

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

UWADIA P. OSAGHAE,

Defendant-Appellee.

UNPUBLISHED

May 8, 1998

No. 201947

Recorder's Court

LC No. 92-007529

Before: Neff, P.J, and White and D. A. Teeple,* JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the trial court's order granting defendant's motion for relief from judgment and his motion to withdraw guilty plea. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On July 1, 1992, defendant pleaded guilty to a charge of unlawful possession of another's financial transaction device, contrary to MCL 750.157p; MSA 28.354(15). He was subsequently convicted in federal court of aiding and abetting bank fraud. Defendant served his state and federal sentences without taking an appeal.

At the time of his convictions, defendant had been a resident alien in the United States for over ten years. Federal immigration law was amended in 1996, mandating the deportation of any resident alien with two or more convictions involving moral turpitude. 8 USC 1251(2)(A)(ii). The statute eliminated the possibility of waiver of deportation. 8 USC 1182(c).

Defendant moved to withdraw his plea, based on the unanticipated mandatory deportation and the trial court's failure to advise him of his right to testify. The trial court granted defendant's motions, and this Court granted plaintiff's application for leave to appeal.

Plaintiff argues that the trial court erred in granting relief from judgment where defendant failed to establish good cause for his failure to raise this issue on appeal. MCR 6.508(D)(3)(a). Defendant

* Circuit judge, sitting on the Court of Appeals by assignment.

could have raised on appeal his claim that he was not advised of his right to testify. Failure to advise defendant of his right to testify did not render the plea involuntary. MCR 6.508(D)(3)(b)(ii). However, defendant could not raise the deportation issue until federal law was amended in a bill signed into law April 24, 1996. Where defendant could not raise this issue on direct appeal or by an earlier motion, MCR 6.508(D)(3) is inapplicable.

We cannot agree that the trial court abused its discretion in granting defendant's motion to withdraw his guilty plea. *People v Haynes (After Remand)*, 221 Mich App 551, 558; 562 NW2d 241 (1997). In *People v Kadadu*, 169 Mich App 278; 425 NW2d 784 (1988), the defendant pleaded guilty to a drug offense, and was subsequently subject to mandatory deportation proceedings pursuant to 8 USC 1251(a)(11). The trial court granted the defendant's motion to withdraw his guilty plea to the drug offense, based on the defendant's affidavit stating that he was unaware that his conviction would subject him to deportation. This Court affirmed the trial court, finding that it did not abuse its discretion in allowing defendant to withdraw his plea.

There is more support for allowing defendant to withdraw his plea in the instant case. Rather than claiming ignorance of the law, defendant was subjected to a provision that did not exist at the time of his plea. Given this change in circumstances, the trial court did not abuse its discretion in allowing defendant to withdraw his plea.

Affirmed.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Donald A. Teeple