

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

YIMARA KATHUN BOKSH,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

NOT FOR PUBLICATION

Case Nos. C-2014-566

C-2014-567

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 18 2015

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION DENYING CERTIORARI

JOHNSON, JUDGE:

Petitioner Yimara Kathun Boksh entered negotiated pleas of guilty in Comanche County District Court, Case Nos. CF-2001-511 and CF-2002-167 to Unlawful Possession of a Controlled Drug with Intent to Distribute in violation of 63 O.S.2001, § 2-401(B)(2) and Trafficking in Illegal Drugs, in violation of 63 O.S., § 2-415, respectively. The district court accepted Boksh's pleas and sentenced her to twelve years imprisonment in each case with the sentences to be served concurrently. On May 13, 2014, this Court granted Boksh's requests for certiorari appeals out of time. Boksh filed applications to withdraw her pleas of guilty and a hearing was held on the motions to withdraw on June 18, 2014. On this date, the district court denied Boksh's motions. Boksh now appeals the orders denying her motions and petitions this Court for a Writ of Certiorari allowing her to withdraw her pleas and proceed to trial.¹

¹ For purposes of these appeals, we find it expeditious to consolidate these cases for disposition in a single opinion since they present a common error for review on appeal. Rule 3.3(D), Rules of the Court of Criminal Appeals, 22 O.S., Ch. 18, App. (2015).

Boksh raises the single issue of whether her guilty pleas were entered knowingly and voluntarily under the due process clause of the Fifth and Fourteenth Amendments because she was not informed of the immigration consequences of her pleas.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

Discussion

This Court has held that, “[o]n *certiorari* review of a guilty plea, our review is limited to two inquiries: (1) whether the guilty plea was made knowingly and voluntarily; and (2) whether the district court accepting the guilty plea had jurisdiction to accept the plea.” *Cox v. State*, 2006 OK CR 51, ¶ 4, 152 P.3d 244, 247, citing *Frederick v. State*, 1991 OK CR 56, ¶ 5, 811 P.2d 601, 603. Furthermore, we review denials of motions to withdraw guilty pleas for an abuse of discretion. *Coyle v. State*, 1985 OK CR 121, ¶ 5, 706 P.2d 547, 548.

In her motion to withdraw and at the hearing on the motion to withdraw, Boksh argued that her guilty pleas were not entered knowingly and voluntarily because defense counsel did not adequately advise her about the immigration consequences before she entered the pleas. The district court denied her motion to withdraw and Boksh argues on appeal that this ruling was in error.

Boksh advised the district court below as she does this Court on appeal that in *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) the United States Supreme Court held that where the deportation

consequence of a guilty plea is clear, a defense counsel who fails to advise a client that his plea carries a risk of deportation renders ineffective assistance of counsel under the Sixth Amendment. Boksh acknowledges, however, that her pleas were entered prior to the Supreme Court's decision in *Padilla* and that in *Chaidez v. United States*, __ U.S. __, 133 S.Ct. 1103, 185 L.Ed.2d 149 (2013), the Supreme Court held that *Padilla v. Kentucky* does not have retroactive effect. While Boksh acknowledges that the *Chaidez* ruling precludes her from making an effective Sixth Amendment claim about defense counsel's failure to inform her of the immigration consequences entering a guilty plea, she argues that the trial court's failure to advise her of this same information rendered her pleas unknowing and involuntary in violation of her Fifth Amendment Due Process rights.

To survive due process scrutiny, a guilty plea must be entered knowingly, intelligently, and voluntarily. *Tovar Mendoza v. Hatch*, 620 F.3d 1261, 1269 (10th Cir. 2010). The United States Supreme Court has defined a "voluntary" plea as one made by a defendant who is "fully aware of the direct consequences" of his guilty plea. *Brady v. United States*, 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)(internal quotation marks omitted). Prior to *Padilla*, the Tenth Circuit Court of Appeals held that immigration consequences of entering a plea are collateral and not direct consequences. *Broomes v. Ashcroft*, 358 F.3d 1251, 1257 (10th Cir. 2004). The *Padilla* Court, however, did not address whether immigration consequences are collateral or direct and did not provide a due process analysis. In the absence of clear authority to the

contrary, this Court will not extend *Padilla* to the due process context and require Oklahoma state trial courts to understand immigration consequences and advise defendants of the possibility of deportation.

DECISION

The Petition for a Writ of Certiorari is **DENIED**. The Judgments and Sentences of the District Court are **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE EMMIT TAYLOE, DISTRICT JUDGE

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OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur
LEWIS, J.: Concur in Result

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