

IN THE COURT OF APPEALS OF IOWA

No. 3-433 / 12-0471

Filed July 24, 2013

SEGLAM WONG,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Plymouth County, Duane E. Hoffmeyer, Judge.

Senglam Wong appeals the district court ruling denying his application for postconviction relief. **AFFIRMED.**

Sean M. Conway of Dornan, Lustgarten & Troia, PC LLO, Omaha Nebraska, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, and Darin J. Raymond, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Senglam Wong appeals the district court ruling denying his application for postconviction relief. In his application, Wong argued his attorney had a duty to advise him of the immigration consequences of his plea, under the rule announced in *Padilla v Kentucky*, 559 U.S. 356 (2010). On appeal, Wong argues the district erred in finding he failed to establish the prejudice prong of his ineffective-assistance-of-counsel claim. Because we find the rule announced in *Padilla* does not apply retroactively, we affirm.

I. Background Facts and Proceedings

Senglam Wong is a forty-three-year-old native of Singapore who has lived in the United States since the age of nine. In 1981 he attained permanent resident status. In May 2009, Wong was charged with possession with the intent to deliver marijuana, in violation of Iowa Code section 124.401(1)(d) (2009); failure to affix a drug tax stamp, in violation of Iowa Code section 453B; and one count of prohibited acts, in violation of Iowa Code section 124.402(1)(e). Wong entered into an agreement on September 2, 2009, and pled guilty to possession with the intent to deliver marijuana and prohibited acts. The State agreed to dismiss the failure-to-affix-a-tax-stamp charge at the time of sentencing. Pursuant to the agreement, Wong signed a document, which read, “I understand that a criminal conviction, deferred judgment, or deferred sentence may affect my status under federal immigration laws.”

Wong appeared at the plea hearing on October 30, 2009. During the hearing, a discussion took place on the record regarding the possible impact of a

guilty plea on Wong's immigration status. After learning he was not a U.S. citizen, the court raised the possibility of immigration consequences and asked Wong if he had given those consequences careful consideration. Wong indicated he had done so. Following an off-the-record discussion, Wong's attorney further addressed the issue, saying, "I don't know that we need to visit about it more. He's a permanent resident. I'm not an immigration attorney. I do not believe a conviction of delivery of marijuana would have consequences such that he would be deported, but I am not an immigration attorney." The district court judge accepted this explanation, and the hearing later concluded. Wong was sentenced to a suspended prison sentence, two years of probation, drug treatment, and community service.

On May 15, 2011, U.S. Immigration and Customs Enforcement (ICE) agents arrived at Wong's home and questioned him about his criminal history. Wong acknowledged he had been convicted of two drug related offenses. ICE agents subsequently placed Wong under arrest as he was subject to mandatory deportation due to the nature of his crimes. Wong later filed his application for postconviction relief and argued his counsel was ineffective, under *Padilla v. Kentucky*, for failing to advise him of the immigration consequences of his guilty plea.

The district court denied the application for postconviction relief on February 7, 2012. In the ruling, the district court first decided that Wong could apply the rule announced in *Padilla* retroactively. Turning to the ineffective-assistance-of-counsel claim, the district court decided Wong's counsel had

performed ineffectively but denied the application after finding Wong failed to prove prejudice.

II. Standard of Review

We normally review applications for postconviction relief for errors at law. *Perez v. State*, 816 N.W.2d 354, 356 (Iowa 2012). When a constitutional error is alleged, however, our review is de novo. *Id.*

III. Discussion

Wong argues his counsel was ineffective for failing to advise him of the immigration consequences of his plea. The district court agreed counsel was ineffective but found Wong failed to prove the necessary prejudice. Before the district court could reach the substantive issue, however, it determined *Padilla* could apply retroactively to Wong's claim. At the time of the ruling, the district court was operating without clear direction concerning the retroactivity of *Padilla*. In the months following the ruling, the issue of retroactive application of *Padilla* has been settled.

The issue was squarely considered by the United State Supreme Court in *Chaidez v. United States*, 133 S. Ct. 1103 (2013). In *Chiadez*, the Court held that *Padilla* created a new rule. 133 S. Ct. at 1108. Because it is a new rule, "defendants whose convictions became final prior to *Padilla* therefore cannot benefit from its holding." *Id.* at 1113. Our supreme court has recognized that we are bound by the *Chiadez* decision. See *Nguyen v. State*, No. 11-0549, 2013 WL 1170326, at *2 (Iowa Mar. 22, 2013).

Padilla was decided on March 31, 2010. Wong entered his plea on October 30, 2009, and was sentenced on November 13, 2009, before *Padilla*. Wong cannot use the rule announced in *Padilla* retroactively, and therefore his trial counsel was under no duty to advise him of the immigration consequences of his plea. Accordingly, his application for postconviction relief fails.

AFFIRMED.