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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. HIREN JAGDISH PATEL, Defendant and Appellant.	H052287 (Santa Clara County Super. Ct. No. CC631253)

In 2007, Hiren Patel was convicted of, among other things, an attempted lewd act on a minor and placed on probation for three years. Afterwards, based on this conviction, the Department of Homeland Security commenced proceedings against Patel, which resulted in a removal order. In this case, Patel moved to vacate his convictions under Penal Code section 1473.7, subdivision (a)(1) on the ground that, when he went to trial, he did not understand the immigration consequences of conviction. (Subsequent undesignated statutory references are to the Penal Code.) In particular, Patel argued that, if he had understood those consequences, he would have negotiated an "immigration-acceptable" plea bargain. The trial court denied Patel's motion, finding that his testimony concerning his understanding of the immigration consequences of conviction was not credible and that he failed to show a reasonable probability that he could have obtained a "immigration-acceptable" plea bargain.

Patel now appeals. He renews his argument that he did not understand the immigration consequences of conviction. He also contends that, if he had understood these consequences, he might have obtained an "immigration-acceptable" plea bargain.

Conducting an independent review of Patel's motion, we conclude that Patel has not shown a substantial probability that he would have sought and obtained an immigration-acceptable plea bargain and therefore has failed to demonstrate prejudicial error. We therefore affirm the denial of Patel's motion to vacate his convictions.

I. BACKGROUND

A. The 2007 Convictions

As recounted in this District's opinion affirming Patel's convictions (*People v. Patel* (Oct. 3, 2008, H031617) [nonpub. opn.] (*Patel*)), in May 2006 Patel started a conversation in an online chat room with "Kelly," who he believed was a 12-year-old girl. In reality, "Kelly" was a police officer conducting a sting operation. Patel asked "Kelly" about her sexual experience and interest, and he set up a meeting in a park by her home. When Patel arrived, he was arrested, and after waiving his *Miranda* rights he admitted that he had chatted with "Kelly" and sought to meet her. Police later seized Patel's computer, which confirmed that Patel had chatted with "Kelly."

In January 2007, Patel was charged with an attempted lewd act on a child under the age of 14 in violation section 288, subdivision (a) and attempted distribution of harmful matter to a minor in violation of section 288.2, subdivision (b). The case went to trial in late March 2007, and on April 2, 2007, after deliberating for less than a day, the jury convicted Patel of both offenses.

In June 2007, the trial court suspended Patel's sentence, placed him on formal probation for three years and imposed a four-month jail term. Patel appealed but, modifying one condition of probation, this court affirmed. (*Patel, supra,* H031617, p. 13 [nonpub. opn.].)

B. The Removal Proceedings

In March 2012, the Department of Homeland Security arrested Patel and issued a notice to appear for removal in light of his conviction for an attempted lewd act on a minor, which is an aggravated felony under the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.). After the Ninth Circuit held in *Negrete-Ramirez v. Holder* (2014) 741 F.3d 1047 that noncitizens such as Patel are eligible for adjustment of status and waiver of inadmissibility under 8 U.S.C. § 1182(h), an immigration judge granted Patel's waiver and application for adjustment. However, the Board of Immigration Appeals reversed and entered a final order of removal. In February 2023, the Ninth Circuit denied a petition for review.

C. The Motion to Vacate the 2007 Convictions

The following year, in February 2024, Patel moved in Santa Clara County Superior Court to vacate his 2007 convictions under section 1473.7. Patel contended that, when he decided to go to trial, he did not understand the immigration consequence of conviction and that he was prejudiced because, if he had understood those consequences, he would have tried to obtain a plea bargain with an "immigration-acceptable" outcome. The District Attorney opposed the motion. In support of that opposition, he submitted declarations from Steven Moore, the prosecutor who tried the 2007 case, and Victoria Brown, Moore's supervisor. Moore stated that Brown had the authority to negotiate offers, but added that, for public safety reasons, he would not have made an immigration-neutral plea offer. Moore also stated that he would not have made an immigration-neutral offer if Patel had agreed to serve a lengthier prison sentence. In her declaration, Brown similarly stated that "the People expected an as-charged plea due to public safety reasons" and that she would not have approved an immigration-neutral offer even if Patel had offered to serve more lengthy custodial time for "public safety reasons" because "the Defendant appeared to be a predatory child molester."

In April 2024, the trial court held a hearing on Patel's motion. At the hearing, Patel testified in support of his motion and also presented testimony from his trial counsel. The District Attorney presented testimony from Moore, the prosecutor who tried the case. Moore testified that in 2007, for public safety reasons, the District Attorney generally did not agree to immigration-neutral dispositions for felony sex charges. On cross-examination, defense counsel elicited that exceptions to this general practice were made, but did not ask whether any "immigration-acceptable" deal might have been made in Patel's case.

After hearing argument from counsel, the trial court adjourned the hearing. Two weeks later, the court denied Patel's motion. It noted that this case was unusual in that Patel had decided to proceed to trial rather than entering into a plea bargain, but concluded that he nonetheless was entitled to move to vacate under section 1437.7. However, based on the testimony from Patel's trial counsel, the court concluded that Patel had understood the immigration consequences of the convictions risked by trial and that Patel's testimony was not credible in that he continued to minimize or deny his wrongdoing. Applying the reasonable probability standard, the trial court also found that Patel had not shown prejudice. In light of the testimony from the prosecutor and his supervisor, the trial court found that there "didn't appear to be any middle ground" that would have allowed Patel to obtain a plea deal with less severe immigration consequences and that Patel's claim that he would have sought and obtained such a resolution was "speculative."

After the order denying the motion to vacate was entered, Patel filed a timely notice of appeal.

II. DISCUSSION

Patel argues that the trial court erred both in finding that he understood the immigration consequences of conviction and that, in any event, he was not prejudiced. In

reviewing the denial of a motion to vacate under section 1473.7, we apply independent review. (*People v. Padron* (2025) 109 Cal.App.5th 950, 959 (*Padron*).) Under this standard, "we defer to any 'factual findings based on the trial court's personal observations of witnesses,' but otherwise ' "exercise[] [our] independent judgment to determine whether the facts satisfy the rule of law." ' " (*Ibid.*) Applying such judgment, we conclude that Patel's motion should be denied because, even if Patel had misunderstood the immigration consequences of conviction, he was not prejudiced by that misunderstanding.

A. Section 1473(a)(1)

Under section 1473.7, a person who is no longer in criminal custody may move to vacate a conviction on the ground that the conviction was "legally invalid due to 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 conviction or sentence." (§ 1473.7, subd. (a)(1).) To establish that a conviction was legally invalid on this ground, a "defendant must first show that he did not meaningfully understand the immigration consequences" of his litigation strategy. (*People v. Espinoza* (2023) 14 Cal.5th 311, 319 (*Espinoza*).) "Next, the defendant must show that his misunderstanding constituted prejudicial error." (*Ibid.*)

Under section 1437.7, a misunderstanding of immigration consequences is prejudicial if there is a "reasonable probability" that, absent the misunderstanding, the defendant would have adopted a different strategy. (*Espinoza*, *supra*, 1 Cal.5th at p. 319.) Thus, where a defendant accepts a plea bargain, a misunderstanding is prejudicial if " 'the defendant would have rejected the plea if the defendant had correctly understood its actual or potential immigration consequences.' " (*Ibid.*) Similarly, where, as here, a defendant "decides to go to trial, loses, and is sentenced, the defendant can establish prejudice" under section 1473.7 "by showing there is a reasonable probability that (1) he

or she would have done something differently—that is, would have taken another 'path' [citation]— and (2) the alternate path would have resulted in an immigration-neutral outcome." (*People v. Carrillo* (2024) 101 Cal.App.5th 1, 20 (*Carrillo*).)

"A reasonable probability does not mean more likely than not." (*Carrillo*, *supra*, 101 Cal.App.5th at p. 19.) Instead, a reasonable probability is "merely a reasonable chance, which is more than an abstract possibility"—that is, a "probability sufficient to undermine confidence in the outcome." (*Ibid.*) In determining whether there was a reasonable probability that a defendant would have adopted a different strategy, courts "weigh all relevant circumstances." (*Espinoza*, *supra*, 14 Cal.4th at p. 321.) Such circumstances include not only the defendant's ties to the United States, but also "whether alternative, immigration-safe dispositions were available" and, in particular, "whether the defendant would have had reason 'to expect or hope' that a plea deal without immigration consequences 'would or could have been negotiated.' " *(Id*. at pp. 323, 324.)

B. Analysis

In arguing that he was prejudiced by his purported misunderstanding of the immigration consequences of conviction, Patel does not challenge the testimony of the prosecutor and the prosecutor's supervisor that the People would not have agreed to an immigration-neutral plea bargain. Instead, Patel asserts that he would have been willing to accept a longer sentence or sex offender registration in exchange for an "immigration-acceptable" plea bargain subjecting him to deportation but allowing him to "argue for discretionary relief in immigration proceedings." We are not persuaded.

In the first place, Patel has not explained what "immigration-acceptable" plea bargain could have been negotiated. Patel notes that he was convicted of an attempted lewd act with a minor, which is an aggravated felony and made him ineligible for certain types of discretionary relief such as asylum or cancellation of removal. (*People v. Curiel*

(2023) 92 Cal.App.5th 1160, 1174.) In addition, citing to his memorandum in the trial court, Patel contends that he might have been charged with "[a]lternative offenses"—attempted false imprisonment, attempted sexual battery, assault, or attempted child molestation—that might not have become aggravated felonies. However, Patel does not explain what additional defenses against deportation he would have had under such an "immigration-acceptable" plea bargain, much less how these additional defenses would have increased his chances of avoiding deportation. As a consequence, there is no way to tell whether there is a reasonable probability that Patel would have pursued an "immigration-acceptable" plea bargain rather than go to trial.

Patel also offered no evidence that an "immigration-acceptable" plea bargain was available. Both the prosecutor and his supervisor submitted declarations stating that an immigration-neutral offer would have been declined, even in exchange for a lengthier prison sentence, and there is no hint in either declaration that the District Attorney would have been amenable to an "immigration-acceptable" bargain. To the contrary, the supervisor declared that, in light of public safety concerns, the District Attorney expected an "as-charged plea" in this case. In addition, while defense counsel asked the prosecutor at the section 1473.7 hearing whether the general policy against immigration-neutral offers was subject to exceptions, he did not ask about the possibility of an "immigration-acceptable" plea bargain in his case. Moreover, unlike defendants in other cases, Patel did not submit a declaration from an immigration specialist that such a plea deal could have been pursued. (See, e.g., *People v. Padron* (2025) 109 Cal.App.5th 950, 964.) As a consequence, there is no basis in the record for finding any possibility that an "immigration-acceptable" plea bargain could have been obtained.

Patel asserts that "[t]he *prosecution*'s evidence lacked . . . any proof that the prosecution would have rejected all immigration acceptable outcomes." (Italics added.) That is true. However, it is not the prosecution's burden to show that Patel's presumed

misunderstanding was harmless. Instead, "the *defendant* must show that his misunderstanding constituted prejudicial error." (*Espinoza, supra*, 14 Cal.5th at p. 319, italics added; see also *People v. Vivar* (2021) 11 Cal.5th 510, 534 ["A moving party demonstrates prejudice by showing that in the absence of the error regarding immigration consequences, it's reasonably probable the moving party would not have entered the plea."].)

Finally, even if an immigration-acceptable plea bargain had been available, and there were reason to think that the prosecution would have offered such a bargain in exchange for a longer term of incarceration, we are not persuaded that there is a reasonable probability that Patel would have accepted that bargain. It is true that Patel had significant ties to the United States: Although Patel had been in the United States for less than 10 years when he was sentenced, his wife and son are United States citizens; his parents, brother, and numerous aunts, uncles, and cousins live in this country; and he had what appears to be a successful career here. However, even with a conviction for an aggravated felony, Patel had a substantial defense against deportation that prevailed before the immigration judge, and he failed to identify what additional defenses he would have had under an "immigration-acceptable" plea bargain, much less show that those defenses would have been stronger than the one he asserted. As a consequence, there is no reason to believe that Patel would have accepted more time in jail or in prison in exchange for the additional defenses available under an immigration-acceptable plea bargain.

Patel did testify that he would have agreed " 'to register as a sex offender' " and "to spend a year in County Jail in order to avoid mandatory deportation consequences," but there is no evidence that such a deal was available. Similarly, while Patel testified that he would have been willing to make a deal in which he was "potentially deportable, but eligible to obtain waivers" instead of a conviction "where you're ineligible for

waivers," this testimony is irrelevant because Patel's convictions did not make him ineligible for a waiver of inadmissibility under 8 U.S.C. § 1182(h).

We therefore conclude that Patel has not shown a reasonable probability that he would have entered into a plea bargain rather than go to trial and therefore has not shown any prejudicial error warranting relief under section 1437.7.

III. DISPOSITION

The order dated April 16, 2024 denying appellant's motion for post-conviction relief under section 1473.7 is affirmed.

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BROMBERG, J.

WE CONCUR:

_____
DANNER, ACTING P. J.

_____
KULKARNI, J.*

People v. Patel
H052287

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