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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.

ZENAYDA LIZBETH NALDI,

Defendant and Appellant.

B275617

(Los Angeles County  
Super. Ct. No. SA072799)

APPEAL from an order of the Superior Court of Los Angeles County, Lauren Weis Birnstein, Judge. Affirmed.

Law Office of Zulu Ali and Zulu Ali for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Ilana

Herscovitz, Deputy Attorneys General, for Plaintiff and Respondent.

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In 2009, Zenayda Lizbeth Naldi (Naldi), pursuant to a plea agreement, pleaded no contest to theft from an elder or dependent adult (Pen. Code, § 368, subd. (d)).<sup>1</sup> In 2016, almost seven years later, Naldi moved to withdraw her plea under section 1016.5, which permits withdrawal of a guilty plea when the trial court did not advise the defendant of possible adverse immigration consequences of her plea. After a hearing, the trial court denied the motion based on its factual finding that Naldi had notice of the statutorily-required information before she agreed to plead no contest. Naldi appeals that decision. We affirm.

## **BACKGROUND**

### **I. The plea**

On November 24, 2009, Naldi entered into a plea agreement—in exchange for pleading no contest, the People agreed to the following: Naldi would be placed on five-years formal probation; in addition, she would be required to make restitution to the victim, perform 35 days of community service at any nonprofit agency, and one day of community service at the Museum of Tolerance; if she complied with these terms, Naldi’s conviction would be reduced to a misdemeanor.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

As part of the plea agreement, Naldi signed and initialed a multi-page document entitled, “FELONY ADVISEMENT OF RIGHTS, WAIVER AND PLEA FORM.” Among other things, Naldi acknowledged the following on the plea form: that she had a “full opportunity” to discuss her case with her attorney, including the “consequences of [her] plea.” Naldi specifically affirmed that “I understand that if I am not a citizen of the United States, I must expect my plea of guilty or no contest *will result in my deportation, exclusion from admission or reentry to the United States, and denial of naturalization and amnesty.*” (Italics added.) Naldi also acknowledged on the plea form that she read the language quoted above and “discussed [it] with [her] attorney.” Naldi’s attorney’s also affirmed that she had “explained each” of Naldi’s rights under the agreement to her, answered “all” of Naldi’s questions with regard to those rights, including “the consequences of the plea.”

At the hearing on her plea, Naldi affirmed for the trial court that, with the assistance of her attorney, she had not only read but also understood the plea form, that she had initialed the form’s boxes and had signed the form, and that she did not have any questions regarding her rights or “the consequences of her plea.” Also at the hearing, Naldi’s counsel stipulated to a “factual basis” for the plea. The resulting minute order noted that Naldi had received the following advisement: “If you are not a citizen, you are hereby advised that a conviction of the offense for which you have been charged will have the consequence of deportation,

exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”

## **II. The motion to vacate**

In February 2016, Naldi filed a motion to withdraw her plea pursuant to sections 1192.5 and 1016.5.<sup>2</sup> According to her supporting declaration, Naldi’s motion was prompted by a deportation order from an “Immigration Judge.” Naldi did not realize the “immigration consequences” of her plea until she was taken into custody by Immigration and Customs Enforcement. Specifically, Naldi alleged that neither the trial court nor her attorney had advised her that she was “subject to mandatory deportation and/or denial of relief, voluntary departure, bar from reentry, and/or any other special consequences” if she pleaded guilty. If she had been properly advised she would not have pleaded guilty, but “would have gone to trial or negotiated another plea.” In addition, Naldi maintained that there was “no inquiry as to the factual bases” of her plea. Besides her declaration, Naldi offered no other evidence in support of her motion.

On May 9, 2016, the trial court denied the motion. In so doing, the trial court rejected the argument offered by Naldi’s counsel that, notwithstanding Naldi’s various acknowledgements on the plea form and at the plea hearing, the various advisements regarding the immigration

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<sup>2</sup> In September 2014, Naldi filed a similar motion, which was denied in January 2015, principally due to Naldi’s affirmations on the plea form.

consequences of her plea “were not adequate.” Reviewing the plea form and the plea hearing transcript, the trial court concluded that Naldi was “adequately advised of [her] immigration rights and consequences.” Naldi timely appealed.

## **DISCUSSION**

### **I. Section 1016.5 and the standard of review**

Section 1016.5, subdivision (a) requires that, before accepting a guilty plea, the trial court “shall administer the following advisement on the record to the defendant: [¶] 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.” (Italics added.)

Section 1016.5, subdivision (b) allows a defendant to move to withdraw his plea and vacate the judgment if “the court fails to advise the defendant as required *by this section* and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the [specified adverse immigration] consequences.” (Italics added.)

“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* (2002) 28 Cal.4th 876, 884, italics added; *People v. Arendtsz* (2016) 247 Cal.App.4th 613, 617 (*Arendtsz*).)

The defendant bears the burden of demonstrating prejudice. (*People v. Arriaga* (2014) 58 Cal.4th 950, 963; *People v. Martinez* (2013) 57 Cal.4th 555, 562, 565.) The accused must prove it was reasonably probable he or she would not have entered a guilty, no contest or nolo contendere if properly advised. (*Martinez*, at pp. 562, 565; accord, *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 210 (*Zamudio*).) Our Supreme Court has explained: “To that end, the defendant must provide a declaration or testimony stating that he or she would not have entered into the plea bargain if properly advised. It is up to the trial court to determine whether the defendant’s assertion is credible, and the court may reject an assertion that is not supported by an explanation or other corroborating circumstances.” (*Martinez*, at p. 565; see *In re Resendiz* (2001) 25 Cal.4th 230, 253–254 [defendant’s self-serving statement not sufficient to show prejudice]; *In re Alvernaz* (1992) 2 Cal.4th 924, 938 [prejudice “must be corroborated independently by objective evidence”].)

We review the trial court’s denial of defendant’s motion to vacate the judgment for an abuse of discretion. (*Arendtsz*, *supra*, 247 Cal.App.4th at p. 617; see *Zamudio*, *supra*, 23 Cal.4th at p. 192.) Under the abuse of discretion standard, we give “abundant deference to the trial court’s rulings.”

(*People v. Jackson* (2005) 128 Cal.App.4th 1009, 1018.) A trial court's exercise of discretion will not be disturbed on appeal unless the court "exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice." (*Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, 1434.) "It is often said that a trial court's exercise of discretion will be reversed only if its decision is 'beyond the bounds of reason.' "*(Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393.)

## **II. The trial court did not abuse its discretion in denying the motion**

On appeal, Naldi concedes she "was given general advisements provided on [her] plea form," but contends they were not adequate because they did not track the language of section 1016.5, subdivision (a) verbatim. Specifically, Naldi contends the advisements were inadequate because they did not include the language "'may have the consequences'" or "'pursuant to the laws of the United States.'"

Naldi's argument is without merit. It is firmly established that "[t]he advisement need not be in the exact language of section 1016.5." (*People v. Araujo* (2016) 243 Cal.App.4th 759, 762.) "[O]nly substantial compliance is required under section 1016.5 as long as the defendant is specifically advised of all three separate immigration consequences of his plea." (*People v. Gutierrez* (2003) 106

Cal.App.4th 169, 174, italics added; *Araujo*, at p. 762 [same]; see generally, *Zamudio, supra*, 23 Cal.4th at pp. 207–208.)

Here, Naldi was advised in writing of all three potential consequences (deportation, exclusion from admission to the United States, and denial of naturalization). “[A] validly executed waiver form is a proper substitute for verbal admonishment by the trial court.” (*People v. Ramirez* (1999) 71 Cal.App.4th 519, 521; see *People v. Gutierrez, supra*, 106 Cal.App.4th at p. 175 [court may rely on executed form]; *People v. Quesada* (1991) 230 Cal.App.3d 525, 533–534 [statutory admonition need not be given orally].) In addition, both Naldi and her attorney affirmed at the time of her plea that she was advised of the potential immigration consequences of her plea, she understood those consequences and had no questions about them.

Even if there was some merit to her claim about the nonsubstantial compliance with section 1016.5, Naldi failed to demonstrated any prejudice. Her vague, self-serving, and uncorroborated declaration submitted in support of her motion is patently insufficient to establish prejudice. (See *Arendtsz, supra*, 247 Cal.App.4th at p. 617.)



**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.