



E-FILED
CNMI SUPREME COURT
E-filed: Dec 30 2017 01:23PM
Clerk Review: Dec 30 2017 01:23PM
Filing ID: 61513481
Case No.: 2016-SCC-0003-CRM
Deanna M Ogo

Notice: This slip opinion has not been certified by the Clerk of the Supreme Court for publication in the permanent law reports. Until certified, it is subject to revision or withdrawal. In any event of discrepancies between this slip opinion and the opinion certified for publication, the certified opinion controls. Readers are requested to bring errors to the attention of the Clerk of the Supreme Court, P.O. Box 502165 Saipan, MP 96950, phone (670) 236-9715, fax (670) 236-9702, e-mail Supreme.Court@justice.gov.mp.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

MICHAEL T. CASTRO,
Defendant-Appellant.

Supreme Court No. 2016-SCC-0003-CRM
Superior Court No. 14-0078

SLIP OPINION

Cite as: 2017 MP 20

Decided December 30, 2017

Shannon Foley and Michele Harris, Assistant Attorney Generals, Saipan, MP, for
Plaintiff-Appellee.

Pamela Brown Blackburn, Saipan, MP, for Defendant-Appellant.

BEFORE: PERRY B. INOS, Associate Justice; JOSEPH N. CAMACHO, Justice Pro Tem.; TIMOTHY H. BELLAS, Justice Pro Tem.

INOS, J.:

¶ 1 Defendant-Appellant Michael T. Castro (“Castro”) pled guilty to one count of Theft in violation of 6 CMC § 1601(b)(3). As a result of his conviction, Castro, who was on Saipan on a CNMI-Only Transitional Worker (“CW”) visa, was deported. Castro raises two issues on appeal. First, he argues the trial court abused its discretion when, without holding an evidentiary hearing, it denied his writ of error coram nobis and motion to withdraw his guilty plea. Second, he argues he received ineffective assistance of counsel because his counsel failed to advise him of the potential immigration consequences of the guilty plea. For the following reasons, we VACATE the trial court’s order, and REMAND this case with instructions to hold an evidentiary hearing.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 This appeal arises from Castro’s conviction following his entry of a guilty plea for Theft. He was initially charged with felony Theft under 6 CMC § 1601(b)(2), which carries a penalty of up to five years of imprisonment. The charge, however, was later amended to a misdemeanor Theft, which carries a penalty of up to a year of imprisonment. 6 CMC § 1601(b)(3). Castro, on the advice of his counsel (“trial counsel”), pled guilty to the misdemeanor Theft charge and was given a one-year jail sentence, all suspended except for seven days.

¶ 3 Upon Castro’s release from the Department of Corrections, he was instructed to report to United States Citizenship and Immigration Services. Deportation proceedings immediately commenced pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which instituted mandatory deportation for non-citizens convicted of crimes of moral turpitude or aggravated felonies. At that point, he filed a writ of error coram nobis in the trial court, seeking to withdraw his guilty plea on the grounds trial counsel failed to inform him of potential immigration consequences of his guilty plea. The trial court denied his petition, and deportation proceedings continued.¹

¶ 4 Castro now appeals.

II. JURISDICTION

¶ 5 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 6 We consider two issues on appeal. First, we consider whether the trial court abused its discretion when it denied Castro’s motion to withdraw his guilty

¹ While Castro has been deported and appellate counsel has been unable to reach him, this appeal affects his substantial rights and his participation is not required at this point in the proceedings. In the interest of justice, we consider the merits of his appeal.

plea without holding an evidentiary hearing. We review for abuse of discretion both the denial of an evidentiary hearing, *Commonwealth v. Bashar*, 2015 MP 4 ¶ 7, and denial of a motion to withdraw a guilty plea. *Commonwealth v. Chen*, 2006 MP 14 ¶ 6. Second, we examine whether Castro received ineffective assistance of counsel. The burden is on Castro to show that his counsel was deficient, and such deficient assistance prejudiced the defense. *Bashar*, 2015 MP 4 ¶ 12 (citations omitted). We review the issue de novo. *Id.* ¶ 7.

IV. DISCUSSION

A. Denial of Evidentiary Hearing and Withdrawal of Guilty Plea

1. Writ of Error Coram Nobis

¶ 7 To begin our discussion, we note our rules do not permit a writ of error coram nobis. Writs of error coram nobis are not mentioned in the NMI Rules of Criminal Procedure and were eliminated from the NMI Rules of Civil Procedure in 1980.² While litigants have, on occasion, filed such writs, and we have heard appeals from the denial of such writs,³ we now clarify the appropriate procedural posture. Future litigants seeking to withdraw a guilty plea or have a judgment of conviction set aside must file a motion under NMI Rule of Criminal Procedure 32(d) (“Rule 32(d)”). Here, because the trial court construed Castro’s writ of error coram nobis as one made under Rule 32(d), we consider the trial court’s order as a denial of a Rule 32(d) motion.

2. Necessity of Evidentiary Hearing

¶ 8 The trial court denied Castro’s request for an evidentiary hearing because “Castro [did] not identify the deportation statute that gives rise to his claim for relief” and because the deportation statute the trial court identified, 8 U.S.C. § 1227(a)(2)(A)(i)(I)-(II), did not succinctly, clearly, or explicitly define the term “crime involving moral turpitude.” *Commonwealth v. Castro*, Crim. No. 14-0078 (NMI Super. Ct. Dec. 14, 2014) (Order Den. Castro’s Coram Nobis Remedy Under R. 32(d) of the Rules of Criminal Procedure at 4) (“Order”). The trial court concluded, because “from the facts alleged, that Castro would not prevail on his ineffective assistance of counsel claim[,]” an evidentiary hearing was not warranted. Order at 5. We disagree.

¶ 9 In August 2015, as Castro was filing the underlying motion to withdraw his guilty plea in the Superior Court, we issued our opinion in *Commonwealth v. Bashar*, 2015 MP 4. *Bashar* adopted a new standard, established by the United States Supreme Court in *Padilla v. Kentucky*, 559 U.S. 356 (2010), that “Sixth Amendment right to effective assistance of counsel includes the right of a criminal defendant to be informed of whether entry of a criminal plea carries the risk of deportation[,] . . .” and thus counsel is obligated to inform a criminal

² See Com. Reg. 690, 761 (Feb. 16, 1980) (noting writs of coram nobis are abolished in the Commonwealth).

³ See, e.g., *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶ 6 (considering trial court’s denial of appellant’s writ of error coram nobis together with the denial of a Rule 32(d) motion to withdraw a guilty plea).

defendant of potential immigration consequences. *Bashar*, 2015 MP 4 ¶ 17. Following this standard, we considered whether the trial court must conduct an evidentiary hearing on a claim of ineffective assistance of counsel. We concluded in order to be entitled to an evidentiary hearing, a defendant must have alleged specific facts, which if proven true, would constitute ineffective assistance. *Id.* ¶ 18. Further, we stated an evidentiary hearing is needed when “the record cannot resolve substantial issues of material fact” *Id.* In short, we determined “[i]n the context of an ineffective assistance claim, an evidentiary hearing must be conducted ‘if the records and files . . . cannot conclusively resolve substantial issues of material fact’ and whether the allegations, if proven, would warrant relief for the defendant.” *Id.* ¶ 11 (alteration in original) (quoting *United States v. Butt*, 731 F.2d 75, 78 (1st Cir. 1984)).

¶ 10 Our rationale in *Bashar* is helpful here. There, having adopted the *Padilla* standard, we considered whether the trial court abused its discretion in denying Bashar’s request for an evidentiary hearing. We found the trial court did not abuse its discretion because Bashar “fail[ed] to demonstrate whether the hearing would have elicited facts that would bolster his ineffective assistance claim. . . . [and], in determining the motion, the trial court considered all declarations, including Bashar’s; the trial court’s warning concerning the potential immigration consequences of the plea; and the timing of the motion.” *Id.* ¶ 20.⁴ The trial court also considered the declaration of Bashar’s counsel, noting he had specifically advised Bashar that while the plea agreement might be in his best interest, it would eventually subject Bashar to deportation. *Id.* ¶ 18. We concluded Bashar did not “sufficiently establish how the existing record was inadequate to resolve substantial issues of material fact regarding his ineffective assistance claim.” *Id.* ¶ 20.

¶ 11 A judge has broad discretion in determining whether to hold an evidentiary hearing.⁵ *Grigsby & Assocs. v. M Sec. Inv.*, 635 Fed.Appx 728, 735 (11th Cir. 2015). However, “[a] judge cannot take two affidavits that swear to opposite things and say, ‘I find one of the affidavits more credible than the other, and therefore I shall accept it as true.’” *Durukan America, LLC v. Rain Trading, Inc.*, 787 F.3d 1161, 1164 (7th Cir. 2015) (quoting *Castillo v. United States*, 34 F.3d 443, 446 (7th Cir. 1994)). Here, Castro submitted a declaration stating trial counsel failed to inform him about the potential immigration consequences of his guilty plea. His declaration included the dates and locations of Castro’s meetings

⁴ On petition for rehearing, we further clarified the trial court did not abuse its discretion because Bashar’s allegations were “vague and conclusory” and “it was reasonable for the trial court to resolve [the] claim of ineffective counsel by looking at the record alone” because Bashar’s statements were contradicted by specific and detailed statements from other eyewitnesses, including Bashar’s attorney. *Commonwealth v. Bashar*, 2016 MP 2 ¶ 11.

⁵ This discretion also permits a judge to hold an evidentiary hearing even when parties have waived such a hearing. *See, e.g., In re C.R.H.*, 644 N.E.2d 1153, 1158 (Ill. 1994) (noting waiver is a limitation on the parties, not the reviewing court).

with his trial counsel, what was discussed in those meetings, and stated trial counsel failed to advise him of the potential immigration consequences during those meetings. Furthermore, his version of events was corroborated by the signed declaration of his wife.

¶ 12 The remainder of the record was inconclusive as to what advice Castro was or was not given. Castro’s trial counsel submitted a declaration stating “I properly advised my former client, Michael Castro, of the collateral immigration consequences of his guilty plea . . .” Sato Aff. 1. This statement, unlike counsel’s declaration in *Bashar*, gave the trial court no indication of what advice was actually given, whether trial counsel considered if theft was a crime of moral turpitude,⁶ or to what extent he advised Castro regarding the risk of deportation. Because the existing record was vague as to what his trial counsel advised Castro, it was inadequate to resolve substantial issues of material facts regarding Castro’s ineffective assistance of counsel claim.

¶ 13 The Sixth Amendment requires Castro to have been informed of whether his guilty plea carried the risk of deportation. He alleged specific facts that he was not so advised, and the remainder of the record left material facts in dispute. Therefore, Castro was entitled to an evidentiary hearing. We conclude the trial court abused its discretion when it ruled Castro could not prevail on his ineffective assistance of counsel claim without holding an evidentiary hearing.

¶ 14 Without an evidentiary hearing, the record before us is insufficient to consider whether Castro should have been permitted to withdraw his guilty plea pursuant to Rule 32(d) or succeeded on his ineffective assistance of counsel claim. Thus, we cannot reach those arguments. Instead, we vacate the trial court’s Order, and remand this case with instructions to hold an evidentiary hearing regarding Castro’s ineffective assistance of counsel claim.

V. CONCLUSION

¶ 15 For the foregoing reasons, we determine the trial court abused its discretion in declining to hold an evidentiary hearing. Accordingly, we VACATE the trial court’s Order and REMAND the case for proceedings consistent with this opinion.

SO ORDERED this 30th day of December, 2017.

/s/

PERRY B. INOS
Associate Justice

⁶ A brief search through federal authority shows the Ninth Circuit has “consistently held that acts of petty theft constitute crimes of moral turpitude.” *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009) (citing *Flores-Juarez v. Mukasey*, 530 F.3d 1020, 1022 (9th Cir. 2008); *United States v. Esparza-Ponce*, 193 F.3d 1133, 1136 (9th Cir. 1999), *cert. denied*, 531 U.S. 842 (2000)).

/s/ _____
JOSEPH N. CAMACHO
Justice Pro Tem

/s/ _____
TIMOTHY H. BELLAS
Justice Pro Tem



E-FILED
CNMI SUPREME COURT
E-filed: Dec 30 2017 01:23PM
Clerk Review: Dec 30 2017 01:23PM
Filing ID: 61513481
Case No.: 2016-SCC-0003-CRM
Deanna M Ogo

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

MICHAEL T. CASTRO,
Defendant-Appellant.

Supreme Court No. 2016-SCC-0003-CRM

Superior Court No. 14-0078

JUDGMENT

Defendant-Appellant Michael T. Castro appeals the trial court order denying his motion for an evidentiary hearing, writ of error coram nobis, and motion to withdraw his guilty plea, and the trial court's denial of his ineffective assistance of counsel claim. For the reasons stated in the accompanying opinion, this Court VACATES the trial court's order and REMANDS this matter with instructions to hold an evidentiary hearing.

ENTERED this 30th day of December, 2017.

/s/

DEANNA M. OGO
Clerk of the Supreme Court