Circuit Court for Prince George's County
Case No. CT13-0105X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2072

September Term, 2015

STATE OF MARYLAND

v.

HUGO REYES-MORALES

Nazarian,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 5, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On January 17, 2013, Hugo Reyes-Morales (hereinafter "Appellee") was indicted in the Circuit Court for Prince George's County on five offenses: four counts of third-degree sex offenses and one count of sexual solicitation of a minor. On July 10, 2013, Appellee entered an *Alford* plea to one count of the third-degree sex offense. Appellee was sentenced to 364 days in prison.

On April 1, 2015, Appellee filed a petition for post-conviction relief. A hearing was held on June 22, August 7, and September 11, 2015. Subsequently, Appellee filed a Petition for Writ of Coram Nobis. On October 13, 2015, the circuit court granted Appellee's Petition for Writ of Coram Nobis and vacated his plea and conviction. It is from this decision that the State of Maryland (hereinafter "the State") files this timely appeal. In doing so, the State brings one question for our review, which we have rephrased for clarity:[1]

> I. Did the circuit court err in granting Appellee's Petition for Writ of Coram Nobis?

For the reasons stated, we reverse the judgment of the circuit court and remand this case for further proceedings.

[1] The State presents the following question:

> 1. Did the circuit court improperly grant *coram nobis* relief where, prior to his plea to a third degree sex offense, Reyes-Morales was correctly informed that he was subject to deportation for conviction of a third degree sex offense, that his counsel had no control over immigration issues, and that he could be ordered to the leave country and told never to return?

FACTUAL AND PROCEDURAL BACKGROUND

Appellee is a citizen of Mexico who is a United States lawful permanent resident. He was never a United States citizen.

On January 17, 2013, Appellee was indicted by the Circuit Court for Prince George's County on four counts of sexual offense in the third degree, and one count of sexual solicitation of a minor. The charges stemmed from Appellee allegedly inappropriately touching a twelve-year-old girl who was being babysat by Appellee's wife. Appellee entered the room where the victim was sleeping and touched her breast and vagina. The victim woke up and ran to the bathroom and then told her mother what had happened. The Appellee admitted to touching the victim. Subsequently, Appellee retained the services of Mr. Thomas C. Mooney, Esquire (hereinafter "Mooney") to represent him in the matter. On February 5, 2015, Mooney entered his appearance in the Circuit Court for Prince George's County on behalf of Appellee.

Alford Plea and Sentencing Hearing

On July 10, 2013, Appellee entered an *Alford* plea to one count of sexual offense in the third degree. On the same day, Appellee was sentenced to 364 days, all but two days suspended with credit for two days already served and 364 days of supervised probation. At the hearing, Mooney's associate Mr. Ken Joy, Esquire (hereinafter "Joy") stood in for Mooney.

During Appellee's sentencing hearing, the hearing judge and Joy discussed the potential immigration consequences of Appellees guilty plea:

THE COURT: He has immigration issues.

[MR. JOY]: But he is aware of that, Your Honor. We have explained it to him.

…

THE COURT: I'm not sure about the effect of the sex offender registry on immigration; that might be enough in and of itself.

[MR. JOY]: Your Honor, since day one when he's come in our office, through the use of our secretary who spoke Spanish, we have steadfast said every day that we have no guarantee, whatsoever, over any immigration issues. It doesn't matter.

We even told him if he got a DUI, he could be deported, so we have no control and he understands that.

THE COURT: All right. Do you want to proceed with the plea?

[APPELLEE]: Yes

Subsequently, during the court's explanation of the rights that Appellee would be relinquishing by pleading guilty, the court explained the potential immigration consequences of the plea to Appellee:

THE COURT: All right. And you understand that given your immigration status in this country, there is a possibility that Immigration and Customs enforcement could create a fine on you and could order you to leave the country, and never to return.

Ordinarily, the 364 days is considered a immigration friendly sentence, but I'm not aware of what their policy is concerning registry on the sex offender registry. So, you are entering an Alford plea, with the understanding that if you went to trial and got convicted, you could serve a more significant sentence, and still have the same immigration consequence; do you understand?

[APPELLEE]: Yes.

THE COURT: All right. Did you understand everything that I have said, all the rights I told you about?

[APPELLEE]: Yes.

THE COURT: Is it your intention to give up those rights and enter a plea of guilty?

[APPELLEE]: Yes.

Thereafter, the State presented the evidence that it would have offered at trial against Appellee:

[THE STATE]: Had this gone to trial, the State would have proved beyond a reasonable doubt that [Appellee sexually assaulted a young girl]…She was 12 years old. She was being babysat by [Appellee's wife]. While [the victim] was in the room, [Appellee] entered the room, and touched the victims breast and vagina. The victim woke up and ran to the bathroom.

[The victim] later reported it to her mom… Her mother would have testified that she confronted [Appellee], and [Appellee] admitted to touching the victim.

[MR. JOY]: No additions or corrections for the purpose of the plea.

THE COURT: Do you agree that if this matter went to trial that that would be the evidence against you?

[APPELLEE]: Yes.

The court then proceeded to determine if Appellee was freely, voluntarily, and intelligently accepting the plea. Notably, as part of the court's determination, the court asked Appellee:

THE COURT: [A]re you entering the plea because you do not want to go to trial and risk being convicted of more offenses and facing a more serious incarceration?

[APPELLEE]: Yes.

THE COURT: You want to take advantage of the agreement?

[APPELLEE]: Yes.

THE COURT: All right. I'm going to find there is a factual basis and the plea is freely, voluntarily, and intelligently made.

Coram Nobis Proceedings

On January 31, 2014, Appellee was taken into custody by the Department of Homeland Security. As a result of Appellee not being a naturalized citizen of the United States, he was subject to deportation because his conviction involved a crime of moral turpitude. On July 15, 2015, Appellee filed a Petition for Writ of Coram Nobis based on the unconstitutionality of the plea and/or ineffective assistance of counsel on the third-degree sex offense charge. Appellee requested that the circuit court vacate the guilty plea and strike the not guilty finding in the case.

The matter came before the Circuit Court of Prince George's County for a hearing on October 2nd and 3rd of 2015. During direct examination of Appellee at Appellee's *coram nobis* hearing, Appellee testified to his recollection of his discussion with his attorneys prior to accepting the *Alford* plea:

[TRIAL COUNSEL]: [D]id you talk to Mr. Mooney the morning of court?

[APPELLEE]: Yes.

[TRIAL COUNSEL]: Did he say anything to you about immigration when you talked to him the morning of court?

[APPELLEE]: No, not exactly.

[TRIAL COUNSEL]: Okay. Can you tell me what he said to you?

…

[APPELLEE]: He told me that my case was very low, it was low and that immigration might take it or might not.

[TRIAL COUNSEL]: Where you ever told by anybody before you met me that you were subject to mandatory deportation?

[APPELLEE]: No.

Following testimony from Appellee, Appellee's former attorney, Mr. Joy, was called to testify at the *coram nobis* hearing. During Joy's testimony, Appellee's attorney asked about Joy's characterization of the Alford plea as "immigration friendly":

[MR. JOY]: As far as whether or not I told [Appellee], the belief was that this was an immigration friendly plea, yes.

…

[TRIAL COUNSEL]: [Y]ou, in fact, told my client that you did not know what immigration would do; is that correct?

[MR. JOY]: I think I specifically stated that this matter could deport him, but I'm not 100 percent sure because I've had other clients that have had deportable offenses that have not been deported.

We explained to him – I explained to him that this could deport him, probably would, but that I'm not 100 percent sure.

Additionally, Appellee's counsel asked Joy whether Appellee was ever advised to seek an immigration attorney for the immigration implications of his case. Joy responded:

[MR. JOY]: What occurred was, [Appellee] came by the office… Mr. Mooney was in the corner sitting down talking with [Appellee], going over [Appellee's] rights for trial because at the current time, we were set to go to trial.

> [Mr. Mooney] advised [Appellee] that he should go see an immigration attorney…through our interpreter…and [our interpreter] gave him the immigration – Anthony Fatemi's information.[2]

Joy would later reiterate that his firm recommended that Appellee consult an immigration attorney prior to trial. *See* R. Extract at E.189. After questions related to the circumstances surrounding Appellee's acceptance of the plea deal, Mr. Joy explained that he went over the plea deal with Appellee through a Spanish interpreter before Appellee accepted the plea. Thereafter, the following exchange ensued:

> [TRIAL COUNSEL]: Did you and the interpreter tell [Appellee] that as a result of that plea that day, he would be deported?
>
> [MR. JOY]: Did I say that he would be deported? No, I did not say he would.
>
> [TRIAL COUNSEL]: You said he could be deported?
>
> [MR. JOY]: That's correct.

Joy also testified that he had advised Appellee, prior to trial, "that the only surefire 100 percent way that [Appellee] would not be deported would be to go to trial." Following questioning of Joy, Mr. Mooney – who was also Appellee's former attorney on the case – was called to testify. On direct examination, the State asked Mooney about the immigration advice he gave Appellee prior to, and following, the plea offer:

> [THE STATE]: [W]hat was the substance of your conversation regarding whether there would be any immigration consequences of either a plea or a conviction?

[2] Anthony Fatemi is an immigration attorney who Appellee's former counsel referred Appellee to for legal consultation relating to his immigration issues.

[MR. MOONEY]: The substance of the conversation was that should he be convicted there would be immigration consequences be it a plea or a trial. I know that my recollection of what he expressed was that he really didn't want to go to jail, but he really didn't [want to] get deported. There was a lot of discussion about which one was more important in his life at the time.

[THE STATE]: And what did he tell you was most important?

…

[MR. MOONEY]: My recollection is that he waffled between the two until the day of trial when he was made an offer that they guaranteed him to stay out of jail.

[THE STATE]: Do you recall whether you advised him whether he could, would, might, might be deported as a result of a plea in this case?

[MR. MOONEY]: I don't recall the exact wording. We did talk about whether, you know, deportation was an issue upon a finding of guilt. That's what I recall. And the answer was yes.

[THE STATE]: At any point, did you refer him to consult with another attorney?

[MR. MOONEY]: Yes, there was a conversation about that, and he was referred to Anthony Fatemi.

[THE STATE]: Was this before or after trial?

[MR. MOONEY]: Prior to.

Thereafter, during cross examination of Mooney, the following exchange ensued:

[TRIAL COUNSEL]: Okay. So now, [Appellee's] hired you to represent him. And at the 11th hour, at some time you say well, maybe you should see another lawyer, okay, because I don't know the immigration consequences. Correct?

…

[MR. MOONEY]: That's incorrect because this gentleman came into the office on a number of occasions. And the subject of immigration came up on more than one occasion. And we had discussion about the reality that upon conviction or upon plea, that deportation was an imminent reality.

…

[TRIAL COUNSEL]: So you told him he would be deported? Automatically deported?

[MR. MOONEY]: No. I already told you that I don't remember saying that he would be deported, because in order to be deported, somebody actually has to come and take him out of the country.

I have other clients who have, for whatever reason, not been deported. I'm not psychic. I don't know that ICE will come and get him, but it is a likelihood that he will be deported.

Finally, Mooney testified about the discussion he had with Appellee prior to Appellee's acceptance of the *Alford* plea:

[THE STATE]: And did you discuss the immigration consequences of that offer?

…

[MR. MOONEY]: Yes.

[THE STATE]: And what was discussed?

…

[MR. MOONEY]: Immigration implications arise upon the entry of a plea of guilt to an offense such as this. That was the message that was conveyed. Again I don't remember the exact words.

…

[THE STATE]: And what were the precise implications?

[MR. MOONEY]: Deportation.

[THE STATE]: Did you tell him that?

[MR. MOONEY]: That – we told him that deportation was, in fact, one of the issues upon entry of the plea of guilty, yes.

Following Mooney's testimony, and closing arguments, the *coram nobis* hearing concluded.

On October 13, 2015, the circuit court granted Appellee's Petition for Writ of Coram Nobis. The Post-Conviction Motion was ruled moot on October 2, 2015. The State filed this timely appeal. However, on November 4, 2016, this Court granted a Motion to Stay pending the United States Supreme Court decision in *Juan Carlos Sanmartin Prado v. Maryland*. On April 17, 2017, the Supreme Court denied the writ of certiorari. *See Prado v. Maryland*, 137 S.Ct. 1590 (2017), *cert*. denied.

STANDARD OF REVIEW

"The standard of review of the [trial] court's determinations regarding issues of effective assistance of counsel is a mixed question of law and fact." *Prado*, 448 Md. at 679 (Quoting *State v. Jones*, 138 Md. App. 178, 209 (2001)). While we will not disturb the *coram nobis* court's findings of fact absent clear error, a reviewing court must undertake an independent analysis to determine whether there was, in fact, "a violation of a constitutional right as claimed." *Id*. Namely, "the appellate court must exercise its own

independent judgment as to the reasonableness of counsel's conduct and the prejudice, if any." *Id*. In doing so

> [The appellate court] will evaluate anew the findings of the [trial] court as to the reasonableness of counsel's conduct and the prejudice suffered. As a question of whether a constitutional right has been violated, we make our own independent analysis by reviewing the law and applying it to the facts of the case.

Id. In other words, "in our independent examination of the case, we re-weigh the facts as accepted in order to determine…[whether there] was…a violation of a constitutional right as claimed. *Coleman v. State*, 434 Md. 320, 331 (2013). We conduct our independent review without deference to a trial court's resolution of questions of law. *See Padilla*, 448 Md. at 679.

DISCUSSION

A. Parties' Contentions

The State argues that the circuit court improperly granted Appellee's Petition for Coram Nobis. The State contends that Appellee did not state adequate grounds for *coram nobis* relief. The State asserts that at the *coram nobis* hearing Appellee gave conflicting testimony. Namely, Appellee testified that he received a Green card in 2006; but Appellee also testified that he came to the United States unlawfully in 2010. The State also argues that Appellee failed to prove that *he* was the person suffering collateral consequences because the immigration deportation proceeding documents (hereinafter "Deportation Documents") Appellee received were addressed to "Hugo Morales de Matias," not "Hugo Reyes-Morales." Thus, the State maintains that given the uncertainty in the record as to Appellee's immigration status, Appellee failed to state adequate grounds for *coram nobis*

relief.

Next, the State asserts that Appellee's *Alford* plea was proper pursuant to Maryland Rule 4-242. The State maintains that the circuit court stated to Appellee that given Appellee's immigration status there was a possibility that he could be removed from the United States. The State also contends that Appellee's attorneys did not render ineffective assistance in connection with their advice on the immigration consequences related to Appellee's *Alford* plea. The State argues that Appellee's counsel testified at the *coram nobis* hearing that Appellee was advised that his *Alford* plea might result in Appellee being deported.

Appellee responds that the circuit court properly granted his Petition for Coram Nobis because Appellee was "misadvised and lead to believe that his plea was 'immigration friendly' despite the… explicit definitions of deportable offenses in the immigration statute." Appellee argues that his counsel advised that he could be deported rather than giving unequivocal advice that was "required at that time by *Sanmartin Prado v. State*, 225 Md. App. 201, 213 (2015)." Appellee maintains that the Court of Appeals reversed this Court's decision in *Sanmartin Prado* but argues that the reversal does not change the outcome of this case. Specifically, Appellee argues that in "*Sanmartin Prado*, the record did not evidence *misadvice* about immigration consequences." Moreover, Appellee contends that despite the clear language of the immigration statute Appellee's defense counsel mistakenly believed that Appellee's *Alford* plea to the alleged offenses was immigration friendly.

Finally, Appellee argues that, at the *coram nobis* hearing, the State never contended

that Appellee was not the person named in the Deportation Documents. Accordingly, Appellee argues that the State waived its right to challenge Appellee's standing for *coram nobis* relief. Additionally, Appellee notes that he identified the Deportation Documents as the same documents he received after he was arrested by immigration authorities.

B. Analysis

The State argues that the circuit court erred in granting Appellee's Petition for Coram Nobis because Appellee did not state adequate grounds for *coram nobis* relief. Pursuant to the Sixth Amendment of the United States Constitution as applied to the states through the Fourteenth Amendment and Article 21 of the Maryland Declaration of Rights, Appellee is entitled to effective assistance of counsel. Here, Appellee alleges that his defense counsel failed to advise him of the collateral consequences of his *Alford* plea. Appellee maintains that his defense counsel told him that he *could* be deported, but not that the offense of sexual offense in the third degree made him deportable. Appellee also contends that his defense counsel and the circuit court advised him that he was not subject to automatic deportation as a result of the conviction.

A petitioner is entitled to *coram nobis* relief if the petitioner can satisfy the two-prong test to establish ineffective assistance of counsel. *Strickland v. Washington*, 467 U.S. 1267 (1984). The test requires that the petitioner shows that: (1) trial counsel's performance fell below an objective standard of reasonableness; and (2) there must be a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United States Supreme Court stated:

> Although removal proceedings are civil, deportation is intimately related to the criminal process, which makes it uniquely difficult to classify as either a direct or a collateral consequence. Because the distinction is thus-ill-suited to evaluating a *Strickland* claim concerning the specific risk of deportation, advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.

Padilla v. Kentucky, 559 U.S. 356, 357 (2010). Maryland case law and Maryland statute also requires an attorney to advise a client of possible immigration implications. Maryland Rule 4-242 (d) prescribes:

> **Conditional Plea of Guilty.**
>
> (1) *Scope of Section.* This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.
>
> (2) *Entry of Plea; Requirements.* With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.
>
> (3) *Withdrawal of Plea.* A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Appellee entered an *Alford* plea to one count of sexual offense in the third degree. Appellee contends that at the time Appellee entered his *Alford* plea the immigration statute in effect in defining deportation consequences was "succinct, clear, and explicit." The statute that we must examine is:

> **(2) Criminal offenses**
>
> **(A) General crimes**

> **(i) Crimes of moral turpitude**
> Any alien who—
>
> **(I)** is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and
>
> **(II)** is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.
>
> …
>
> **(iii) Aggravated felony**
>
> Any alien who is convicted of an aggravated felony at any time after admission is deportable.

8 U.S.C. § 1227 (a)(2)(A). "Sexual abuse of a minor" is an "aggravated felony" pursuant to 8 U.S.C. § 1101 (a) (43) (A). Appellee maintains that his defense counsel told him that he *could* be deported, but not that the offense of sexual offense in the third degree made him deportable. Before reaching our conclusion in this case, we turn to review the recent developments in this area of law.

Padilla & Sanmartin Prado

This case comes following significant developments in the law relating to the scope of a defense counsel's duty to advise their client of the collateral immigration consequences of a guilty plea. Namely: the Supreme Court's decision in *Padilla*; and the Court of Appeals's decision in *Sanmartin Prado*. In *Padilla v. Kentucky*, the Supreme Court held:

> When the law is not succinct and straightforward *(as it is in many of the scenarios posited by Justice ALITO)*, a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation

> consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.

Padilla v. Kentucky, 559 U.S. 356, 369 (2010) (emphasis added). The scenarios posited by Justice Alito are found in Alito's concurring opinion, which in relevant part states:

> The Court's new approach is particularly problematic because providing advice on whether a conviction for a particular offense will make an alien removable is often quite complex. "Most crimes affecting immigration status are not specifically mentioned by the [Immigration and Nationality Act (INA)], *but instead fall under a broad category of crimes, such as crimes involving moral turpitude or aggravated felonies*." As has been widely acknowledged, determining whether a particular crime is an "aggravated felony" or a "crime involving moral turpitude [(CIMT)]" is not an easy task.

Id. at 377-78 (2010) (Alito, J., concurring) (Internal citations omitted) (emphasis added). Thus, when the majority referred to scenarios "when the law is not succinct and straightforward" – i.e. the scenarios posited by Justice Alito – the majority was ostensibly referring to convictions that "fall under a broad category of crimes, such as crimes involving moral turpitude or aggravated felonies." Accordingly, the majority seemed to recognize that when a conviction is for a crime that falls under the category of "moral turpitude or aggravated felonies," an advising attorney "need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." *Accord Id*. at 369; *with Id*. at 377-78 (Alito, J., concurring).

In *Padilla*, the Supreme Court reasoned that the immigration consequences of Padilla's controlled substance conviction were "truly clear" because the immigration statute was "succinct, clear, and explicit in defining the removal consequence for Padilla's conviction." *Id*. at 368 (Citing 8 U.S.C. § 1227(a)(2)(B)(i): "Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate)

any law or regulation of a State, the United States or a foreign country relating to a controlled substance... other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable"). The Supreme Court explained that

> Padilla's counsel could have easily determined that his plea would make him eligible for deportation simply from reading the text of the statute, which addresses *not some broad classification of crimes but specifically commands removal for all controlled substances convictions* except for the most trivial of marijuana possession offenses.

Id. (emphasis added). Notably, the majority specifically expressed that this was not a case where the conviction fell under a broad category of offenses.

Following *Padilla*, the Court of Appeals decided *State v. Sanmartin Prado*, which applied the holding of *Padilla* to Maryland law. In *State v. Sanmartin Prado*, 448 Md. 684 (2016), Juan Carlos Sanmartin Prado ("Prado"), a citizen of Ecuador and legal permanent resident of the United States, was charged with first-degree child abuse, second-degree child abuse and second-degree assault against his three-year old daughter. Prado plead not guilty by way of an agreed statement of facts to the second-degree child abuse offense. At trial the following exchange occurred between Prado and his defense counsel:

> [TRIAL COUNSEL]: And understand what—we have had discussions with respect to your immigration status. Is that correct?
>
> [PRADO]: Yes, sir.
>
> [TRIAL COUNSEL]: You have a green card and you have been a permanent resident of the United States for over twelve years, is that correct?
>
> [PRADO]: Yes, sir.
>
> [TRIAL COUNSEL]: You are not under an active deportation order?

[PRADO]:	No.
[TRIAL COUNSEL]:	And there's no immigration detainer that we are aware of. Is that correct?
[PRADO]:	That's correct.
[TRIAL COUNSEL]:	And you understand that I'm not making any promises and the [circuit court] is not making any promises about what the federal government could possibly do in the future with respect to reviewing this conviction. Is that correct?
[PRADO]:	Yes, sir.
[TRIAL COUNSEL]:	And you still wish to proceed this morning?
[PRADO]:	Yes, sir.

Id. at 668. He was found guilty of second-degree child abuse. Two years later he filed a Petition for Writ of Error Coram Nobis "contending that, as a result of the conviction, he was facing a significant collateral consequence, that he is automatically deportable from the United States[.]" *Id*. at 671 (internal quotations omitted). He alleged that his defense counsel failed to advise him that he was subject to automatic deportation. At the Petition for Writ of Error Coram Nobis hearing, his defense counsel testified that he told his client that he "could and probably would be [facing] immigration consequences as a result of the plea." The circuit court denied the petition. Prado appealed and we reversed the judgment of the circuit court, remanding the case to the circuit court for further proceedings. We held that "trial counsel qualified his statements to [Prado] as to whether a conviction would render him deportable[,]" and that, accordingly, "Prado established that [] trial counsel did

not provide him with the correct available advice about the deportation risk." *Id.* at 213 (2015). The Court of Appeals reversed our decision.

The Court of Appeals forwarded multiple reasons for its decision to hold for the State. First, the court noted that Prado's counsel had appropriately warned him of the potential immigration consequences of his guilty plea:

> defense counsel advised [Prado] that "this was a 'deportable offense' and [Prado] 'could be deported ... if the federal government chose to initiate deportation proceedings,' and it was 'possible' that the [Prado] would be deported [,]" and where defense counsel testified that he also advised the defendant that "there could and probably would be immigration consequences" and "that it was a deportable or a possibly deportable offense," and the advice was given before a plea of not guilty by way of an agreed statement of facts proceeding, such advice was not constitutionally deficient but rather was "correct advice" about the "risk of deportation," as required by *Padilla*.

(Internal citation omitted). The Court of Appeals concluded that the defense counsel's advice in *Sanmartin Prado* was not constitutionally deficient because it correctly advised of the precise legal effect of Defendant's guilty plea. Namely, that Defendant's guilty plea would effectively render Defendant "deportable" under U.S. immigration law. The court explained that even in cases where aliens are deemed automatically "deportable," deportation is never a certainty. *Id.* at 718 ("that an offense is 'deportable' does not mean that deportation is an absolute certainty."). Thus, the court reasoned that a defense attorney, when advising a defendant of the immigration consequences attendant to a contemplated plea agreement, should not be expected to advise their client that an outcome is certain when such an outcome is not in fact a legal certainty. Likewise, the court reasoned that *Padilla* did not require defense counsel to use "magic words" – such as

"automatically deportable" – when advising clients of attendant immigration risks to a guilty plea. *Id*. at 711-12. Simply stating that an offense is deportable or may carry adverse immigration consequences is enough.

Moreover, the Court of Appeals in *Sanmartin Prado* provided additional reasoning for its holding:

> from a practical standpoint, it would be unreasonable to require defense counsel, without qualification, to advise noncitizen clients about the risk of deportation such that defense counsel is placed in the position of having to provide detailed and specific information about the risk of deportation and to essentially become an immigration law specialist.

Id. at 719. This reasoning was entirely consistent with *Padilla*'s mandate for situations where the immigration consequences of a guilty plea are unclear. *See Padilla*, 559 U.S. at n. 10 ("Lack of clarity in the law, however, does not obviate the need for counsel to *say something* about the possibility of deportation, even though it will affect the scope and nature of counsel's advice.") (emphasis added). Thus, under *Padilla*, Prado's counsel in *Sanmartin Prado* was only required to "say something" about the adverse immigration consequences; he was not required to "provide detailed and specific information about the risk of deportation and to essentially become an immigration law specialist." *Prado*, 448 Md. at 719. Accordingly, the Court of Appeals found that Prado's counsel met the requirements of *Padilla* by telling his client that "the offense of conviction was a deportable offense and that he could be deported."

Having determined that Prado's counsel complied with *Padilla*, the Court of Appeals turned to address whether Prado's counsel ran afoul of Maryland Rule 4–242(f)(1). The court held that Rule 4–242(f)(1)

> does not require that any specific advice be given regarding the probability or certainty of deportation or that any specific information be given regarding any immigration law that may be applicable to a particular defendant's case. *In sum, Maryland Rule 4–242(f)(1) requires only that a noncitizen defendant be alerted that he or she may face immigration consequences.*

(emphasis added). Accordingly, the Court of Appeals held that trial counsel provided constitutionally sufficient advice under Rule 4–242(f)(1) by explaining to his client that "the offense of conviction was a deportable offense and that he could be deported."

Applying Padilla & Prado to the Case Sub Judice

The mandate of *Sanmartin Prado* is controlling in this case. Here, like in *Sanmartin Prado*, the consequence of Appellee's guilty plea was to render him "deportable" under U.S. immigration law. Here, as in *Sanmartin Prado*, defense counsel alerted their client that he or she may face adverse immigration consequences as a result of their guilty plea. Moreover, here as in *Sanmartin Prado*, the defendant faced charges that fell under the amorphous categories of "aggravated felonies" or "crimes of moral turpitude;" rather than an offense with clearly delineated immigration consequences, such as the controlled substances category at issue in *Padilla*. Thus, this case, like *Sanmartin Prado*, involves a guilty plea to a crime with immigration consequences that are not entirely clear. Under both *Padilla* and *Sanmartin Prado*, the responsibility of a defendant's counsel under such circumstances is to "say something" to explain that "the offense of conviction was a deportable offense and that [the defendant] could be deported." Appellee's counsel met this responsibility.

Appellee admits in his brief that the Court of Appeals held in *SanMartin Prado* that "counsel adequately advises a defendant of the immigration consequences of a guilty plea

by advising the defendant of the 'risk of deportation' even if defense counsel 'qualified' his advice with words such as 'possibly deportable.'" (Appellee Br. at 11). Moreover, Appellee concedes that the decision of the *coram nobis* court in this case was made before the Court of Appeals decided *Sanmartin Prado*.

Notwithstanding the clear mandate of *Sanmartin Prado*, Appellee argues that this case involves "affirmative misadvice," rather than simply incomplete or qualified advice. Namely, Appellee, points to the statement by Appellee's counsel that "it was an immigration friendly plea." Appellee does acknowledge, however, that his counsel also told him there was "no guarantee, whatsoever, over any immigration issues," and that "he could be deported." (Appellee Br. at 15).

Notably, the fact that Appellee's attorney told him "he could be deported" as a result of the plea, by itself, is enough to satisfy the mandate of *Sanmartin Prado*. Conversely, had counsel's only advice been that the plea was "immigration friendly," *Sanmartin Prado*'s requirements would not be met. However, the record shows that Appellee's counsel advised that Appellee should consult with an immigration attorney. Appellee elected not to do so. Further, in the same conversation in which Appellee's counsel said it may be an "immigration friendly plea," Appellee's counsel also informed Appellee that "this matter could deport him," but stated that he was "not 100 percent sure because [he] had other clients that have had deportable offenses that have not been deported." Moreover, Appellee testified at the *coram nobis* hearing that his attorneys on the case told him "[his] case was very low, it was low and that immigration might take it or might not." Thus, Appellee's own testimony acknowledged that he could potentially be deported as a

result of his guilty plea. We are not convinced that the mere fact that Appellee's counsel – at some point – expressed the belief that this was an "immigration friendly plea" should negate the numerous iterations of proper legal advice Appellee was given in relation to his guilty plea.

In sum, Appellee was informed by counsel that he could be deported as a result of his plea and was advised to seek an immigration attorney to fully assess the risk. Thus, Appellee's counsel sufficiently advised Appellee, pursuant to *Sanmartin Prado* and Maryland Rule 4–242(f)(1), that his plea carried the risk of deportation.

Accordingly, we hold that defense counsel's advice "was not constitutionally deficient, but rather was 'correct advice' about the 'risk of deportation,' as required by *Padilla,* 559 U.S. at 369, 374." *State v. Sanmartin Prado*, 448 Md. 684-711 (2016).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.