

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>STATE OF OHIO</b>	)	<b>CASE NO: CR 03 437308</b>
	)	
<b>Plaintiff</b>	)	<b>JUDGE JOHN P. O'DONNELL</b>
	)	
vs	)	
	)	
<b>HARMEET BAINS</b>	)	<b><u>JOURNAL ENTRY</u></b>
	)	
<b>Defendant</b>	)	

*John P. O'Donnell, J.:*

Defendant Harmeet Bains is not a United States citizen. On May 14, 2003, he was indicted for felony deception to obtain dangerous drugs and, on August 25 of that year, he entered a guilty plea to a misdemeanor offense of attempted deception to obtain dangerous drugs.<sup>1</sup> There is no dispute that during the plea hearing mandated by Rule 11 of the Ohio Rules of Criminal Procedure the court gave him the statutory advisement of potential immigration consequences required by Ohio Revised Code Section 2943.031(A). The defendant has now filed a motion to withdraw his guilty plea based upon a claim that his lawyer told him that his guilty plea would not “cause immigration problems” and that he had “nothing to worry about.”<sup>2,3</sup>

As an initial matter, the defendant has asked that a decision on the motion to withdraw his plea be held pending the decision of the United States Supreme Court in the recent case of *Padilla v. Kentucky*.<sup>4</sup> The defendant in *Padilla* claims that his lawyer’s private incorrect advice that a guilty plea would have no immigration consequences renders his conviction

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<sup>1</sup> The defendant’s record has been sealed and is not available to the court. The dates and details summarized in this entry are drawn from the defendant’s motion to withdraw guilty plea and vacate conviction pursuant to R.C. 2953.21 and Ohio Criminal Rule 32.1, filed August 24, 2009.

<sup>2</sup> See defendant’s affidavit, exhibit G to motion to withdraw plea.

<sup>3</sup> The motion was called for a hearing on October 14, 2009, but the hearing was not held because the defendant did not appear. Hence, this ruling is based only on the written materials.

<sup>4</sup> Case No. 08-651.

constitutionally defective. However, as this court understands *Padilla*, the Kentucky state court where Padilla entered a guilty plea was not obligated to provide a statutory advisement similar to Ohio's.<sup>5</sup> As a result, although both cases involve alleged incorrect advice by counsel, this case includes the further circumstance that the advice was directly contrary to what the court told the defendant. *Padilla* is thus not sufficiently analogous to this case so that the decision there will guide the court's decision here and there is no need to defer a ruling pending the U.S. Supreme Court's decision.

As for the merits of the motion, the defendant first makes a claim for post-conviction relief that argues his counsel's ineffectiveness deprived him of his right to counsel under the Sixth Amendment of the United States Constitution. A claim of ineffective assistance of counsel requires a defendant to show that (1) the performance of defense counsel was seriously flawed and deficient and (2) the result of the defendant's trial or legal proceeding would have been different had defense counsel provided proper representation. *In re: W.H.*, 2009-Ohio-5835, Cuyahoga App. No. 92786, ¶10. Assuming first that defense counsel did give the incorrect advice, and that doing so rendered his performance "seriously flawed," the second prong of this test still requires Bains to show that he was prejudiced by counsel's ineffectiveness, and prejudice requires a showing to a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Bradley* (1965), 42 Ohio St. 3d 136, at syllabus 3.

In order to establish prejudice here, Bains argues that if his lawyer hadn't given him wrong information he "would have taken his case to trial since he had nothing more to lose" at a

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<sup>5</sup> This court has read the decision of the Kentucky Supreme Court at 253 S.W. 3d 482. That decision provides only scant details of the hearing at the trial court level, but does not allude to an affirmative advisement by the court of the immigration consequences to the defendant of his guilty plea. A Westlaw search for the opinion of the Kentucky appellate court that was reversed by the Kentucky Supreme Court reveals that it is "not for publication."

trial and that “he entered the guilty plea to the charge based solely upon the advice of his attorney.”<sup>6</sup> This argument requires the court to ignore, first, that the defendant pled guilty to a misdemeanor where he was originally charged with a felony (*i.e.*, he had “something to lose” at trial) and, second, the entire plea colloquy the defendant had with the court before admitting his guilt.

The underlying purpose of Criminal Rule 11(C) is for the court to give enough information to a defendant to allow him to make an intelligent, voluntary, and knowing decision of whether to plead guilty. *State v. Jones*, 181 Ohio App. 3d 47, 2009-Ohio-483, Cuyahoga App. No. 91025, ¶6. Bains does not dispute that the trial court complied with Criminal Rule 11 and R.C. 2943.031. Hence, the defendant’s claim of prejudice – that he would not have entered a guilty plea but for his lawyer’s whispered words contrary to the court’s advisement – is not credible. The defendant could not have relied on his lawyer’s hushed reassurance in the face of the trial court’s explicit caution that “conviction of the offense to which you are pleading guilty may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”<sup>7</sup>

The defendant also argues that his plea should be vacated under Rule 32.1 of the Ohio Rules of Criminal Procedure. A defendant moving for a post-sentence withdrawal of a guilty plea has the burden of establishing the existence of manifest injustice. *State v. J.G.*, 2009-Ohio-5495, Cuyahoga App. No. 92765, ¶6; Criminal Rule 32.1.

Manifest injustice does not exist here. The trial court advised the defendant one thing but his lawyer apparently told him the opposite, and the defendant claims he listened to his lawyer instead of the court’s explicit warning. There is no doubt that the court gave him all of the

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<sup>6</sup> Motion to withdraw plea, p. 6.

<sup>7</sup> O.R.C. 2943.031. A denial of the post-conviction relief claim is also justified by its untimeliness under R.C. 2953.21.

information about the possible adverse consequences of his guilty plea. That his lawyer may have assured him that those consequences would not happen, and that he trusted his lawyer instead of the court, does not make his plea involuntary or unknowing, and the fact that a consequence the court warned him about has now come to pass does not make the plea unjust.

Not only do the circumstances here not rise to the level of manifest injustice, but this court is also wary of finding manifest injustice in any case where a defendant claims to have entered a guilty plea in reliance on information directly contradicted by the court's own explanation to the defendant of a guilty plea's consequences. While accepting that there may be a rare instance where the interests of justice warrant vacating a plea under those circumstances, to do so regularly, or even occasionally, would impair the finality of any guilty plea and make a Criminal Rule 11 hearing unnecessary.

For all of these reasons, the defendant's motion to withdraw his guilty plea, filed August 24, 2009, is denied.

**IT IS SO ORDERED:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge John P. O'Donnell

**SERVICE**

A copy of this Journal Entry was sent by regular U.S. mail, this \_\_\_\_\_ day of November, 2009, to the following:

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Judge John P. O'Donnell