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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RITNESH PRASAD SHARMA,

Defendant and Appellant.

B237072

(Los Angeles County
Super. Ct. No. KA089637)

APPEAL from an order of the Superior Court of Los Angeles County,
Jack P. Hunt, Judge. Affirmed.

Law Offices of Brian D. Lerner and Brian D. Lerner for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and
Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.

Ritnesh Prasad Sharma appeals from the denial of a motion to set aside a negotiated plea of no contest to first degree burglary on the ground he was not properly advised of the immigration consequences of his plea. We affirm the trial court's post-judgment order denying the motion.¹

BACKGROUND

On June 14, 2010, appearing with private counsel, Sharma pleaded no contest to first degree burglary. Before entering his plea, Sharma was informed of his constitutional rights and the consequences of his plea orally and in writing. The trial court specifically advised Sharma, "Among the consequences outlined on this plea form are immigration consequences. They may or may not apply to you depending upon your citizen status in this country. In the event you are not a legal citizen of the United States, your plea today will subject you to deportation from this country, exclude you from reentry into the United States, and deny you naturalization or amnesty pursuant to the law of the United States. Do you understand that as well?" Sharma acknowledged that he understood.²

In accordance with the plea agreement, the trial court sentenced Sharma to the lower term of two years in state prison for burglary, and granted the People's motion to dismiss the remaining two counts in the interests of justice.

¹ Citing *People v. Placencia* (2011) 194 Cal.App.4th 489, the People argue the appeal should be dismissed for lack of certificate of probable cause. The issue of whether a certificate of probable cause is required for a defendant to appeal from a post-judgment order denying a motion to vacate a guilty plea for failure to advise of section 1016.5 immigration consequences is currently before the California Supreme Court. (*People v. Arriaga* (2011) 201 Cal.App.4th 429, review granted Feb. 12, 2012, S199339.)

² At the plea hearing, among the rights and consequences that Sharma initialed he understood on the "Felony Advisement of Rights, Waiver, and Plea Form" was the paragraph entitled "Immigration Consequences," which stated, "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."

On April 15, 2011, an Immigration Judge found Sharma removable from the United States based upon his burglary conviction, a decision that was later confirmed by the Board of Immigration Appeals.

Having retained new counsel, Sharma filed a “motion to vacate coram nobis^[3] or reduce sentence to 364 days” on September 15, 2011.⁴ Sharma claimed he had received constitutionally inadequate advice from his retained counsel at the time, and the advisements required by Penal Code⁵ section 1016.5 did not precede entry of the plea.⁶ Sharma’s accompanying declaration asserted he was a citizen of Fiji, but had been a lawful permanent resident of the United States since 1984. He and his son were living with his parents.

The trial court noted Sharma had been given the advisements required by section 1016.5 and summarily denied the motion. Sharma filed a timely notice of appeal.

DISCUSSION

Sharma contends his plea was not knowing and voluntary because the advisements required by that section did not reflect the true immigration consequences and defense counsel failed to advise him of the section 1016.5 immigration consequences of his plea.

³ Sharma’s moving papers did not explain this reference to coram nobis in his statutory motion, or otherwise address the basis for any coram nobis relief. We note that coram nobis will not issue to vacate a plea of guilty on the ground it was induced by ineffective assistance of counsel. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 982-983.)

⁴ The record contains no written opposition filed by the People.

⁵ All further statutory references are to the Penal Code, unless otherwise designated.

⁶ Section 1016.5, subdivision (a) requires that, prior to acceptance of a plea of nolo contendere to any offense punishable as a crime under state law, 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.”

A defendant's right to an advisement about immigration consequences is statutory, not constitutional. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 194.)

The underlying purpose of section 1016.5 is to ensure the defendant has actual knowledge of the possible adverse immigration consequences of a guilty or no contest plea and has had an opportunity to make an intelligent choice to plead guilty or no contest. (*Id.* at pp. 193-194; *People v. Gutierrez* (2003) 106 Cal.App.4th 169, 173.)

“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. [Citations.]” (*People v. Castro-Vasquez* (2007) 148 Cal.App.4th 1240, 1244.) We review the denial of a motion to vacate under section 1016.5 for abuse of discretion. (*Zamudio, supra*, 23 Cal.4th at p. 192.)

On appeal, Sharma does not dispute he was advised by the trial court of the immigration consequences as required by section 1016.5. Instead, Sharma contends, despite this advisement, he did not understand the immigration consequences of his plea and, had he understood, he would have sought a different plea bargain or would have taken the case to trial. Sharma asserts he pleaded no contest to an offense that constitutes an “aggravated felony” under federal immigration laws, and was therefore subject to each of the three immigration consequences mentioned in the section 1016.5 advisements, namely deportation, exclusion from admission and denial of naturalization.⁷ Sharma

⁷ First degree residential burglary constitutes an aggravated felony for immigration purposes as a “crime of violence” under 18 United States Code, section 16 for which the term of imprisonment is at least one year. (8 U.S.C. § 1101(a)(43)(F).) An “alien” convicted of an aggravated felony is conclusively presumed to be removable (8 U.S.C. § 1228(c)), is subject to immediate removal (8 U.S.C. § 1227(a)(2)(A)(iii)), is permanently inadmissible to the United States (8 U.S.C. § 1182(a)(9)(A)(i)), and is permanently barred from establishing good moral character for naturalization purposes (8 U.S.C. § 1101(f)(8)).

maintains the statute, as currently worded, leads a defendant, who is an alien, to believe that a no contest plea would subject him or her to only one of these immigration consequences, presumably because of the words “may have” and “or.” Sharma argues that because an alien convicted of an aggravated felony is subject to all three consequences, the section 1016.5 advisement misrepresents the actual immigration consequences of a no contest plea. Sharma urges that the statute be amended to read, “A conviction which constitutes an aggravated felony under the immigration laws of the United States will have the consequences of deportation, exclusion from admission to the United States, and denial of naturalization pursuant to the laws of the United States.”

Sharma’s claim he did not enter a knowing and voluntary plea because the section 1016.5 advisement did not reflect his true immigration consequences is belied by the record. Sharma ignores the fact that the section 1016.5 advisement as orally given by the trial court and as written on the “Felony Advisement of Rights, Waiver, and Plea Form” informed Sharma that his plea “will” subject him to all three immigration consequences, as stated in the conjunctive. Sharma acknowledged both orally and in writing that he understood the section 1016.5 advisement conveyed to him. Thus, the section 1016.5 advisement conveyed to Sharma went beyond what the statute requires, by making Sharma fully aware of the actual immigration consequences of his no contest plea.

Because Sharma was given a proper section 1016.5 advisement, his additional claim of ineffective assistance of counsel based on his attorney’s purported failure to properly advise him “is not a wrong encompassed by the statute.” (*People v. Kim* (2009) 45 Cal.4th 1078, 1107, fn. 20; see *People v. Chien* (2008) 159 Cal.App.4th 1283, 1285.) The proper vehicle is a petition for writ of habeas corpus. (*In re Resendiz* (2001) 25 Cal.4th 230, 237, fn. 2.)

DISPOSITION

The order is affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.