

Circuit Court for Montgomery County  
Case No. 97373

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2428

September Term, 2018

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ENRIQUE TAPIA

v.

STATE OF MARYLAND

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Beachley,  
Reed,  
Salmon, James P.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: November 5, 2019

\*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.

In 2003, Enrique Tapia (hereinafter “Appellant”) pled guilty to a charge of possession with the intent to distribute a controlled dangerous substance. In September of 2017, Appellant attempted to challenge his 2003 guilty plea through a petition for writ of error coram nobis. In this petition, Appellant alleged that he was not informed by his attorney that pleading guilty to the criminal charge of possession with the intent to distribute subjected him to removal proceedings pursuant to § 237(a)(2)(B)(i) of the Immigration and Naturalization Act. Relying on *Padilla v. Kentucky*, 559 U.S. 356 (2010) and *Denisyuk v. State*, 422 Md. 462 (2011),<sup>1</sup> Appellant argues that his trial counsel “was obligated, but failed, to provide advice on the deportation consequences” of accepting a guilty plea, and therefore, Appellant suffered ineffective assistance of counsel in terms of the *Strickland*<sup>2</sup> test. The circuit court denied the coram nobis petition, finding that *Padilla* did not apply retroactively to Appellant’s petition. This appeal followed, wherein Appellant presents a single question for our review, which we have rephrased for clarity:<sup>3</sup>

I. Did the circuit court err when it denied Appellant’s Writ of Error Coram Nobis Petition?

For the stated reasons, we affirm.

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<sup>1</sup> See also accompanying discussion *infra*.

<sup>2</sup> *Strickland v. Washington*, 466 U.S. 688 (1984). See also accompanying discussion *infra*.

<sup>3</sup> Appellant presents the following question:

1. Was the circuit court’s denial of Appellant’s Writ of Error Coram Nobis legally and factually correct?

### **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant grew up in Bolivia and accompanied his parents to the United States in February of 1992. Up until the criminal matter at issue, Appellant was a lawful permanent resident with no prior criminal history.

On February 12, 2003, Appellant was arrested and charged in the Circuit Court of Montgomery County with three criminal offenses: possession with the intent to distribute a controlled dangerous substance, possession of marijuana and possession of drug paraphernalia. Following a plea agreement, on May 20, 2003, Appellant pled guilty to one count of possession with intent to distribute a controlled dangerous substance in violation of Maryland Code, Criminal Law Article (hereinafter “C.L.”), § 5-602. Appellant was represented during this proceeding by counsel. During the plea hearing, the following discussion took place:

[The Court]: I’m required to advise you that if you’re not a United States citizen you may face additional consequences of deportation, detention, or ineligibility for citizenship. If you have any concern about that you should discuss it with your lawyer. Do you understand what I’ve just said?

[Mr. Tapia]: Yes sir.

Appellant likewise confirmed that he understood his constitutional rights, understood that he could change his mind, and reaffirmed his desire to plead guilty. Appellant was sentenced to 18 months of incarceration, all of which was suspended in favor of 18 months of probation.

On September 27, 2017, Appellant filed a petition for a writ of error coram nobis in the Circuit Court for Montgomery County. Appellant contended that he sustained collateral

consequences when his attorney did not inform him that his conviction would expose him to removal proceedings. Appellant claimed that if he had been advised of the adverse immigration consequences, he would have not accepted the plea, and would have continued with a trial. Appellant asserted that due to his attorney's error, he received ineffective assistance of counsel, and since *Denisyuk v. State* held that *Padilla* applied retroactively, he is entitled to coram nobis relief, pursuant to the *Padilla* decision.

In a written opinion dated August 21, 2018, the circuit court denied Appellant's coram nobis petition, finding that based on the binding precedent set forth by the Court of Special Appeals in *Guardado v. State*, 218 Md. App. 640 (2014), *Padilla* does not apply retroactively to Appellant's guilty plea, as his plea took place seven years before the *Padilla* decision. The circuit court addressed the fact that just as the Court had found in *Guardado*, where the judge advised the defendant about immigration consequences of a guilty plea, the circuit court judge had also informed Appellant of these potential penalties, and he still plead guilty. The circuit court further reasoned that because there was no state law violation applicable to Appellant's writ of error coram nobis, the court could not grant the Appellant's petition. This timely appeal followed.

## **DISCUSSION**

### **A. Parties' Contentions**

As outlined above, Appellant maintains that because he was not made aware of the adverse immigration implications of a guilty plea by his attorney, pursuant to *Strickland*, he experienced ineffective assistance of counsel as defined by *Padilla*, which is a collateral consequence for the purposes of coram nobis relief; under *Denisyuk*, Appellant argues, he

is entitled to this relief. The State (hereinafter “Appellee”), on the contrary, submits that in accordance with subsequent precedent set by *Chaidez v. United States*, 568 U.S. 342 (2013), *Miller v. State*, 435 Md. 174 (2013), and *Guardado v. State, Padilla* does not apply retroactively to cases where the guilty plea became final before *Padilla’s* holding and where there is no independent basis in state law for Appellant’s claim. Additionally, Appellee asserts that Appellant has failed to demonstrate that he has suffered collateral consequences meriting coram nobis relief.

### **B. Standard of Review**

The circuit court’s decision to grant or deny coram nobis relief is reviewed for abuse of discretion. *State v. Rich*, 454 Md. 448, 471 (2017). Notwithstanding the “extraordinary nature” of the relief sought through a coram nobis petition, “appellate courts should not disturb the coram nobis court's factual findings unless they are clearly erroneous . . . .” *Id.* Here, while the circuit court made factual findings as to Appellant’s petition, the court’s ultimate conclusion that *Padilla* is not retroactive to Appellant’s case was an assessment concerning legal sufficiency. Accordingly, in examining the circuit court’s “legal determination” in denying coram nobis relief, we review this decision *de novo*. *Rich*, 454 Md. at 471.

### **C. Analysis**

However straight forward the answer to this question is now, it is suitable, in the least, to briefly outline the progression of the law on this matter, in light of the rather recent diversity of holdings governing the issue.

“Coram nobis is extraordinary relief designed to relieve a petitioner of substantial collateral consequences outside of a sentence of incarceration or probation where no other remedy exists.” *State v. Smith*, 443 Md. 572, 623 (2015). To qualify for this relief, the petitioner must show that, among other things, he or she “suffer[ed] or fac[ed] significant collateral consequences.” *Smith*, 443 Md. at 623-624 (quoting *Skok v. State*, 361 Md. 52, 78-79 (2000)). Further, “the grounds for challenging the criminal conviction must be of a constitutional, jurisdictional or fundamental character.” *Skok v. State*, 361 Md. at 78 (citing *United States v. Morgan*, 346 U.S. 502, 512 (1954)).

The Sixth Amendment of the United States Constitution, as applied to the States through the 14<sup>th</sup> Amendment Due Process Clause, in addition to Article 21 of the Maryland Declaration of Rights, mandates that every criminal defendant be afforded the right to effective assistance of counsel. *See Duvall v. State*, 399 Md. 210, 220-21 (2007). In establishing that a defendant received ineffective assistance of counsel, *Strickland v. Washington* extensively outlines the standard for evaluating the validity of such a claim, finding that in order to obtain relief, a defendant must first show that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 694. After meeting this “heavy burden”<sup>4</sup>, the defendant must then demonstrate that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different . . . .” *Id.*

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<sup>4</sup> *See Harris v. State*, 303 Md. 685, 697 (1985).

The Supreme Court, in *Padilla v. Kentucky*, held that a criminal defense attorney is obligated to inform a criminal, non-citizen client about the adverse immigration consequences that accompany a guilty plea, and failure to do so is subject to *Strickland's* two prong ineffective assistance of counsel test. *Padilla*, 559 U.S. at 369-370. Whether this holding applied retroactively, however, was left unclear, and there emerged a divide between federal and state courts as to the extent in which *Padilla* applied, particularly with convictions that became final before *Padilla* was decided. In *Denisyuk v. State*, the Maryland Court of Appeals ruled that *Padilla* did “appl[y] retroactively to all cases arising out of convictions based on guilty pleas that occurred after April 1, 1997”, which was the effective date of the enactment of the Illegal Immigration Reform and Immigration Responsibility Act of 1996. *Denisyuk*, 422 Md. at 478-479. In finding that *Padilla* did apply retroactively, the court reasoned that [*Padilla*] did not “establish a rule of prospective application only” but “applied ‘settled precedent [i.e. *Strickland*] to [a] new and different factual situation[.]’ ”. *Id.* at 481-482 (citing *Potts v. State*, 300 Md. 567, 577 (1984)).

Even so, three years after *Padilla*, the Supreme Court resolved the split regarding the retroactivity of *Padilla*, and in *Chaidez v. United States*, the Court held that the *Padilla* decision was in fact “a new rule” and therefore, did not have a retroactive effect in collateral proceedings. *Chaidez*, 568 U.S. at 347. The Court supported this conclusion by agreeing with the Seventh Circuit in its analysis that “*Padilla's* holding was new because it ran counter to that widely accepted ‘distinction between direct and collateral consequences.’ ” *Id.* at 346 (quoting *Chaidez v. U.S.*, 655 F.3d 684, 693 (2011)). The Court further concurred that “ ‘the [Supreme] Court had never held that the Sixth Amendment requires a criminal

defense attorney to provide advice about matters not directly related to [a] client's criminal prosecution,' including the risks of deportation.” and thereby “impos[ed] a new obligation” in doing so. *Id.* (quoting *Chaidez*, 655 F.3d at 691; *Teague v. Lane*, 489 U.S. 288, 301 (1989)).

In light of this clarification and within months of the *Chaidez* decision, the Maryland Court of Appeals again addressed the issue of *Padilla*'s retroactivity, in *Miller v. State*. The *Miller* Court acknowledged that even though the Supreme Court had found that *Padilla* was not retroactive, Maryland was not bound by *Teague*<sup>5</sup> “to provide a remedy for a violation that is declared ‘nonretroactive’ under *Teague*.” *Miller*, 435 Md. at 194 (quoting *Denisyuk*, 422 Md. at 480 n. 8). Still, the Court identified *Chaidez* as controlling and concluded that it “could not create a federal remedy denied by the Supreme Court” and *Padilla*'s retroactive effect only applied when there is an independent basis grounded in state law – not federal law – to challenge the alleged violation. 435 Md. at 194. Judge Battaglia, writing the plurality opinion, perceived the reality that Maryland has “consistently recognized” allegations regarding ineffective assistance of counsel as claims based in federal law pursuant to the Sixth Amendment's right to counsel, as opposed to Maryland's Article 21 provision. *Id.* at 198.

Within the year, this Court relied on *Miller*, and found that in *Guardado, supra, Padilla* does not apply retroactively to an ineffective assistance claim. *Guardado*, 218 Md. App. at

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<sup>5</sup> In accordance with *Teague*, a criminal defendant cannot seek relief under a new rule on collateral review if their conviction is final before the new rule is announced. *Chaidez*, 568 U.S. at 343. A “case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final.” *Teague*, 489 U.S. at 301.



653. Despite the fact that the defendant in *Guardado* had not sought relief under Article 21, our Court reiterated that even if “Article 21 is [] read *in pari materia* with the Sixth Amendment”, *id.* (citing *State v. Walker*, 417 Md. 589, 604 n. 8 (2011)), we follow the understanding, as articulated in *Miller*, that Article 21, alone, does not “provide[] an 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 652 (citing *Miller*, 435 Md. at 199).

There are no guidelines more dispositive of this matter than the aforementioned holdings. As so well-put in *Guardado* and applied here, “the linchpin of [Appellant’s] contentions, namely, that *Padilla* applie[s] retroactively to his case, [is] incorrect.” *Guardado*, 218 Md. App. at 653. In the instant case, Appellant’s guilty plea of possession with intent to distribute marijuana became final in 2003, preceding *Padilla* by seven years. Appellant does not make an argument concerning any state law grounds for which this Court could grant him relief; we concur with Appellee that “[t]here is none.” (citing *Miller*, 435 Md. at 192; *Guardado*, 218 Md. App. at 653)). For this reason, Appellant simply cannot take advantage of the implications of *Padilla*. Appellant’s reliance on *Denisyuk* is plainly wrong, and Appellant is bound by the precedent set in *Miller* and *Guardado*, respectively.

**CONCLUSION**

Accordingly, we find that the circuit court did not err when it denied the writ of error coram nobis petition for lack of legal sufficiency, in accordance with *Miller* and *Guardado*, finding that *Padilla* did not apply retroactively to Appellant's claim.

**JUDGMENT OF THE CIRCUIT  
COURT FOR MONTGOMERY  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**