Circuit Court for Baltimore City
Case No.: 593034053

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1427

September Term, 2025

NEVILLE LLOYD HIBBERT

v.

STATE OF MARYLAND

Nazarian,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 17, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Neville Lloyd Hibbert was born in Jamaica and came to the United States as a child. He is not a citizen of the United States but has been a lawful permanent resident for more than fifty years. In 1993, Mr. Hibbert pleaded guilty in the Circuit Court for Baltimore City to the manufacture and distribution of cocaine. Before entering his plea, Mr. Hibbert expressed concern about how it would affect his immigration status. His attorney told him not to worry about it and that pleading guilty would not affect his immigration status because he was a lawful permanent resident. In reality, the conviction made Mr. Hibbert deportable immediately and ten years later, he was placed into immigration proceedings and ordered removed.

Another twenty years later, Mr. Hibbert filed a petition for a writ of error *coram nobis* that challenged the validity of his guilty plea on the basis that it was not knowing and voluntary and that his trial counsel had rendered ineffective assistance. Although the State agreed with him, the *coram nobis* court denied Mr. Hibbert's petition. He appeals and because we hold that trial counsel's affirmative misadvice about the immigration consequences of Mr. Hibbert's plea constituted ineffective assistance and, separately, rendered his plea not knowing and voluntary, we reverse.

I. BACKGROUND

In October 1993, Mr. Hibbert pleaded guilty to the manufacture and distribution of cocaine and was sentenced to seven years' incarceration, all suspended, with three years of supervised probation. Although Mr. Hibbert tried to appeal *pro se*, he failed to pay the filing fee and his appeal didn't proceed. Mr. Hibbert has since completed his sentence, but because of his conviction, he was placed into immigration proceedings and ordered removed in 2004.[1]

In his September 2024 *coram nobis* petition, Mr. Hibbert argued that he was entitled to relief because his trial counsel had rendered ineffective assistance at his plea hearing and because his plea was not knowing and voluntary. Neither a transcript nor an audio recording of the 1993 plea hearing was available. Instead, Mr. Hibbert attached an affidavit to his petition that set out what he asserts are the relevant facts.

In his affidavit, Mr. Hibbert explained that trial counsel "advised [him] to plead guilty to the charge of possession and distribution of cocaine." According to Mr. Hibbert, he told his attorney that he was "concerned that pleading guilty would affect [his] immigration status since [he was] not a citizen of the United States." Trial counsel assured Mr. Hibbert "that pleading guilty would not affect [his] status since [he] was a lawful permanent resident" and told him "not to worry because it was just a minor possession kind of case." Based on this advice, Mr. Hibbert pleaded guilty to the manufacture and distribution of cocaine. At the plea hearing, "the judge made no mention of the consequences that pleading guilty would have on [Mr. Hibbert's] immigration status." Mr. Hibbert says that he "would not have pled guilty if [he] had known that [he] would not be able to fix [his] immigration status."

[1] Mr. Hibbert now resides in Florida and must report, in person, to Immigration and Customs Enforcement every six months, upload a picture every Friday, and get permission to leave the state.

In response to his petition, the State agreed that Mr. Hibbert had received constitutionally ineffective assistance and urged the court to grant his petition without a hearing "because the State and the defense 'stipulate that the facts stated in the petition are true and that facts and applicable law justify the granting of relief.'" The State also signaled that if Mr. Hibbert's conviction were vacated, it would *nolle pros* the charge because it was "satisfied that [Mr. Hibbert] is no longer a threat to the community" given that he "has not been convicted of any other crimes since he pled guilty in the instant matter over thirty-two years ago."

Despite the State's concession, the *coram nobis* court held a hearing on May 15, 2025. Mr. Hibbert was the only witness.[2] He testified that he was represented at his plea hearing by counsel[3] and detailed their pre-hearing conversation:

> Q: Okay. Did you ask any questions to your attorney at that time when he made that recommendation [to take the plea bargain]?
>
> No.
>
> Q: Okay Did he give you any advisals?
>
> A: No.
>
> * * *
>
> Q: Okay. And did you ask your attorney anything about your legal status?

[2] Mr. Hibbert's affidavit was also admitted into evidence.

[3] Neither party subpoenaed trial counsel to testify at the *coram nobis* hearing. It may be that he was unavailable. *See United States v. Ravenell*, 66 F.4th 472 (4th Cir. 2023), *cert. denied*, 114 S. Ct. 1344 (2024).

> A: No, I – I asked him will this affect my legal status and he said no.
>
> Q: Do you recall exactly what he told you?
>
> A: No.
>
> Q: Okay. Did – what if anything do you recall he told you when you asked him then?
>
> A: He said don't worry about it, you don't have nothing to worry about.
>
> Q: Why not? Did he say?
>
> A: No, he didn't.
>
> Q: Did he say this on the record or off the record?
>
> A: No, he didn't say it on the record, he said it to me when I was talking to him.

Mr. Hibbert testified as well that he would have rejected the plea had he known the consequences.

After Mr. Hibbert's testimony, the State reiterated its agreement that the "incorrect advice from [trial] counsel" constituted "deficient performance." The State characterized Mr. Hibbert's testimony as credible and consented to *coram nobis* relief because Mr. Hibbert had "demonstrated both deficient performance and that he was prejudiced by the deficient performance of [trial counsel]."

The court took the matter under advisement and later issued a written order denying Mr. Hibbert's petition. The court determined initially that Mr. Hibbert had failed to overcome the presumption of regularity for two reasons. *First*, the court explained that it did not find Mr. Hibbert's testimony credible:

> Petitioner offers contradictory recollections of counsel's advisement. Petitioner testified that counsel failed to advise on immigration consequences. In Petitioner's affidavit, he stated that counsel told him not to worry about immigration consequences. Petitioner has not provided any credible evidence of trial counsel's alleged misadvisement. Petitioner has failed to overcome the presumption of regularity. The Court does not find Petitioner's testimony credible.

(Footnote omitted).

Second, the court faulted Mr. Hibbert for "fail[ing] to provide the trial record in support of his claims." The court noted that "[i]n [Mr. Hibbert]'s affidavit, he states that the trial transcripts were unavailable. At the postconviction hearing, the State provided that [Mr. Hibbert]'s court file was available."

The court concluded further that Mr. Hibbert's ineffective-assistance argument depended upon *Padilla v. Kentucky*, 559 U.S. 356 (2010), and that "*Padilla* does not apply retroactively to Petitioner's claims." The court concluded that "trial counsel's failure to advise was not unreasonable under prevailing professional norms that existed when Petitioner pled guilty."

II. DISCUSSION

Mr. Hibbert raises one question on appeal, which we rephrase slightly: Did the *coram nobis* court abuse its discretion in denying his petition?[4] We hold that it did.

[4] Mr. Hibbert phrased the Question Presented in his brief as follows: "Whether the trial court abused its discretion when it denied Mr. Hibbert's Petition for Writ of Error Coram Nobis?"

The State phrased the Question Presented as: "Should the Court reverse the denial of coram nobis relief to Mr. Hibbert?"

Coram nobis is an "extraordinary remedy" that allows a convicted defendant to "show that a criminal conviction was invalid under circumstances where no other remedy is presently available and where there were sound reasons for the failure to seek relief earlier." *State v. Smith*, 443 Md. 572, 597 (2015) (*quoting Skok v. State*, 361 Md. 52, 72–73 (2000), *superseded by statute on other grounds*, Md. Code (2001, 2025 Repl. Vol), § 8-401 of the Criminal Procedure Article, *as recognized in*, *Rich v. State*, 230 Md. App. 537 (2016), *overruled on other grounds by*, *Davis v. State*, 490 Md. 359 (2025)). This writ is meant to aid defendants who "forego an appeal even if errors of a constitutional or fundamental nature may have occurred" and "[t]hen, . . . later learn[] of a substantial collateral consequence of the conviction" when "it may be too late to appeal, and, if [they are] not incarcerated or on parole or probation," it is too late to seek post-conviction relief. *Skok*, 361 Md. at 77. A change in immigration status qualifies as a collateral consequence. *See Reyes v. State*, 253 Md. App. 476, 495 (2022) (noting that our Supreme Court has "recognized changes to immigration status as constituting significant collateral consequences for the purposes of a coram nobis petition").

Even so, Mr. Hibbert is eligible for *coram nobis* relief only if: (1) he is challenging his conviction based on constitutional, jurisdictional, or fundamental grounds, whether factual or legal; (2) he can rebut the presumption of regularity that attaches to each criminal case; (3) he faces significant collateral consequences from his conviction; (4) the alleged error has not been waived or finally litigated in a prior proceeding, absent intervening changes in the applicable law; and (5) he is not entitled to another statutory or common law remedy. *State v. Rich*, 454 Md. 448, 462 (2017) (*citing Skok*, 361 Md. at 78–80).

We "review the *coram nobis* court's decision to grant or deny the petition for abuse of discretion." *Id.* at 471. "However, in determining whether the ultimate disposition of the *coram nobis* court constitutes an abuse of discretion, [we will] not disturb the . . . court's factual findings unless they are clearly erroneous, while legal determinations shall be reviewed *de novo*." *Id.*

The court in this case denied Mr. Hibbert's petition on the grounds that he failed to satisfy the first and second conditions. It didn't address the other conditions, but the parties agree that Mr. Hibbert met them. They also agree that the *coram nobis* court's assessment of the first and second conditions was wrong. So do we.

A. Mr. Hibbert Rebutted The Presumption Of Regularity.

The *coram nobis* court began its ruling by asking whether Mr. Hibbert overcame the presumption of regularity that attached to his conviction. A "presumption of regularity" means that we presume that the results of the underlying proceedings are correct "and the burden of proof is on the *coram nobis* petitioner" to prove otherwise. *Skok*, 361 Md. at 78 (cleaned up) (*citing United States v. Morgan*, 346 U.S. 502, 512 (1954)). The *coram nobis* court concluded here that Mr. Hibbert failed to meet his burden both because his testimony at the hearing was "contradictory" to his affidavit and because he had failed to produce a transcript of his 1993 plea hearing. These findings were clearly erroneous.

1. Mr. Hibbert's testimony was consistent with his affidavit.

The court found that Mr. Hibbert was not credible because his hearing testimony purportedly contradicted his affidavit. It described Mr. Hibbert's hearing testimony as asserting that counsel "failed to advise on immigration consequences" while describing his affidavit as asserting that counsel "told him not to worry about immigration consequences." This contradiction, the court reasoned, meant that Mr. Hibbert had not offered any competent evidence of counsel's misadvice, and for that reason he failed to overcome the presumption of regularity.

We generally don't "second-guess the [hearing] judge's assessment of a witness's credibility," *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020), "[b]ecause the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony." *Smith v. State*, 415 Md. 174, 185 (2010). But although "[w]e will give deference to the [circuit] court's factual findings, [we] still review[] those findings for clear error." *Kusi v. State*, 438 Md. 362, 383 (2014).

"A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (*quoting Goodwin v. Lumbermens Mut. Cas. Co.*, 199 Md. 121, 130 (1952)). For example, we will "overturn a [hearing] judge's factual finding if . . . a document in evidence belies the judge's finding, rendering that factual finding fundamentally and clearly erroneous." *Id.* at 384 (*quoting Attorney Grievance Comm'n v. Maignan*, 390 Md. 287, 295 (2005)). As the Supreme Court of Maryland has explained:

> It is true, . . . that credibility decisions made by a hearing judge are ordinarily entitled to deference, but not when the credibility decision is so contrary to unexplained, unimpeached, unambiguous documentary evidence as to be inherently incredible and unreliable. If the check admitted into evidence was blue in color, and we could see it was blue in color, we

> certainly would not accept the judge's crediting of the office manager's testimony that it was yellow.

Maignan, 390 Md. at 295 .

Because the *coram nobis* court's credibility assessment was based not on its observation of Mr. Hibbert's demeanor, but rather on a purported inconsistency between his hearing testimony and his affidavit, a more extensive review of the court's findings for clear error is warranted. *Cf. Easley v. Cromartie*, 532 U.S. 234, 243 (2001) (noting that in the case before it, where "the key evidence" at trial "consisted primarily of documents and expert testimony" and "[c]redibility evaluations played a minor role," "an extensive review of the [trial court's] findings, for clear error, [was] warranted"). And after reviewing the court's findings in this case, we are left "with the definite and firm conviction," *Kusi*, 438 Md. at 383 (*quoting Goodwin*, 199 Md. at 130), that the court's finding was mistaken. Read in context, both of Mr. Hibbert's statements describe the same story. In his affidavit, Mr. Hibbert stated that he "told [counsel] that [he] was concerned that pleading guilty would affect [his] immigration status," and that counsel responded by telling him "not to worry about it because it was just a minor possession kind of case" and that "pleading guilty would not affect [his] status since [he] was a lawful permanent resident." Then, at the 2025 hearing, Mr. Hibbert testified similarly: he said that counsel didn't mention any immigration consequences ("did he give you any advisals?" "No.") until prompted by Mr. Hibbert when he asked, "[W]ill this affect my legal status," at which point counsel told him "no" and that he "don't have nothing to worry about."

These statements are not contradictory. They tell the same tale: counsel did not, on his own initiative, warn Mr. Hibbert about potential immigration consequences and when Mr. Hibbert asked specifically, counsel misadvised him affirmatively. The *coram nobis* court's finding that Mr. Hibbert's accounts were "contradictory" was clearly erroneous.

2. A transcript of Mr. Hibbert's plea hearing was not required.

The *coram nobis* court also penalized Mr. Hibbert because he hadn't produced "the trial record in support of his claims." The court reasoned that although Mr. Hibbert claimed that the transcripts were unavailable, "the State provided that [his] court file was available." There are three problems with this reasoning.

First, the existence of a court file doesn't establish the existence (or not) of a transcript or audio recording of the plea hearing. To be sure, that's where a transcript or recording would (or at least should) be if they existed. But the State stipulated expressly that they didn't, citing "the age of this matter." Mr. Hibbert's affidavit said the same. And the existence of a docket sheet, charging documents, and other paper materials that comprise a court file doesn't prove that a transcript or audio recording exists.

Second, even if a transcript existed, it is not needed to rebut the presumption of regularity here because Mr. Hibbert's claim doesn't rest on what happened at the plea hearing. It rests on what counsel told him before the plea hearing, in private conversation. As Mr. Hibbert explained at the *coram nobis* hearing, counsel "didn't [misadvise him] on the record"—"he said it to me when I was talking to him." A transcript of the proceeding at which Mr. Hibbert acted upon counsel's misadvice would not provide evidence of a conversation that occurred off the record (especially one that isn't disputed).

And *third*, while the current version of Maryland Rule 4-242(g)(1) requires that a defendant be advised in court of the possibility of collateral immigration consequences before a court can accept a plea, this advisement requirement was not incorporated into the rules when Mr. Hibbert pleaded guilty in 1993. It would be speculation to say that a transcript necessarily must have shown the court advising Mr. Hibbert of collateral consequences based on a Rule of advisement not yet adopted at the time.

What's more, the Maryland Rules anticipate this situation in the *coram nobis* context. Maryland Rule 15-1202 requires a *coram nobis* petitioner to attach "all relevant portions of the transcript or explain why the petitioner is unable to do so." *Id.* at 15-1202(c). Mr. Hibbert followed this Rule and provided the alternative explanation.

Here, the absence of the transcript was explained, the explanation was stipulated to by the State, and the claim didn't depend on events that would be reflected in a transcript. Under these circumstances, the absence of a transcript can't support finding a failure to rebut the presumption of regularity, and the *coram nobis* court erred in holding otherwise.

B. Mr. Hibbert's Trial Counsel Provided Constitutionally Ineffective Assistance By Affirmatively, Grossly Misadvising Him Of The Immigration Consequences Of His Plea.

On the merits of his *coram nobis* petition, the court rejected Mr. Hibbert's ineffective assistance claim, holding that counsel's "failure to advise was not unreasonable under prevailing professional norms that existed when [Mr. Hibbert] pled guilty" because the plea was entered before the constitutional requirement to advise was imposed by *Padilla*. On appeal, the parties agree that the *coram nobis* court misunderstood the nature of Mr. Hibbert's claim. Mr. Hibbert doesn't contend that counsel rendered deficient performance by *failing* to advise him about the immigration consequences of his plea. He contends that counsel rendered deficient performance by *mis*advising him affirmatively about those consequences when asked. But although the State concedes that the *coram nobis* court's reasoning was wrong, in its view, we need not address Mr. Hibbert's ineffective assistance claim because reversal is required under *Reyes v. State*, 253 Md. App. 476 (2022), because counsel's affirmative misadvice rendered Mr. Hibbert's plea not knowing and voluntary. That may be true, but because the *coram nobis* court discussed only Mr. Hibbert's ineffective assistance claim and not the voluntariness of his plea, we nevertheless shall exercise our discretion under Maryland Rule 8-131(a) to address the issue. *See Wharton v. State*, 268 Md. App. 647, 653–54 (2026) (exercising discretion under Maryland Rule 8-131(a) to address an issue that was "not strictly necessary to resolve" the defendant's argument on appeal "for the circuit court's guidance on remand").

1. Affirmative misadvice about collateral consequences of a plea could constitute ineffective assistance before Padilla.

Before determining whether Mr. Hibbert received ineffective assistance of counsel, we first must determine whether he has even alleged a claim. Although the *coram nobis* court misunderstood the nature of Mr. Hibbert's argument, the court was right that *Padilla* doesn't apply retroactively to Mr. Hibbert's benefit. Thus, his claim is viable only if and to the extent it doesn't rely on *Padilla*. We begin, then, by discussing *Padilla* and the precise contours of the new rule it announced before deciding whether Mr. Hibbert's claim has support independent of that rule.

The facts in *Padilla* were similar to the facts of this case: Mr. Padilla alleged that his attorney not only failed to advise him that his guilty plea would result in deportation, but also represented to him that he "did not have to worry about immigration status since he had been in the country so long." *Padilla*, 559 U.S at 359. The Supreme Court of the United States held that the Sixth Amendment requires an attorney to inform their criminal-defendant client about the risk of deportation flowing from a guilty plea. *Id.* at 374.

Although *Padilla*'s holding doesn't speak directly to affirmative misadvice, the Court didn't ignore the concept altogether. In reaching its holding, the Court in fact acknowledged that there were some lower court decisions "isolating an affirmative misadvice claim," but it rejected the suggestion of the United States (acting as *amicus curiae*) that it announce a similarly limited rule. *Id.* at 369–70. The Court stated, "[T]here is no relevant difference between an act of commission and an act of omission in this context." *Id.* at 370 (cleaned up).

In the wake of *Padilla*, courts started to split over whether the Court had announced a new rule or merely applied an existing rule in a new setting. *See Chaidez v. United States*, 655 F.3d 684, 688 (7th Cir. 2011) (collecting cases), *aff'd*, 568 U.S. 342 (2013). So a few years later, in *Chaidez v. United States*, 568 U.S. 342 (2013), the Supreme Court held that *Padilla* announced a new rule of law that doesn't apply retroactively. *Id.* at 358. Unlike Mr. Hibbert's claim, however, Ms. Chaidez's claim was based solely on her attorney's failure to inform her that her guilty plea carried the risk of deportation. *Id.* at 345. There was no claim that Ms. Chaidez's attorney misinformed her about that consequence.

The Court noted as much in defining the contours of *Padilla*'s new rule. *See id.* at 356. It acknowledged that "three federal circuits (and a handful of state courts) held before *Padilla* that misstatements about deportation could support an ineffective assistance claim." *Id.* But the Court observed that those decisions didn't carve out a special exception for deportation. *Id.* Rather, they "reasoned only that a lawyer may not affirmatively misrepresent his expertise or otherwise actively mislead his client on any important matter, however related to a criminal prosecution." *Id.* Indeed, those decisions "co-existed happily with precedent, from the same jurisdictions (and almost all others), holding that deportation is not so unique as to warrant an exception to the general rule that a defendant need not be advised of the collateral consequences of a guilty plea." *Id.* (cleaned up). This "separate rule for material misrepresentations" *id.*, existed before, and was undisturbed by, *Padilla*'s rule.

A few months later, our Supreme Court recognized that *Chaidez* left open a door for defendants to challenge their pre-*Padilla* guilty pleas on grounds independent from *Padilla*. In *Miller v. State*, 435 Md. 174 (2013), the Court considered whether we could provide a state law remedy for defendants who were not informed of the immigration consequences of their pre-*Padilla* guilty plea. *Id.* at 194. But the Court decided in the end that there was no "independent state basis for finding counsel deficient based upon a failure to provide advice regarding adverse immigration consequences prior to or during guilty plea proceedings," *id.* at 199, and didn't discuss claims alleging affirmative misadvice.

If, according to *Chaidez*, there was a rule in place at the time of Mr. Hibbert's conviction that spoke not of the obligation to act, but rather of the obligation to act competently by rendering accurate advice, that rule is "separate" from and undisturbed by *Padilla*'s rule. That "separate rule" lives in harmony with a pre-*Padilla* and post-*Padilla* world and wasn't considered in or foreclosed by *Miller*. So to the extent Mr. Hibbert's claim relies on a "separate rule" for affirmative misadvice, it doesn't matter that *Padilla* doesn't apply retroactively.

2. At the time of Mr. Hibbert's conviction, the Fourth Circuit recognized a separate rule for affirmative misadvice about collateral consequences of a guilty plea.

There is no published Maryland decision on whether affirmative misadvice given before *Padilla* about immigration consequences constitutes ineffective assistance of counsel, but Mr. Hibbert identifies several federal and state courts that had adopted that rule before his conviction.

For example, in *Downs-Morgan v. United States*, 765 F.2d 1534 (11th Cir. 1985), the petitioner attacked his guilty plea to conspiracy to import marijuana. 765 *Id.* at 1536. Mr. Downs-Morgan initially pleaded not guilty but changed his plea to guilty after "his attorney represented that the conviction would not subject him to deportation." *Id.* After applying later for political asylum, Mr. Downs-Morgan learned that his drug conviction made him both subject to deportation and excludable from the United States. *Id.* Although the Eleventh Circuit "decline[d] to hold that an affirmative misrepresentation by an attorney in response to a specific inquiry by the accused . . . necessarily constitutes ineffective assistance," the Court recognized that "certain considerations are so important that misinformation from counsel may render the guilty plea constitutionally uninformed." *Id.* at 1540–41. The Court remanded the case for an evidentiary hearing to determine whether, under the totality of the circumstances, Mr. Downs-Morgan had received ineffective assistance from his counsel in deciding to plead guilty. *Id.* at 1541.

Before *Downs-Morgan*, the only federal case squarely addressing the validity of a guilty plea based on an affirmative misrepresentation that the defendant would not be deported was *United States v. Parrino*, 212 F.2d 919 (2d Cir. 1954). There, the Second Circuit refused to permit a defendant to withdraw his plea even though his attorney had misinformed him that he wouldn't be subject to deportation. *Id.* at 920–22. But as the Eleventh Circuit observed in *Downs-Morgan*, *Parrino* involved a motion to withdraw a plea under Federal Rule of Criminal Procedure 32(d), not a claim of ineffective assistance of counsel. 765 F.2d at 1540. When the Second Circuit later examined (and rejected) an ineffective assistance claim based on counsel's failure to inform the accused of the immigration consequences of his guilty plea, the Court suggested an affirmative misrepresentation by counsel could have supported the claim. *See United States v. Santelises*, 509 F.2d 703, 704 (2d Cir. 1975) (per curiam) ("Since [defense counsel] does not aver that he made an affirmative misrepresentation, [the defendant] fails to state a claim for ineffective assistance of counsel."). The D.C. Circuit had suggested the same by that point. *See United States v. Briscoe*, 432 F.2d 1351, 1353 (D.C. Cir. 1970) ("Under appropriate circumstances the fact that a defendant has been misled as to consequence of deportability may render his guilty plea subject to attack."). And state courts soon started following suit. *See*, *e.g.*, *People v. Correa*, 465 N.E.2d 507, 512 (1984) ("[W]here defense counsel has unequivocally represented to his client that [a guilty] plea will not result in his deportation and the defendant has relied upon this patently erroneous advice in deciding to plead guilty, post-conviction relief is appropriate to permit the defendant to plead anew . . . .”).

Mr. Hibbert recognizes that at the time of his conviction, there was no Maryland- or Fourth Circuit-equivalent to any of these cases. But there was *Strader v. Garrison*, 611 F.2d 61 (4th Cir. 1979). In that case, the petitioner escaped from prison, and after he was recaptured, he was charged with crimes allegedly committed during his period of unscheduled freedom. *Id.* at 63. In deciding whether to plead guilty, he expressed concern that the new sentence would postpone his parole eligibility date and he was incorrectly “assured by [his] lawyer that it would not.” *Id.* The Fourth Circuit held that “when [a defendant] is grossly misinformed about [parole eligibility dates] by his lawyer, and relies upon that misinformation, he is deprived of his constitutional right to counsel.” *Id.* at 65. The Court expressly rejected the Second Circuit’s decision in *Parrino*, describing the case as an “aberration[].” *Id.* at 64. The Court concluded that “[w]hen the erroneous advice induces the plea, permitting [the defendant] to start over again is the imperative remedy for the constitutional deprivation.” *Id.* at 65.

It’s true that *Strader* was about parole eligibility, not deportation. Even so, it reveals that before *Padilla*, the Fourth Circuit was willing to recognize that affirmative misadvice about a “collateral” consequence of a conviction could support an ineffective assistance claim. And by the time Mr. Hibbert pleaded guilty, this principle was so entrenched in Fourth Circuit jurisprudence that the Court no longer bothered to publish decisions involving it. *See*, *e.g.*, *United States v. Crisp*, 929 F.2d 695 (4th Cir. 1991) (unpublished table opinion) (per curiam).

What's more, *Strader* "co-existed happily with precedent, from the same jurisdiction," *Chaidez*, 568 U.S. at 356, holding that defendants need not be advised of possible deportation or other collateral consequences of a guilty plea. *See*, *e.g.*, *United States v. DeFreitas*, 865 F.2d 80, 82 (4th Cir. 1989) ("We cannot say that counsel performed unreasonably in merely neglecting to inform [the defendant] that he might be subject to deportation or denied re-entry into the United States because of his guilty plea."). It fell squarely within the "separate rule for material misrepresentations" that *Chaidez* recognized was undisturbed by *Padilla*. *Chaidez*, 568 U.S. at 356; *see also Padilla*, 559 U.S. at 386–87, 387 n.4 (Alito, J., concurring in the judgment) (observing that several federal Circuits had already "held that affirmative misadvice concerning nonimmigration consequences of a conviction can violate the Sixth Amendment even if those consequences might be deemed 'collateral'" (*citing*, *inter alia*, *Strader*, 611 F.2d at 65)).

Strader flows logically to the conclusion that gross misadvice about another "collateral" consequence is constitutionally deficient representation. *See United States v. Mora-Gomez*, 875 F. Supp. 1208, 1213 (E.D. Va. 1995) (applying *Strader* and holding that "counsel's affirmative misrepresentation regarding the deportation consequences of a guilty plea may, but does not automatically, constitute ineffective assistance"). And Maryland's application of federal constitutional law must be consistent with federal courts in this jurisdiction. *See Miller*, 435 Md. at 194 n.9. Moreover, *Strader* tracks other Maryland law at the time of Mr. Hibbert's plea recognizing that when trial courts choose to give defendants advice, even when not obligated to do so, that advice cannot be erroneous. *See Morales v. State*, 325 Md. 330, 338 (1992) ("Since in the instant case the trial judge elected to inform the unrepresented defendant of the possibility of impeachment by prior convictions, he should have done so correctly.”). We hold, therefore, that affirmative misrepresentations about the immigration consequences of a pre-*Padilla* guilty plea may constitute ineffective assistance of counsel.

3. Counsel grossly misadvised Mr. Hibbert about the immigration consequences of his plea.

Having determined that Mr. Hibbert raised a proper ineffective assistance claim, we turn to whether he, in fact, received constitutionally deficient assistance.

To establish ineffective assistance of counsel, Mr. Hibbert had to satisfy the two-part test established in *Strickland v. Washington*, 466 U.S. 668 (1984): he had to demonstrate (1) that “counsel’s representation fell below an objective standard of reasonableness;” and (2) that “there is a reasonable probability that but for counsel’s unprofessional errors, the result of the proceedings would have been different.” *Id.* at 688, 694. In the context of guilty pleas, the first part of the test is met when an attorney’s actions fall outside “the range of competence demanded of attorneys in criminal cases.” *Hill v. Lockhart*, 474 U.S. 52, 56, 59 (1985) (*first quoting McMann v. Richardson*, 397 U.S. 759, 771 (1970); *and then citing Tollett v. Henderson*, 411 U.S. 258, 267 (1973)). To establish prejudice in this context, the petitioner must demonstrate that “there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

Whether Mr. Hibbert received ineffective assistance is “a mixed question of law and fact,” and we will not disturb the *coram nobis* court’s factual findings unless they are clearly erroneous. *Blake v. State*, 485 Md. 265, 290–91 (2023) (citations omitted). We do, however, exercise our own independent judgment as to the reasonableness of counsel's conduct and any prejudice that resulted. *State v. Sanmartin Prado*, 448 Md. 664, 680 (2016) (*citing State v. Jones*, 138 Md. App. 178, 209 (2001), *aff'd*, 379 Md. 704 (2004)).

As to *Strickland*'s first prong, counsel's representation of Mr. Hibbert was objectively unreasonable. At the time of Mr. Hibbert's conviction, it was settled law in the Fourth Circuit that although attorneys weren't required to inform their criminal defendant clients about the collateral consequences of their guilty plea, they could not misinform them about those collateral consequences. *See Strader*, 611 F.2d at 65. And Mr. Hibbert was misinformed affirmatively, and in a substantively significant way, about the collateral consequences of his guilty plea. Counsel told Mr. Hibbert "not to worry about [his immigration] status because it was just a minor possession kind of case" and that "pleading guilty would not affect [his] status since [he] was a lawful permanent resident." But at the time, a conviction for the manufacture and distribution of cocaine, whether prosecuted under federal law or under Maryland's analogous statute, triggered two independent grounds of deportation.

First, the conviction made Mr. Hibbert deportable under 8 U.S.C. § 1251(a)(2)(B)(i) (1993) (current version at 8 U.S.C. § 1227(a)(2)(B)(i)) because it "relat[ed] to a controlled substance." This section of the Immigration and Nationality Act required only a "conviction" and wasn't conditioned on any minimum sentence threshold. *Id. Second*, the conviction made Mr. Hibbert deportable under 8 U.S.C. § 1251(a)(2)(A)(iii) (1993) (current version at § 1227(a)(2)(A)(iii)) because it qualified as an "aggravated felony."[5] And contrary to counsel's advice, Mr. Hibbert's status as a lawful permanent resident didn't shield him from either of these grounds of deportation. By their terms, both provisions applied to "alien[s]," *see* 8 U.S.C. § 1251(a)(2)(A)(iii), (B)(i) (1993) (current version at 8 U.S.C. § 1227(a)(2)(A)(iii), (B)(i)), which meant (and still means) "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3) (1993); 8 U.S.C. § 1101(a)(3) (2026).

Put another way, Mr. Hibbert became deportable the moment judgment entered. Lawful permanent resident status didn't then, doesn't now, and never has negated a ground of deportability triggered by a qualifying criminal conviction. Counsel was grossly mistaken to suggest otherwise. So even before *Padilla*, counsel's conduct "fell outside the wide range of professionally competent assistance." *Taylor v. State*, 428 Md. 386, 399 (2012) (*quoting Strickland*, 466 U.S. at 690).

4. Mr. Hibbert Was Prejudiced By Counsel's Gross Misadvice.

As to *Strickland*'s second prong, Mr. Hibbert was prejudiced by counsel's misadvice. He testified that he would not have pleaded guilty had he known that his plea

[5] *See* 8 U.S.C. § 1101(a)(43) (defining "aggravated felony" to include any "drug trafficking crime (as defined in section 924(c) of Title 18 [of the United States Code)]"); 18 U.S.C. § 924(c)(2) (defining a "drug trafficking crime" to include "any felony punishable under the Controlled Substances Act (21 U.S.C. 81 et seq.)"); 21 U.S.C. § 841(a)(1), (b)(1) (making manufacture and distribution of cocaine a felony punishable under the Controlled Substances Act); *see also In re Barrett*, 20 I. & N. Dec. 171, 177–78 (BIA 1990) (holding that a state-law conviction for an offense analogous to a federal Controlled Substances Act felony qualifies as a "drug trafficking crime" aggravated felony for immigration purposes).

would result in his deportation. The Supreme Court of the United States has recognized that "[p]reserving the client's right to remain in the United States may be more important to the client than any potential jail sentence." *Immigration & Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 322 (2001) (citation omitted), *superseded by statute on other grounds*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 310, *as recognized in*, *Nasrallah v. Barr*, 590 U.S. 573 (2020). The Court has rejected expressly the argument that "it would be irrational for a defendant [facing deportation] to reject [a] plea offer in favor of a trial" even where the defendant is unlikely to prevail at trial. *Lee v. United States*, 582 U.S. 357, 371 (2017).

Deportation was the determinative issue for Mr. Hibbert. He came to the United States from Jamaica when he was nine years old. At the time he pleaded guilty, Mr. Hibbert had been living in the United States for over twenty years and his entire family lives here. Mr. Hibbert specifically asked counsel whether a plea would jeopardize his ability to remain in the United States, signaling that he would have rejected the plea had he known the consequences. Given Mr. Hibbert's significant family ties to the United States and his testimony (unchallenged by the State) that he would not have pleaded guilty had he been aware of the consequences, Mr. Hibbert has proven that he was prejudiced by counsel's deficient performance.

Mr. Hibbert was, therefore, entitled to *coram nobis* relief because he received constitutionally ineffective assistance of counsel.

C. Mr. Hibbert's Guilty Plea Was Not Knowing And Voluntary.

Even if Mr. Hibbert hadn't received ineffective assistance of counsel, he was entitled to *coram nobis* relief nevertheless because his guilty plea wasn't knowing and voluntary.

Before accepting a plea, the trial court must determine that the defendant "is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea." Maryland Rule 4-242(c). Although these "consequences" generally are limited to direct consequences, *Yoswick v. State*, 347 Md. 228, 240 (1997), *abrogated by*, *Padilla v. Kentucky*, 559 U.S. 356 (2010), *as recognized in*, *Miller v. State*, 196 Md. App. 658 (2010), a plea entered in reliance on affirmative misadvice about a collateral consequence is not knowing and voluntary, even if the court itself had no duty to advise the defendant about the consequence in the first place. *See Morales*, 325 Md. at 338.

As the State acknowledges, *Reyes* is dispositive on this point. Like Mr. Hibbert, Ms. Reyes was a lawful permanent resident who (before *Padilla*) pleaded guilty to a controlled-substance offense after being misadvised affirmatively by her attorney about the consequences of the plea—including, specifically, that the plea would not affect her efforts to become a citizen.[6] *Reyes*, 253 Md. App. at 480, 489. We held that her plea was not knowing and voluntary because Ms. Reyes was "affirmatively misinformed about the consequences of her plea throughout all the proceedings," and therefore was "denied the

[6] Ms. Reyes also raised an ineffective-assistance claim in her *coram nobis* petition, but she abandoned the issue on appeal. *See Reyes*, 253 Md. App. at 489 n.11.

opportunity to make an informed choice of whether to plead guilty or go to trial." *Id.* at 505.

So too here. Mr. Hibbert's plea was entered in reliance on counsel's assurance that there would be no immigration consequences. That affirmative advice was wrong. As a result, Mr. Hibbert was denied the opportunity to make an informed choice of whether to plead guilty or go to trial. Under *Reyes*, his plea cannot stand.[7]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY MAYOR & CITY COUNCIL OF BALTIMORE. MANDATE TO ISSUE FORTHWITH.

[7] Also pending before the Court is Mr. Hibbert's "Motion to Expedite Consideration of Appeal and Direct Issuance of the Mandate." Given our holding here, we shall deny as moot the request for expedited consideration but, especially given the State's agreement that he is entitled to *coram nobis* relief, grant the request to expedite the mandate. Upon entry of this Opinion, the Clerk shall issue the mandate forthwith.