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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5461-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KAROL M. JAKOWSKI,

Defendant-Appellant.

Submitted March 20, 2018 – Decided April 9, 2018

Before Judges Fasciale and Summers.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Indictment No.
12-08-1326.

Leschak & Associates, LLC, attorneys for
appellant (John P. Leschak, on the brief).

Dennis Calo, Acting Bergen County Prosecutor,
attorney for respondent (William P. Miller,
Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant appeals from a July 21, 2017 order denying his
petition for post-conviction relief (PCR). Defendant maintains

primarily that his plea counsel rendered ineffective assistance. Judge James J. Guida entered the order and rendered an oral opinion. We affirm.

On appeal, defendant argues:

POINT I

IT WAS LEGAL ERROR FOR THE TRIAL COURT TO DENY [DEFENDANT'S] PCR PETITION ON THE GROUNDS THAT HE HAD BEEN ADVISED OF THE IMMIGRATION CONSEQUENCES OF HIS PLEA BY THE COURT, BECAUSE THOSE ADVISALS WERE PROVIDED ONLY IN ENGLISH, WHILE [DEFENDANT'S] NATIVE LANGUAGE WAS AND IS POLISH.

POINT II

IT WAS LEGAL ERROR FOR THE TRIAL COURT TO DENY [DEFENDANT'S] PCR PETITION ON THE GROUNDS THAT HE HAD BEEN ADVISED OF THE IMMIGRATION CONSEQUENCES OF HIS PLEA BY THE COURT, BECAUSE, REGARDLESS OF WHETHER OR NOT [DEFENDANT] UNDERSTOOD ENGLISH OR NOT, ADVISALS BY THE COURT CANNOT CURE MISADVICE GIVEN BY PRIVATE COUNSEL.

POINT III

IT WAS LEGAL ERROR FOR THE TRIAL COURT TO DENY [DEFENDANT'S] PCR PETITION ON THE GROUNDS THAT HE HAD BEEN ADVISED OF THE IMMIGRATION CONSEQUENCES OF HIS PLEA BY THE COURT, BECAUSE BY SO HOLDING, THE COURT APPLIED A PER SE RULE, CONTRARY TO JAE LEE V. UNITED STATES.^[1]

POINT IV

IT WAS LEGAL ERROR FOR THE TRIAL COURT TO DENY [DEFENDANT'S] PCR PETITION ON THE GROUNDS THAT HE HAD BEEN ADVISED OF THE IMMIGRATION CONSEQUENCES OF HIS PLEA BY PRIVATE COUNSEL, BECAUSE THE COURT NEVER HEARD ANY WITNESS TESTIMONY FROM PRIOR COUNSEL.

¹ Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958 (2017).

POINT V

IT WAS LEGAL ERROR FOR THE TRIAL COURT TO DENY [DEFENDANT'S] PCR PETITION, BECAUSE INEFFECTIVE ASSISTANCE HAD BEEN ESTABLISHED UNDER JAE LEE V. UNITED STATES, AND THE COURT'S DECISION THAT JAE LEE WAS DISTINGUISHABLE WAS ALSO LEGAL ERROR.

POINT VI

COUNSEL'S FAILURE TO PROPERLY ADVISE [DEFENDANT] OF THE IMMIGRATION CONSEQUENCES OF HIS GUILTY PLEA CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL PURSUANT TO ANTUNA^[2] AND/OR JAE LEE, AND THE COURT'S CONCLUSION TO THE CONTRARY WAS LEGAL ERROR.

To show ineffective assistance of counsel, defendant must demonstrate two things. First, that counsel's performance was deficient and he or she made errors that were so egregious that counsel was not functioning effectively as guaranteed by the Sixth Amendment of the United States Constitution. Strickland v. Washington, 466 U.S. 668, 687 (1984). Second, the defect in performance prejudiced defendant's rights to a fair trial such that there exists "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694; State v. Fritz, 105 N.J. 42, 52 (1987).

Here, the alleged ineffectiveness pertained to whether plea counsel properly advised defendant about the immigration

² State v. Antuna, 446 N.J. Super. 595 (2016).

consequences of his guilty pleas to three counts of drug distribution charges. In the context of a guilty plea, the standard to establish ineffective assistance of counsel is somewhat modified. "[A] defendant can show ineffective assistance of counsel by proving that his [or her] guilty plea resulted from 'inaccurate information from counsel concerning the deportation consequences of his [or her] plea.'" State v. Brewster, 429 N.J. Super. 387, 392 (App. Div. 2013) (quoting State v. Nunez-Valdez, 200 N.J. 129, 143 (2009)).

Plea counsel's duty includes an affirmative responsibility to inform a defendant entering a guilty plea of the relevant law pertaining to mandatory deportation. Padilla v. Kentucky, 559 U.S. 356, 368-69 (2010). This court has made clear that counsel's "failure to advise a noncitizen client that a guilty plea will lead to mandatory deportation deprives the client of the effective assistance of counsel guaranteed by the Sixth Amendment." State v. Barros, 425 N.J. Super. 329, 330-31 (App. Div. 2012) (citing Padilla, 559 U.S. at 369). The Padilla rule applies because defendant pled guilty in June 2013.

Defendant's contention that he was unaware of the immigration consequences of his plea is belied by the record. Plea counsel and the plea judge advised defendant he would be deported. At the beginning of the plea proceeding, the judge told defendant that

deportation was a certainty. The plea papers demonstrate that defendant knew he would be deported as a result of his guilty plea. At the plea hearing, plea counsel on more than one occasion verified with defendant that he understood that by pleading guilty he would be deported. And there is no question, based on the colloquy at the plea hearing, that defendant understood English.

For these reasons and for those Judge Guida expressed in his oral opinion, we conclude that defendant failed to make a prima facie case of ineffective assistance of plea counsel. We conclude that defendant's remaining arguments are unsupported and lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION