

Court of Appeals, State of Michigan

ORDER

People of MI v Yong Xing Deng

Docket No. 317630

LC No. 13-004372-AR

Donald S. Owens
Presiding Judge

Michael J. Kelly

Amy Ronayne Krause
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED for failure to persuade the Court of the existence of manifest error requiring reversal and warranting peremptory relief without argument or formal submission.

The application for leave to appeal is DENIED for lack of merit in the grounds presented.

Ronayne Krause, J., I respectfully dissent from the denial of peremptory reversal. *Padilla v Kentucky*, 559 US 356, 130 S Ct 1473; 176 L Ed 2d 284 (2010) plainly requires defense attorneys to provide to their noncitizen clients complete and correct advice as to the deportation consequences of offenses with which they are charged. *Padilla* permits such attorneys to limit that advice to merely explaining that there may be some such consequences only where those consequences are unclear. The attorney in *Padilla* failed to give his client any advice as to the deportation consequence of his client's charged offense, but the United States Supreme Court clearly and expressly discussed "affirmative misadvice" as well. The instant case utterly unambiguously falls into that category: counsel told defendant that although he might be deported, he probably would not be. In fact, counsel was aware that defendant was charged with "crimes involving moral turpitude," which pursuant to 8 USC 1227(a)(2)(A)(i) would—not might—result in deportation. Notwithstanding whether or not counsel had any good reason to rely on the incorrect advice given by another attorney, counsel simply gave defendant catastrophically wrong advice about the deportation consequences of his guilty pleas. In other words, defendant was in no way on notice of the actual deportation consequences of pleading guilty, because counsel's misleading advice induced him to believe that there was a low risk rather than a guarantee. If counsel had simply said to defendant that he may be deported that could be acceptable under *Padilla*, but he in fact told defendant that he probably would not be deported in direct contradiction to the USC. I

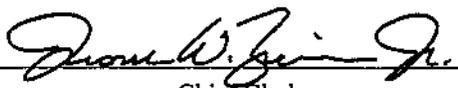
conclude that, under the particular circumstances of this case, defendant's guilty plea was a result of ineffective assistance of counsel pursuant to *Padilla*, and therefore I would grant the motion for peremptory reversal. I concur in granting the motion for immediate consideration and the application for leave to appeal would be moot with my vote to grant the motion for peremptory reversal.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 28 2013

Date


Chief Clerk