

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,)	Supreme Court File No.
)	20170362
)	
Plaintiff and Appellee,)	Ward County Criminal No.
)	51-2016-CR-00443
)	
v.)	
)	
Adolfo Contreras-Castillo,)	APPELLANT'S BRIEF
)	
Defendant and Appellant.)	

**APPEAL FROM THE CRIMINAL JUDGMENT IN WARD
COUNTY DISTRICT COURT, NORTH CENTRAL JUDICIAL
DISTRICT, NORTH DAKOTA THE HONORABLE TODD L.
CRESAP, PRESIDING.**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTION.....	¶1
STATEMENT OF ISSUES	¶2
STATEMENT OF CASE	¶3
STATEMENT OF FACTS	¶5
LAW AND ARGUMENT	¶9
I. Whether the district court erred when it did not allow Adolfo Contreras- Castillo to withdraw his guilty plea.....	¶9
CONCLUSION.....	¶18

TABLE OF AUTHORITIES

Cases

<u>Froistad v. State</u> , 2002 ND 52, 641 N.W.2d 86 (N.D. 2002)	¶13
<u>Moore v. State</u> , 2013 ND 214, 839 N.W.2d 834 (N.D. 2013)	¶11
<u>Padilla v. Kentucky</u> , 559 US 356, 130 S.Ct. 1473 (2010)	¶15
<u>State v. Gunwall</u> , 522 N.W.2d 183 (N.D. 1994).....	¶14
<u>State v. Klein</u> , 1997 ND 25, 560 N.W.2d 198 (N.D. 1997)	¶13
<u>State v. Mortrud</u> , 312 N.W.2d 354 (N.D. 1981)	¶16

Statutes, Rules, Codes

N.D. Const. art. VI, § 6	¶1
N.D.C.C. § 12.1-16-01(1)	¶¶3, 4
N.D.C.C. §§ 29-28-03	¶¶1, 10
N.D.C.C. §§ 29-28-06.....	¶10
N.D.C.C. § 29-32.1-14.....	¶1
N.D.R.Crim.P. 11.....	¶¶8,14,16,17

Transcript References:

The Change of Plea and Sentencing for this matter was conducted on August 23, 2016.

The transcript of that hearing is referred to as [Tr.] in this brief. The hearing on the Motion to Withdraw Mr. Contreras-Castillo guilty plea was held on August 10, 2017. The transcript of that motion hearing is referred to as [MH.] in this brief.

JURISDICTION

[¶ 1] The Defendant, Adolfo Contreras-Castillo, timely appealed the district court's Order Denying a Motion to Withdraw his Guilty Plea. The North Dakota Supreme Court has jurisdiction over the appeal of this matter pursuant to N.D.C.C. § 29-32.1-14 which provides that, "[a] final judgment entered under this chapter may be reviewed by the Supreme Court of this state upon appeal as provided by rule of the Supreme Court." The district court had jurisdiction under N.D.C.C. § 29-32.1-01. This Court has appellate jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. §§ 29-28-03; 06.

STATEMENT OF THE ISSUES

[¶ 2] I. Whether the district court erred when it did not allow Adolfo Contreras-Castillo to withdraw his guilty plea.

STATEMENT OF CASE

[¶ 3] This is a criminal matter on direct appeal from North Central Judicial District, Ward County Criminal Judgment. This case was before the district court in State v. Adolfo Contreras-Castillo, 51-2016-CR-00443. The initial complaint was filed with the court on March 2, 2016. The Defendant was charged with Murder in violation of section 12.1-16-01(1), a class AA Felony; two (2) counts of Terrorizing, a class C Felony, in violation of section 12.1-17-04; and one (1) count of Aggravated Assault, a class C Felony, in violation of section 12.1-17-02. Mr. Contreras-Castillo was represented by Attorney Kyle Melia through his change of plea and Attorney Patrick Waters for his motion to withdraw his guilty plea.

[¶ 4] In accordance with a plea agreement, Mr. Contreras-Castillo pled guilty to the crime of Murder, in violation of N.D.C.C. § 12.1-16-01(1), a class AA Felony. The

court ordered fifty (50) years confinement with fifteen (15) years suspended, and 85 percent of that time must be spent in custody. Mr. Contreras-Castillo had credit for 174 days previously served, must complete five (5) years of supervised probation after release from custody, and pay fines and fees totaling \$1,600.00.

[¶ 5] The Final Criminal Judgment was signed in this case on August 23, 2016. Mr. Contreras-Castillo's pro se request to withdraw his guilty plea was filed on September 7, 2016. On June 30, 2017 Attorney Waters filed a Motion and supporting Brief to Withdraw Mr. Contreras-Castillo's guilty plea. On August 10, 2017, a hearing on the Motion to Withdraw Mr. Contreras-Castillo guilty plea was held. The district court entered its order denying Mr. Contreras-Castillo's Motion to Withdraw on September 11, 2017. Mr. Contreras-Castillo timely appealed that order.

STATEMENT OF FACTS

[¶ 6] In accordance with a plea agreement, Mr. Contreras-Castillo pled guilty to the crime of Murder on August 23, 2016. Approximately two (2) weeks after sentencing, Mr. Contreras-Castillo made a pro se request to withdraw his guilty plea. Doc ID#102. Attorney Waters filed a Motion and Brief to Withdraw Mr. Contreras-Castillo's guilty plea on June 30, 2016. Docket ID#159, 160. The hearing on that motion was held on August 10, 2017. Mr. Contreras-Castillo asserted that withdrawal of his plea should be allowed to correct a manifest injustice. Id.

[¶ 7] Mr. Contreras-Castillo alleged his attorney did not properly advise him regarding the immigration consequences of his change of plea. Id. Attorney Melia stated he did advise him, although it was difficult, because he was not certain of his status. MH.

p.42. Furthermore, Attorney Melia did not consult an immigration attorney regarding the proper advice to give Mr. Contreras-Castillo. MH. p.55.

[¶ 8] The district court at Mr. Contreras-Castillo change of plea and sentencing did not inform him of the immigration consequences of changing his plea in a AA Felony Murder case. Tr. pp. 5-12. The sentencing court went through most of the other inquiries and advice required by Rule 11, even after asking if Mr. Contreras-Castillo understood his rights and waived the reading of them. Id.

[¶ 9] The sentencing court found that Mr. Contreras-Castillo plea was knowingly and voluntarily given. Id. at 5. The district court determined that Attorney Melia had appropriately advised Mr. Contreras-Castillo. Order Denying Motion DocID#197, ¶¶7,9. Also, the court determined that and the sentencing judge did not need to advise Mr. Contreras-Castillo, at the time of his change of plea, about potential immigration consequences. The district court did not find any manifest injustice and denying Mr. Contreras-Castillo's request to withdraw his plea.

LAW AND ARGUMENT

II. Whether the district court erred when it did not allow Adolfo Contreras-Castillo to withdraw his guilty plea.

Standard of Review

[¶ 10] Jurisdiction. Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provisions, the North Dakota legislature enacted Sections 29-28-03 and 29-28-06, N.D.C.C., which provides as follows:

“An appeal to the Supreme Court provided for in this chapter may be taken as a matter of right. N.D.C.C. § 29-28-03. An appeal may be taken by the

defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for new trial; or
5. An order made after judgment affecting any substantial right of the party.”

N.D.C.C. § 29-28-06.

Standard of Review

[¶ 11] Mr. Contreras-Castillo’s motion requested that the district court allow him to withdraw his guilty plea to correct a manifest injustice, in accordance with N.D.R.Crim.P. 11(d)(2). “Withdrawal is allowed when necessary to correct a manifest injustice.” Moore v. State, 2013 ND 214, ¶ 10, 839 N.W.2d 834. Before accepting a plea of guilty, the court must determine that it is voluntary. The court must find that the change of plea was not a result of force, threats, or promises other than promises in a plea agreement. N.D.R.Crim.P. 11. “Waivers of constitutional rights, such as guilty pleas, must be done freely and voluntarily.” Moore, at ¶ 11.

[¶ 12] The district court analyzed Mr. Contreras-Castillo’s request to withdraw his guilty plea under the manifest injustice standard looking at both Attorney Melia’s performance and that of the sentencing court. Manifest injustice occurs when there is ineffective assistance of counsel, but this is not the only way manifest injustice can occur.

[¶ 13] The standard for a plea withdrawal differs depending upon when the motion to withdraw is made. Froistad v. State, 2002 ND 52, ¶ 5, 641 N.W.2d 86. A defendant has a right to withdraw a guilty plea before it is accepted by the court. Id. at ¶ 6. ““After a guilty plea is accepted, but before sentencing, the defendant may withdraw a guilty plea if necessary to correct a manifest injustice, or, if allowed in the court’s discretion, for any

“fair and just” reason unless the prosecution has been prejudiced by reliance on the plea.”
Id. at ¶ 8 (*quoting State v. Klein*, 1997 ND 25, ¶ 13, 560 N.W.2d 198).

[¶ 14] When a court has accepted a plea and imposed sentence, the defendant cannot withdraw the plea unless withdrawal is necessary to correct a manifest injustice. A manifest injustice includes procedural errors by a sentencing court. State v. Gunwall, 522 N.W.2d 183, 185 (N.D. 1994). During the August 23, 2016 Change of Plea and Sentencing Hearing, prior to accepting Mr. Contreras-Castillo’s guilty plea, the court did not advise the defendant, “that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.” as required by N.D.R.Crim.P. 11(b)(1)(J). This is a procedural error that requires the court to allow Mr. Contreras-Castillo to withdraw his plea of guilty.

[¶ 15] The Court in Padilla held that counsel must advise their clients as to the risk of deportation resulting from a guilty plea. Padilla v. Kentucky, 559 US 356, 130 S.Ct. 1473, 1482 (2010). Attorney Melia stated he was uncertain as to Mr. Contreras-Castillo’s immigration status and therefore did not give him case specific advice regarding the immigration consequences of his plea. MH. p.42. Mr. Contreras-Castillo is not a U.S. Citizen. MH. p.20. Mr. Contreras-Castillo stated Attorney Melia “was talking about that [he] *might* face deportation.” Emphasis added, MH. p.17. Padilla allows for a general warning of possible deportation if the consequences of a conviction are unclear or uncertain, however, if the law is clear, attorneys must advise their criminal clients that deportation will result from a conviction. Here the law is clear and the attorney must advise that the defendant will be deported upon conviction. Attorney Melia also did not consult with an immigration attorney regarding the consequences of Mr. Contreras-Castillo’s

change of plea, but gave general information regarding possible deportation. MH. p.42, 55. Therefore, a general warning or a list of possible consequences does not satisfy an attorney's obligation under the Padilla holding.

[¶ 16] North Dakota Rule of Criminal Procedure 11 requires that a change of plea be knowingly, voluntarily and intelligently made. N.D.R.Crim.P. 11(a)(2)(B). "The record must affirmatively show, under the totality of circumstances, that the plea of guilty was voluntary." State v. Mortrud, 312 N.W.2d 354, 356 (N.D. 1981) (reversing denial of motion to withdraw plea due to lack of substantial compliance with Rule 11). Because of his attorney's failure to properly explain the consequences the consequences of a conviction for a defendant who is not a United States citizen and the court's failure to substantially comply with Rule 11, Mr. Contreras-Castillo was unable to make a knowing, voluntary and intelligent change of his not guilty plea. Additionally, Mr. Contreras-Castillo repeatedly told the sentencing court that he believed his actions were done in self-defense, that he did not want to plead guilty, that he did not understand the charge, and that his attorney said he had to plead guilty. Tr. pp. 5-12. Under the totality of the circumstances it is clear that Mr. Contreras-Castillo's change of plea was not voluntarily.

[¶ 17] Mr. Contreras-Castillo's change of plea was not knowingly, voluntarily, and intelligently made because it was based, in part, on a lack of his counsel's failure to properly advise him, as well as to correct the manifest injustice of the district court's substantial noncompliance with Rule 11.

CONCLUSION

[¶ 18] The district court erred when it did not allow Adolfo Contreras-Castillo to withdraw his guilty plea to correct a manifest injustice. WHEREFORE the Defendant

respectfully requests the Court to reverse the Order Denying the Motion to Withdraw Mr. Contreras-Castillo's guilty plea.

Dated this 5th day of March, 2018

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Adolfo Contreras-Castillo,)	CERTIFICATE OF SERVICE
)	
Defendant and Appellant.)	

The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Appellant Brief
Appellant Appendix

And that said copies were served upon:

Marie Ann Miller, Assistant State's Attorney, 51wardsa@wardnd.com

by email at the above address.

Dated: March 5, 2018

KRAUS-PARR, MORROW, & WEBER

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The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Appellant Brief
Appellant Appendix

And that said copies were served upon:

Adolfo Contreras-Castillo #45610
c/o ND DOCR
3100 E Railroad Ave
Bismarck, ND 58506

by depositing said copies with USPS, certified mail.

Dated: March 7, 2018

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