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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RAFAEL ANGUIANO VALDES,

Defendant and Appellant.

G027216

(Super. Ct. No. 95SF0531)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Kazuharu Makino, Judge. Dismissed.

Law Offices of James C. Angleton and James C. Angleton for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and Garrett Beaumont, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Rafael Anguiano Valdes, a Mexican-born permanent resident of the United States, appeals from an order denying his petition for writ of

error *coram nobis* and motion to vacate judgment. This proceeding arose from defendant's 1995 felony guilty plea. Defendant contends the nature and temporal proximity of his crimes, combined with his failure to timely rehabilitate and the punishment ultimately imposed on him, renders the prospect of adverse immigration consequences a certainty for him. Thus, he argues the "pro forma warning" of "possible" consequences required by Penal Code section 1016.5 was inadequate and entitles him to vacate his plea and conviction. The Attorney General seeks dismissal of the appeal, arguing defendant could have raised this issue in earlier direct appeals. We agree and dismiss the appeal.

## FACTS

In August 1995, defendant pleaded guilty in superior court to spousal battery, vandalism, assault, and battery, and admitted suffering a prior conviction for spousal battery. Before entering the plea, he initialed and signed a guilty plea form which contained a paragraph stating: "I understand that if I am not a citizen of the United States the conviction for the offense[s] charged may have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Defendant represented to the court that he "listened to [a Spanish language] interpreter going over th[e] guilty plea form with [him]." The court placed defendant on five years probation. Nineteen months later, after defendant admitted violating the terms of probation, the court revoked it and imposed a two-year prison sentence.

The United States Immigration and Naturalization Service served defendant with a notice that it was seeking his removal from the country based on his spousal battery conviction. Defendant asserts an immigration judge dismissed

this charge. Subsequently, the INS amended the notice to allege defendant was deportable because his spousal battery conviction and the resulting sentence constituted an aggravated felony which rendered him deportable.

In November 1998, defendant filed motions pursuant to Penal Code section 1385 alternatively seeking to dismiss the charges or have the crimes declared misdemeanors. The court denied the requests. In 1999, defendant filed two unsuccessful petitions for habeas corpus. He also filed a petition for writ of error *coram nobis*, but the matter was taken off calendar before the court ruled upon it. Each of these requests expressly recognized the potential adverse immigration consequences to defendant resulting from his 1995 conviction.

Defendant filed a second petition for a writ of error *coram nobis* and a motion to vacate the conviction under Penal Code section 1016.5 in March 2000. The superior court denied relief on the merits.

## DISCUSSION

The Attorney General contends the present appeal should be dismissed. Respondent cites the general rule that no appeal lies from an order denying a motion to vacate a judgment of conviction (see 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Appeal, § 53, pp. 299-300), and claims defendant could have raised the same issue in a direct appeal from the original judgment or the subsequent order revoking his probation.

A petition for writ of error *coram nobis* is viewed as “similar in scope and effect” to a motion to vacate a judgment. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 982.) Nonetheless, cases hold an order denying the petition is appealable unless it “fail[s] to state a prima facie case for relief, or the petition raise[s] issues that were, or could have been, raised in other proceedings.

[Citation.]” (*People v. Dubon* (2001) 90 Cal.App.4th 944, 950; see also *People v. Gallardo, supra*, 77 Cal.App.4th at p. 982.)

The record reflects defendant cannot satisfy the writ’s prima facie elements. “A writ of *coram nobis* is generally used to bring factual errors or omissions to the court’s attention. [Citation.] ‘The writ will properly issue only when the petitioner can establish three elements: (1) that some fact existed which, without his fault or negligence, was not represented to the court at the trial and which would have prevented the rendition of the judgment; (2) that the new evidence does not go to the merits of the issues of fact determined at trial; and (3) that he did not know nor could he have, with due diligence, discovered the facts upon which he relies any sooner than the point at which he petitions for the writ. [Citations.]’ [Citations.]” (*People v. Ibanez* (1999) 76 Cal.App.4th 537, 544.)

First, defendant does not explain the extended delay in seeking relief from his guilty plea. He concededly knew the 1995 conviction imposed adverse effects on his immigration status long before filing the current petition.

Second, there is no showing of a factual omission satisfying the writ’s first element. Defendant premised his petition on a claim he did not receive an accurate advisement of the prospective adverse immigration consequences when he pleaded guilty in 1995. Before accepting a guilty plea, a court must, in addition to advising the defendant of his or her constitutional rights and obtaining a knowing and intelligent waiver of them, also advise the defendant of the direct consequences of the plea. (*People v. Walker* (1991) 54 Cal.3d 1013, 1022; *People v. Wright* (1987) 43 Cal.3d 487, 491-493.) Cases recognize the consequences of a criminal conviction on a defendant’s immigration status constitute a collateral consequence. (*In re Resendiz* (2001) 25 Cal.4th 230, 242-243; *People v. Limones* (1991) 233 Cal.App.3d 338, 344.) But the Legislature has nonetheless concluded the potential adverse immigration consequences to a noncitizen convicted of a

state criminal offense is sufficiently important to enact Penal Code section 1016.5, which declares defendants must be informed of the possibility a conviction could result in deportation, exclusion from the United States, or a denial of citizenship.

Here, the statutory requirements were met. The record includes defendant's guilty plea form. The form, initialed and signed by defendant, contained the required notice. It adequately advised him of all the potential adverse immigration consequences specified in Penal Code section 1016.5. Although defendant claims he speaks little English, but often acts as though he understands what is being said to him when in fact he does not, defendant does not deny an interpreter read the form to him in Spanish. Finally, defendant expressly admitted to the court the interpreter had reviewed the form with him.

#### DISPOSITION

The appeal is dismissed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

O'LEARY, J.