STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0286

Blama Jamie Koilor, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 25, 2021
Reversed and remanded
Bryan, Judge

Clay County District Court
File No. 14-CR-17-3619

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Elijah Peter Hartsell, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the postconviction court's denial of appellant's petition to withdraw his guilty plea, appellant argues that his plea was unintelligent. Because

appellant lacked sufficient knowledge regarding the deportation consequences of his guilty plea, we reverse and remand.

FACTS

On October 9, 2017, respondent State of Minnesota charged appellant Blama Jamie Koilor Jr. with three counts of theft under Minnesota Statutes section 609.52, subdivision 2(a) (2016), and one count of motor-vehicle theft under subdivision 2(a)(17). On January 29, 2018, Koilor filed a "Petition to Enter Plea of Guilty in Felony Case" and agreed to plead guilty to theft of a motor vehicle. According to the plea petition, the state agreed to dismiss the remaining counts, and to recommend a "Stay of Imposition, credit for time served, $1,000 + costs, restitution, 5 years supervised probation." One sentence in the plea petition stated, "My attorney has told me and I understand that if I am not a citizen of the United States, my plea of guilty may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen." Koilor also filed an *Alford*[1] addendum to his guilty plea, asserting his innocence, but agreeing that there was "a substantial likelihood" that he would be found guilty based on the evidence the state presented.

At the plea hearing, the district court read the charged offense to which Koilor agreed to plead guilty. The district court described the offense as a felony, asking the following question: "[T]o the charge contained in the second amended complaint, in Count

[1] An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense because there is sufficient evidence for a jury to find the defendant guilty at trial. *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)).

4, that on September 5, 2016, in Clay County, you committed the felony offense of theft of a motor vehicle, in violation of Statute 609.52, Subd. 2(a)(17), how do you plead: Guilty or not guilty?" Koilor stated, "Guilty." Later during the hearing, the attorney for the state confirmed that the offense was a felony, asking whether Koilor understood "that the count to which you're pleading guilty to is a felony offense." Koilor answered "Yes." The district court asked Koilor if there was anything in the petition that he did not understand or agree with, and Koilor replied "No." At the plea hearing, Koilor also testified that he was born in Liberia, but Koilor answered "Yes" when the state's attorney asked whether he was "a citizen of the United States." Koilor then acknowledged the anticipated trial evidence and confirmed that he believed a jury would find him guilty of the charged felony offense based on that evidence.

Prior to sentencing, the district court ordered a presentence investigation report (PSI). Under the heading "Offense Level" in the PSI, the author of the report indicated that Koilor pleaded guilty to a felony. Elsewhere, the PSI refers to the offense as a "felony theft offense." The PSI noted that, based on Koilor's criminal history score of zero, the sentencing guidelines supported a presumptive stayed sentence of twelve months and one day. The author recommended that Koilor "be sentenced to 12 months and 1 day with a Stay of Adjudication and be placed on Supervised Probation for up to 5 years." Regarding Koilor's immigration status, the PSI indicated that Koilor was "born in Liberia and moved to the United States when he was 15 years old." Koilor reported that his family lived in Philadelphia and that he had not had contact with them since early 2017. At the sentencing hearing the parties did not discuss the immigration history detailed in the PSI. The district

court stayed adjudication of the charged offense and placed Koilor on supervised probation for up to five years.

Koilor violated his probation, and on September 17, 2018, the district court revoked the previous stay of adjudication but granted a stay of imposition. Koilor again violated his probation, and on December 12, 2018, the district court revoked the stay of imposition, and imposed the guidelines sentence noted in the original PSI: a sentence of 12 months and one day. The district court stayed execution of this sentence, required Koilor to serve 90 days in the county jail, and placed Koilor back on supervised probation. Koilor violated his probation a third time, and on April 22, 2019, Koilor appeared in court and requested to execute his sentence. The district court granted Koilor's request, revoking the stay of execution and ordering Koilor to serve what remained of the previously imposed guidelines sentence. Shortly after this revocation hearing, the United States Department of Homeland Security began removal proceedings against Koilor.

On November 25, 2019, Koilor filed a pro se petition for postconviction relief. Koilor argued that he was not informed "of the clear immigration consequences of his guilty plea," and that he received ineffective assistance of counsel. The public defender's office then assisted Koilor with his petition and filed a supplemental petition for postconviction relief on the basis that his plea was unintelligent. At the evidentiary hearing that followed, Koilor indicated that he wanted to "withdraw" his pro se motion requesting relief due to ineffective assistance of counsel[2] and that he wished to "proceed only on the

[2] Appellate courts have analyzed claims of ineffective assistance of guilty-plea counsel separately from claims regarding whether a person intelligently pleaded guilty. *E.g.*, *State*

argument that his plea was not intelligently entered." Koilor testified that he did not discuss deportation consequences of his plea with his attorney. Specifically, Koilor testified that no one advised him that his guilty plea would result in deportation. In addition, Koilor testified regarding his mistaken belief about his citizenship status at the time of the guilty plea. Koilor stated that he came to the United States at the age of 15 and believed he was a citizen at the time of the plea because his parents had become citizens. Since the time of his guilty plea, Koilor learned from an immigration official that he was not a citizen. This official informed Koilor that because his parents became citizens after he turned 18, their naturalization did not automatically make Koilor a citizen as well. Koilor testified that he did not know there was an age limit. When asked if he would have pleaded guilty if he had understood his immigration status, Koilor replied "No" and that if he "knew it would trigger a removal proceeding . . . [he] would have probably went to trial and it would have been a different outcome."

The district court denied Koilor's petition for postconviction relief. The district court determined that Koilor received a "general warning about the potential immigration consequences of his plea," and concluded that this warning was sufficient. Koilor appeals.

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v. Ecker, 524 N.W.2d 712 (Minn. 1994) (addressing claim of ineffective assistance of plea counsel as part of the voluntariness of the plea). In this case, both parties agree that a failure to provide an adequate advisory regarding deportation renders a plea unintelligent and invalid. Therefore, we do not address the effectiveness of counsel's assistance or determine whether constitutionally competent counsel would have taken any additional steps to verify or determine Koilor's citizenship status.

DECISION

Koilor challenges the intelligence of his plea, relying on *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010), to argue that specific, detailed advice about the immigration consequences of his guilty plea was required. Because *Padilla* applies and Koilor was not advised of the clear deportation consequences of pleading guilty to felony theft, we reverse.

A defendant has no absolute right to withdraw his guilty plea, but withdrawal is mandated if it is necessary to avoid a manifest injustice, such as when the plea is not accurate, voluntary, and intelligent. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Whether a plea is intelligent depends on what the defendant knew at the time that the guilty plea was entered, *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017), and requires that the defendant understand the charges brought, the rights waived, and the consequences of entering a guilty plea, *State v. Raleigh*, 778 N.W.2d 90, 96 (Minn. 2010), including immigration consequences, *Campos v. State*, 816 N.W.2d 480, 482-83 (Minn. 2012) (stating that in *Padilla*, the United States Supreme Court held that a person's constitutional rights "include[] the right to be informed about the deportation consequences of a guilty plea"). We review conclusions regarding the validity of a guilty plea de novo. *Raleigh*, 778 N.W.2d at 94.

The Supreme Court recognized that "[i]mmigration law can be complex," and there will "undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain." *Padilla*, 559 U.S. at 369. Where the applicable immigration statutes cannot provide certainty regarding deportation, the Constitution only requires that the defendant be informed of a general risk of adverse immigration

consequences. *Id*. at 369. However, in those situations where the charged offense is one for which the deportation consequence is "truly clear," the general advisory is not enough:

> *Padilla* establishes that criminal-defense attorneys must take some affirmative steps before allowing a noncitizen client to accept a plea deal. First, at a minimum, an attorney must review the relevant immigration statutes to determine whether a conviction will subject the defendant to a risk of removal from the United States. Second, if conviction of the charged offense clearly subjects the defendant to removal from the United States, the attorney has a constitutional obligation to advise the defendant of this fact before he or she enters a guilty plea. If it does not, then a general advisory warning about the possible immigration consequences of a guilty plea is sufficient.

Sanchez v. State, 890 N.W.2d 716, 721 (Minn. 2017) (applying and explaining *Padilla*). To determine whether *Padilla* and *Sanchez* require a more specific and strongly worded advisory, a district court reviews "the relevant immigration statutes." *Id.* When that review reveals that the charged offense is one of the select group of crimes for which deportation is certain, then a general advisory is not sufficient. *Id.*

In this case, the parties agree that Koilor received only a general advisory prior to entering a guilty plea. The parties also agree that Koilor was charged with and entered an *Alford* plea to felony theft of a motor vehicle under Minnesota Statutes section 609.52, subdivision 2(a)(17), which carried a maximum sentence of five years imprisonment, yielded a presumptive guidelines term of 12 months and one day, and ultimately resulted in an executed sentence of 12 months and one day. The Minnesota Supreme Court has previously determined that this specific offense is an aggravated felony under federal law. *Campos*, 816 N.W.2d at 484 n.3 ("Additionally, a theft offense (including receipt of stolen

property) or burglary offense for which the term of imprisonment is at least one year constitutes an aggravated felony under the [Immigration and Nationality Act (INA)]." (quotation omitted)); *see also* 8 U.S.C. § 1227(a)(2)(A)(iii) (2018) (establishing that a conviction for an aggravated felony renders a noncitizen automatically removable from the United States). Therefore, the Constitution required an advisory that was never given regarding the consequences of his guilty plea,[3] and Koilor's guilty plea was not intelligent.

The state argues that the heightened advisory was not required in this case because there was a lack of clarity regarding whether Koilor was a United States citizen.[4] We are not convinced for two reasons. First, Koilor's misunderstanding does not change the certainty that a conviction for the charged theft offense rendered him automatically

[3] The state does not dispute Koilor's contention that the failure to provide an adequate advisory regarding deportation renders a plea unintelligent and invalid. Instead, the state's argument presumes the existence of Koilor's constitutional right to know the deportation consequences of his guilty plea. Because the state accepts this premise and because we are limited to the arguments as they are presented to us, for purposes of our review in this case, we will assume without deciding that *Padilla* abrogated the portion of *Alanis v. State*, 583 N.W.2d 573, 578-79 (Minn. 1998), that held that ignorance of deportation consequences does not entitle a criminal defendant to withdraw a guilty plea. *See, e.g.*, *Campos*, 816 N.W.2d at 486-87; *see also Sanchez*, 890 N.W.2d at 720 (noting abrogation of *Alanis*); *Taylor v. State*, 887 N.W.2d 821, 824 (Minn. 2016) (same).

[4] To the extent that the state's argument can also be interpreted as questioning whether Koilor pleaded guilty to a felony offense, we cannot agree. The plea petition, the plea colloquy, the PSI, and the guidelines analysis all show that the state and Koilor believed the offense was a felony level offense at the time of the plea and prior to the sentencing hearing. There can be no uncertainty regarding the offense level in this case, given the number and frequency of these references and the absence of any suggestions to the contrary. In addition, the district court ultimately imposed a sentence of more than one year, and federal immigration law makes aggravated felonies deportable regardless of how much time passes between an admission and a conviction. *See* 8 U.S.C. § 1227(a)(2)(A)(iii) (requiring deportation for any person "who is convicted of an aggravated felony *at any time* after admission" (emphasis added)).

deportable under federal law. While there may be aspects of the facts or the law that are unclear in a particular case, *Padilla* and *Sanchez* do not permit the general advisory in the face of just any legal or factual uncertainty. Rather, they require a review of "the relevant immigration statutes," such as section 1227, to determine whether the charged offense is one for which deportation is certain.

Second, because Koilor had no knowledge of the deportation consequences of his decision when he agreed to plead guilty, and because both parties agree that failure to provide an adequate advisory regarding deportation renders a plea unintelligent and invalid, Koilor's mistaken belief regarding his citizenship supports reversal rather than affirmance. *See, e.g.*, *State v. Jumping Eagle*, 620 N.W.2d 42, 45 (Minn. 2000) (remanding to permit withdrawal of a guilty plea or resentencing where the defendant was mistaken that the offense was not subject to a mandatory conditional release term); *State v. DeZeler*, 427 N.W.2d 231, 235 (Minn. 1988) (remanding to permit withdrawal of a guilty plea where the defendant mistakenly believed that the presumptive sentence would be a stayed sentence, rendering the plea invalid); *State v. Benson*, 330 N.W.2d 879, 880-81 (Minn. 1983) (remanding to permit withdrawal of a guilty plea where the defendant was mistaken regarding the applicable criminal history score); *see also State v. Lopez*, 794 N.W.2d 379, 384 (Minn. App. 2011) ("A district court's failure to comply with a rule 15 inquiry warrants plea withdrawal under the manifest-injustice standard when the failure denies a defendant a constitutional right."). After the plea, Koilor discovered that he was not a citizen in the same way that the defendants in *Jumping Eagle*, *DeZeler*, *Benson*, and *Lopez* learned of their own mistaken beliefs regarding the consequences of their guilty pleas. Post-*Padilla*,

and given the arguments presented in this case, we must provide the same remedy to Koilor that was constitutionally required for defendants who enter guilty pleas with incorrect understandings of the direct consequences of their decisions.

For these reasons, Koilor's mistaken understanding as to his citizenship status[5] and the absence of an advisory regarding the clear deportation consequences of pleading guilty to an aggravated felony, render his guilty plea unintelligent and, therefore, invalid.

Reversed and remanded.

[5] As noted above, we do not address whether Koilor's plea counsel had any obligation to determine Koilor's citizenship status because Koilor withdrew this argument. Instead, our decision is limited to whether Koilor intelligently entered his plea and a review of what Koilor knew at the time that the guilty plea was entered. *See Dikken*, 896 N.W.2d at 877. In addition, our decision is limited to the specific facts of this case, including the testimony provided at the evidentiary hearing that Koilor did not discuss deportation consequences of his plea with his attorney and that Koilor learned from an immigration official after the plea that he was not a citizen.