was adequately advised of the immigration consequences of his plea. Garcia was also aware that, had he not accepted the People's plea offer, he was facing four years in state prison. We therefore conclude that Garcia made an informed choice to accept five years of probation rather than risk a conviction by jury that would not only subject him to deportation, but would also expose him to four years in state prison.

DISPOSITION

The order is affirmed.

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JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.