

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 52

THE PEOPLE OF THE STATE OF NEW YORK

x

-against-

Indictment Nos. 1333/14
1874/15

EDGAR HAKOBYAN,

DECISION AND ORDER

Defendant.

x

THOMAS FARBER, J.:

Defendant Edgar Hakobyan has filed a motion pursuant to CPL §440.10, to vacate his convictions for Criminal Possession of a Forged Instrument in the Second Degree and Identity Theft in the First Degree (Ind. 1333/14) and Criminal Possession of a Forged Instrument in the Second Degree (Ind. 1874/15). Defendant, a non-citizen who was granted political asylum, alleges that he was denied the effective assistance of counsel because his attorney misadvised him as to the immigration consequences of pleading guilty. *See Padilla v. Kentucky*, 559 US 356 (2010); *People v. McDonald*, 1 NY2d 109, 115 (2003). Specifically, defendant alleges that his convictions for the above mentioned crimes resulted in the automatic termination of his asylum status and subjected him to mandatory deportation. Defendant states that he was not informed of this by his attorney. Defendant also argues that the trial court did not sufficiently advise him about the deportation consequences of his plea with respect to his 2014 conviction. *See People v. Peque*, 22 NY3d 168 (2013). Defendant alleges that he would be killed if deported to Armenia, and that he would have gone to trial had he known that a conviction would automatically terminate his asylum status.

The People oppose defendant's motion, arguing that defendant's allegations are self-serving and incredible, and that he has not sufficiently made out a claim of prejudice. Defendant is currently

in the custody of the Department of Homeland Security.

History. On October 24, 2014, defendant pled guilty before the Hon. Michael Obus, to Identity Theft in the First Degree and Criminal Possession of a Forged Instrument in the Second Degree to cover Indictment 1333/14. He was promised a sentence of five years probation. Defendant was represented by Michael Sheinberg, who stated on the record that the defendant was on political asylum and that he had numerous conversations with his client about his immigration status. Counsel stated “he understands this plea may have an affect on his immigration status, but wishes to go forward anyway.” During the plea colloquy, Judge Obus stated to the defendant, “have you discussed sufficiently the potential immigration consequences arising out of these convictions with your lawyer?” Defendant replied “Yes.” There was no further colloquy concerning immigration. Defendant was sentenced that same day to five years probation.

In January 2015, defendant was again arrested for possession of forged credit cards. On December 10, 2015, he pled guilty to one count of Criminal Possession of a Forged Instrument in the Second Degree, with a promised sentence of two to four years. Defendant received a one year sentence to cover his violation of probation on the first case. The plea was taken by the Hon. Ronald Zweibel, and defendant was again represented by Michael Sheinberg. Prior to taking the plea, Judge Zweibel advised the defendant:

If you are not a citizen of the United States, your plea of guilty, and the Court’s acceptance thereof, may result in your deportation and exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States. Also, if you are not a citizen of the United States and you become subject to a final order of deportation issued by the United States Immigration and Naturalization Service, you may be paroled to the custody of that service for deportation purposes, and any time subsequent to the commencement of any determinative prison sentence imposed as a result of this guilty plea.

Defendant indicated that he understood and entered the guilty plea. He was adjudicated a

predicate felon. On January 28, 2016, defendant was sentenced to the promised sentence of two to four years in state prison and a one year definite sentence on the violation of probation.¹ In March 2016, defendant went to the Shock Program at Lakeview Correctional Facility. In October 2016, defendant completed the Shock Program successfully. Prior to his release, defendant's asylum status was terminated by the United States Citizenship and Immigration Services based on the felony convictions under Indictments 1333/14 and 1874/15. He was taken into custody by the Department of Homeland Security and transported to the Buffalo Federal Detention Facility, where he remains awaiting deportation.²

Defendant's moving papers contain an affirmation from defendant's immigration attorney, Alice Antonovsky. Ms. Antonovsky affirms that defendant was rendered ineligible for asylum once he pled guilty to his first felony. His asylum status was terminated by operation of law and he was subject to deportation proceedings. Defendant was also rendered ineligible to apply for withholding of removal. The People have not submitted any evidence to the contrary.

Hearing. A CPL §440 hearing was held on December 20, 2017. Defendant appeared and testified by video camera from his detention facility. His sister, Syuzanna Hakobyan also testified. The People called Michael Sheinberg, defendant's attorney at the two plea proceedings. I credit the testimony of Mr. Sheinberg. I credit the testimony of defendant and his sister only to the extent that it is not inconsistent with that of Mr. Sheinberg. The hearing testimony is summarized below, followed by my findings of fact and conclusions of law.

Edgar Hakobyan. Defendant testified that he is 30 years old and was born in Armenia, but

¹ Defendant also disposed of two misdemeanor cases, one in New York County and one in Kings County, with concurrent sentences of one year.

² Defendant applied for and received a stay of deportation pending the outcome of this case.

came to this country in 2004, when he was 16 years old. He lives with his mother and his sister. The family was granted political asylum because of his mother's anti-government views in Armenia. Since coming to America, defendant has never returned to Armenia.³ Defendant testified that if he is returned to Armenia he would be killed because of his mother's political views. Prior to going to jail, he worked for an electrician, and volunteered at two Armenian Churches. Defendant also attended Kingsborough Community College in Brooklyn.

Defendant was arrested in February 2014, for Criminal Possession of a Forged Instrument in the Second Degree. Michael Sheinberg represented him on that case. Defendant pled guilty to that charge on October 24, 2014. Mr. Sheinberg told defendant that if he pled guilty he could not become a citizen, because of the felony conviction.⁴ According to defendant, Mr. Sheinberg told him that when the Judge asked about immigration consequences at the plea, defendant was to say "yes." Defendant was not advised to seek the advice of an immigration attorney. He was not told that he could be deported; he was not told that he was pleading guilty to an aggravated felony, and he was not told that by pleading guilty he would become ineligible for political asylum. Defendant also testified that when he pled guilty he was not told by the Court that the felony conviction would affect his asylum status. Defendant also stated that he had never seen a copy of the "notice of immigration consequences" that was filed by the People at arraignment. When defendant had conversations about immigration with Mr. Sheinberg, his sister and his friend Davit Kaltyan were present.

In January 2015, defendant was again arrested and indicted for Criminal Possession of a Forged Instrument in the Second Degree, under Indictment 1874/15. Mr. Sheinberg represented him

³ In his original moving papers, defendant stated that he has no family in Armenia.

⁴ Defendant also testified that Mr. Sheinberg told him that he could not be deported because of his asylum status. It appears, however, that this was not discussed until the 2015 case.

on that indictment as well. Defendant pled guilty to this indictment on December 10, 2015, with a promise of two to four years in state prison. When discussing the immigration consequences of this plea, Mr. Sheinberg told the defendant that he could not be deported because he was here on political asylum. Defendant testified that he did not see a copy of the “notice of immigration consequences” that was filed in this case. He was not told that he was pleading guilty to an aggravated felony or a “serious crime” under the Immigration Law. He was also not told that the plea would make him ineligible for asylum nor that he would immediately be placed in deportation proceedings. Defendant testified that had he known, before he pled guilty in 2014, that his plea would make him ineligible for asylum status and that he would be subject to mandatory deportation, he would not have pled guilty. He testified he would have gone to trial. Defendant stated that he would choose a trial because he is scared to go back to his country, since his life would be in danger. I asked the defendant what he understood when the Court, at the plea proceeding in 2015, told him that based on his plea there was a possibility of deportation. Defendant testified that his lawyer had told him that the judge would mention the immigration consequences but did not know about his asylum status, and that because of his asylum status, he would not be deported.

After defendant was sentenced in 2016, he went to the Shock Program. DHS picked him up and brought him to the Buffalo Detention Center. Defendant testified that he was surprised that immigration picked him up because his lawyer had told him that if he went into the Shock Program immigration would not “affect” him because he had asylum status.

While defendant was in the Shock Program he was questioned about his immigration status, and, concerned, he called his sister. His sister called Mr. Sheinberg, who referred him to an immigration attorney, Zachary Westenhoufer. His sister said Mr. Sheinberg was surprised that defendant had an immigration issue.

On cross-examination defendant testified that his first conviction was in 2009 for the traffic infraction of driving while impaired. He was represented by a public defender at that time. In 2013 he was convicted in Brooklyn of driving while intoxicated as a misdemeanor. He was given a sentence of probation, and then resentenced, on March 24, 2014, to 60 days. Mr. Sheinberg represented him. Defendant did not recall if he discussed his immigration status with Mr. Sheinberg at that time. In October 2014, defendant was charged with driving while intoxicated as a felony. He was sentenced to three years probation on that case on October 22, 2014. He was represented by Mr. Sheinberg. During the pendency of the 2015 case, Ind. 1874/15, defendant was arrested for a misdemeanor, Criminal Possession of a Forged Instrument in the Third Degree, in Brooklyn. He was represented by Mr. Sheinberg on that case, and pled guilty to the A misdemeanor with a promise of 1 year in jail. Defendant also pled guilty to the misdemeanor of Identity Theft in the Third Degree on January 11, 2016, in New York County, with a promise of time served. This case also involved forged credit cards.

Defendant testified that if he were to be returned to Armenia he would be tortured and killed. He understands that if the motion were granted, and his convictions vacated, he would have a new trial. But he would rather take his chances at trial and receive a longer jail sentence than face the possibility of death in Armenia. Defendant testified there was never any discussion of the strength of the People's case or the possibility of going to trial. And he was unaware of what his potential exposure was should he get a retrial, lose at trial and be re-sentenced.

Syuzanna Hakobyan. Syuzanna Hakobyan testified that she is defendant's sister. She was born in Armenia and came to the United States with her brother and her father. Her mother is also here. Ms. Hakobyan testified that she came to the United States on asylum status and now she is an American citizen. She works as a biochemist in New Jersey. Ms. Hakobyan testified that she met Mr.

Sheinberg many times when her brother was in court beginning in 2014, and has communicated with Mr. Sheinberg on behalf of her brother. Ms. Hakobyan testified that prior to her brother pleading guilty in 2014, Mr. Sheinberg never recommended that her brother speak to an immigration attorney. She testified she was present for many court appearances and visits to Mr. Sheinberg's office, and Mr. Sheinberg never informed her brother that if he pled guilty he would automatically be in removal proceedings. Ms. Hakobyan testified that no deportation consequences were ever discussed with her brother. She never asked about deportation consequences because it never crossed her mind that a criminal conviction could result in deportation. She also did not recall Mr. Sheinberg ever telling her brother that a criminal conviction would affect her brother's ability to become a citizen. Ms. Hakobyan said immigration consequences were never discussed.

Ms. Hakobyan testified that when her brother called her to tell her he was in immigration custody she contacted Mr. Sheinberg because she was shocked. She recalled that when she called Mr. Sheinberg to tell him her brother was in immigration custody he told her that since her brother has asylum, he would not be deported. That was the first time that deportation was discussed. Mr. Sheinberg gave her the names of immigration lawyers, and she hired Zach Westenhoufer to represent her brother. She was usually present at the meetings with Mr. Sheinberg because she was the financial "helper" and her English was good, so she was the family member charged with helping her brother. Her mother's English was more limited. She testified that had she been advised to hire an immigration attorney she would have hired one because she did not want her brother to be deported.

Michael Sheinberg. Michael Sheinberg testified that he has been practicing law for approximately 27 years, and is self-employed. He was an assistant district attorney in Brooklyn for about three and one-half years, and then went into private practice. Approximately 95 percent of his

work is criminal law. Mr. Sheinberg testified that it was his practice to determine what his client's immigration status was, and to discuss what ramifications the criminal case would have on this status. He testified that he would never advise his clients to take a plea without discussing the strength of the People's case against them, and that this would factor into the decision on whether to plead guilty or go to trial. It is also his practice to advise clients as to their potential exposure on sentence prior to discussing a plea agreement. Mr. Sheinberg also testified that sometimes he would advise a client to plead guilty despite the immigration consequences, if the People had a strong case against them. This would minimize their jail time if they were going to be deported.

Mr. Sheinberg testified that he began representing Mr. Hakobyan sometime around 2012, with a driving while impaired case in Brooklyn. When he first met him, he learned about his immigration status, and discussed it with the defendant. Defendant informed him he was here on political asylum, and he discussed the immigration consequences of taking a plea with the defendant. According to Mr. Sheinberg, he and the defendant did not believe there were going to be issues when he pled guilty to a misdemeanor DWI case.

Mr. Sheinberg testified that if defendant was granted asylum, "it would be a factor that could help him out if he was ever going to be facing deportation proceedings." According to Mr. Sheinberg, the defendant felt very strongly that "the fact that he was there or here on asylum status, that he wouldn't have any problems."

Mr. Sheinberg testified that since 2012, his understanding of the immigration consequences of a plea has not changed. His understanding is that asylum status is a factor that could generally help somebody out if they are facing deportation proceedings. It cannot guarantee 100% that are not going to be deported. He also believes they could not be automatically deported.

Mr. Sheinberg represented the defendant when he pled guilty to a misdemeanor in Brooklyn in 2012. At that time, they discussed that there “may be immigration consequences with any . . . type of plea he did.” Mr. Sheinberg testified that he advised the defendant that he should speak to an immigration attorney if he wanted a more detailed assessment, and he recalled the defendant telling him that he either spoke to one or his family had one.

In 2014 Mr. Sheinberg began representing the defendant on New York County Indictment 1333/14. Defendant’s sister called him about the case. Mr. Sheinberg had previously met Ms. Hakobyan at one of the court dates in Brooklyn. Mr. Sheinberg testified that he represented the defendant on two cases involving forged credit cards in late November 2013 and late February 2014. These two arrests resulted in a single indictment in Manhattan. Mr. Sheinberg believed that the People had a very strong case against the defendant. He testified that he discussed the evidence with Mr. Hakobyan. He recalled the People were offering a year in jail.

Mr. Sheinberg appeared before Judge Obus and based on their discussions, Judge Obus offered the defendant probation. Mr. Sheinberg discussed the immigration consequences with Mr. Hakobyan, and that Mr. Hakobyan did not want to go to jail. They discussed the strength of the case, that defendant was indicted for two incidents, and what his sentence exposure was, since the sentences could run consecutively. Mr. Hakobyan faced up to seven years on each; for a total of 14 years in jail. They were also worried about a violation in a TASC program on defendant’s Brooklyn felony that might result in additional jail time. Defendant, however, was never violated in Brooklyn. These discussions occurred on more than one occasion, at least a couple of times, not just before the plea.

Mr. Sheinberg believed that at the time defendant pled guilty, defendant understood the

immigration consequences of the plea. Mr. Sheinberg does not recall advising the defendant that he was pleading guilty to an aggravated felony, and stated that he advised the defendant to speak to an immigration attorney and figure that out. Mr. Sheinberg stated: “You know, I don’t know what actual type of felony is going to get him deported or not, whether, you know, that was a specific aggravated felony that would. . . .”

I asked Mr. Sheinberg what his current understanding is of what would happen to a non-citizen who was convicted of Criminal Possession of a Forged Instrument in the Second Degree who did not have asylum status. Mr. Sheinberg stated, “They would probably be deported. . . . There is a good possibility they would face deportation proceedings.” He also stated that he did not know if they would be deported or not. I asked Mr. Sheinberg what his current understanding is of what would happen to a person with asylum status who was convicted of Criminal Possession of a Forged Instrument in the Second Degree. He stated that the asylum status was something that the immigration court would definitely take into consideration if “brought forth to them,” if a person was facing deportation proceedings. Mr. Sheinberg denied telling the defendant that he could not be deported because he was here on asylum status.

Mr. Sheinberg again represented the defendant on his second New York County felony case charging Criminal Possession of a Forged Instrument in the Second Degree. Mr. Hakobyan was facing jail time and the evidence against him was pretty strong. They had to decide whether to go to trial or take a plea with a sentence of two to four years. Mr. Hakobyan was also facing a misdemeanor credit card case in Brooklyn, and the violation of probation on the prior Manhattan case. These were all discussed with the defendant. He advised the defendant that there was a possibility that if he pled guilty he would be deported. He discussed with the defendant that it was

a non violent felony and that he could probably get the Shock Program when he went upstate. They discussed that the only way to avoid jail was for him to go to trial and get acquitted, otherwise he would be facing some jail time, since he was a predicate felon. Mr. Sheinberg did not believe that defendant would be successful if he went to trial, and there was the possibility he would have to do more than two to four years if he lost at trial. Another factor that went into his decision to plead guilty was an open case for burglary and credit cards in Las Vegas. Mr. Sheinberg testified that he spoke to the attorney in Las Vegas who told him defendant was facing three years out there but that the judge would probably go along with whatever time he got in New York. In addition, defendant had an unindicted felony case in New York that would be covered by the plea. They discussed that this sentence on the New York case would cover all the outstanding cases. They considered all the outstanding cases and that the evidence against him on the New York felony was very strong--there were photographs and the cards had been found in his possession.

Mr. Sheinberg discussed with defendant what would happen when defendant took the plea, and what the Judge would say, but denied ever telling the defendant to say yes when the Judge asked him about immigration consequences. He told the defendant to answer truthfully, because they had discussed the immigration consequences. Mr. Sheinberg testified that he instructed the defendant a number of times to speak with an immigration attorney and told his family "if they wanted to hire an immigration attorney to hire one for him." Mr. Sheinberg stated that he advised the defendant to plead guilty because he faced a lot of time in jail and there was strong evidence against him. Mr. Sheinberg testified that he was not shocked or surprised when he found out defendant was in immigration custody, that he advised the family to hire an immigration attorney, and that he gave them a few names of immigration attorneys. He stated that he told the family that he hoped the

asylum status would help the defendant out.

Mr. Sheinberg testified that he has taken some legal education on immigration law, but that he does not hold himself out as an expert. He does understand what an aggravated felony is, but he doesn't recall if he used that term with Mr. Hakobyan. Mr. Sheinberg testified that if a non-citizen pleads guilty to an aggravated felony he would "probably have immigration issues. Will you be deported? As I said, I don't know whether somebody's going to be deported or not. I don't know what's going to happen in immigration court."

Findings of Fact. As noted above, I credit Mr. Sheinberg's testimony. I therefore find that Mr. Sheinberg did discuss what he believed were the immigration consequences of the plea with defendant and his sister. I also credit his testimony that he advised them, if they wanted "more detailed advice," to consult an immigration attorney. I further find that Mr. Sheinberg discussed with defendant and his sister the possible jail exposure that defendant faced on both cases and the pros and cons of accepting a plea. I therefore reject defendant and his sister's testimony that this was not discussed.

I find, however, that Mr. Sheinberg communicated, in substance, that Mr. Hakobyan's asylum status would be a very strong barrier to his being deported. Indeed, it was apparent to me that Mr. Sheinberg still believes this.

I credit defendant's testimony that he would be tortured or killed if he were returned to Armenia. Defendant so alleges and the People have submitted no evidence to the contrary.⁵ I also credit his testimony that he believes the consequences of deportation to be so severe that he would have risked a trial, even knowing that he could get more prison time if convicted and that the odds

⁵ I have no independent knowledge on the subject and it would not be appropriate for me to do an independent investigation as to the accuracy of this information.

of acquittal were slim.⁶

Conclusions of Law. The bottom line is this: defendant faced an unusual immigration situation. He had political asylum status and believed that deportation would result in torture or death. The advice that his asylum status would be a strong factor in preventing deportation was wrong. In fact, defendant's felony conviction immediately annulled his asylum status, and deportation was mandatory. Under these unusual circumstances, the advice given was ineffective and defendant was prejudiced.

A defendant seeking to challenge his guilty plea on the grounds of ineffective assistance of counsel under the Federal Constitution must meet the two part standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. McDonald*, 1 NY3d 109, 113 (2003). A defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. at 687. The first prong of the test requires that the defendant establish that counsel's performance fell below an objective standard of reasonableness. *People v. McDonald*, 1 NY3d 109, 113 (2003). The defendant must also establish that the ineffective performance affected the outcome of the plea process. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). In order to satisfy the prejudice prong of *Strickland*, the defendant must show that but for counsel's errors he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, *supra* at 59.

New York law also has a two prong test. The first prong is identical to the federal counterpart. The second prong focuses on whether "the fairness of the process as a whole rather than its particular

⁶ Defendant could have received consecutive sentences of three and one-half to seven years for each of his convictions. As a practical matter, however, a double digit sentence for using a forged credit card to purchase a few thousand dollars of merchandise is highly unlikely, even if defendant had multiple cases.

impact on the outcome of the case.” *People v. Abdallah*, 153 AD3d 1424 (2d Dept 2017) quoting *People v. Benevento*, 91 NY2d 708, 714 (1998).

A criminal defense attorney has a duty to give correct advice about whether the plea carries a risk of deportation. *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010). Where the terms of a relevant immigration statute are clear and explicit regarding the removal consequences of a conviction, and counsel could easily have learned them from reading the statute, counsel has a duty to give correct advice as to the immigration consequences of a plea. *Padilla v. Kentucky*, 559 U.S. at 368-369. When an attorney misadvises a defendant regarding the clear removal consequences of a plea of guilty, the representation falls below an objective standard of reasonableness and constitutes ineffective assistance of counsel. *People v. McDonald, supra*; *People v. Abdallah, supra* at 1426; *People v. Picca*, 97 AD3d 170, 178 (2d Dept 2012).

Here, defense counsel incorrectly advised his client that there was a “possibility” of deportation, and that his asylum status was something that the immigration court would take into consideration if defendant was facing deportation proceedings. Indeed, it is reasonably clear from the tenor of his testimony, that Mr. Sheinberg felt that the asylum status would be a significant factor in any deportation proceedings. In fact, defendant’s conviction constituted an aggravated felony, automatically terminating his asylum status, rendering him mandatorily deportable and ineligible for cancellation of removal. *See* 8 U.S.C. §§1227 (a)(2)(A)(iii), 1158(c)(2)(B), 1101(a)(43)(M)(i). His plea counsel’s advice failed to convey the mandatory nature of deportation as a consequence of the plea, and the inability to apply for cancellation of removal.⁷ The outcome for defendant was clearly

⁷ Moreover if the Attorney General determines that defendant’s crimes constitute a “particularly serious crime,” a broader category of offenses than aggravated felonies, defendant could be deported to Armenia despite his belief that his life would be in danger. *See* 8 U.S.C. 1231 (b)(3)(B)(ii); *People v. Mebuin*, 2017 WL 6616796 (1st Dept 2017).

available from a reading of the relevant statutes, however it does not appear that counsel did that.

In an ordinary case with potential immigration consequences, this advice would not have been a problem. Here, however, it was not only incorrect, it was prejudicial. I find that defendant has established that counsel's performance fell below an objective standard of reasonableness. *People v. Abdullah, supra; see also People v. McDonald, supra.*

Prejudice. The determination as to whether to plead guilty or go to trial is a calculus which takes into account all relevant circumstances pertaining to each individual defendant. For a citizen defendant, the strength of the People's case and the likely sentence in the event of conviction are the most relevant considerations in determining whether to accept a plea bargain agreement. *People v. Picca, 97 AD3d 170, 183 (2d Dept 2012).* For a non-citizen defendant, however, removal from this country might be the most significant determining factor. A determination as to whether an individual in defendant's position could rationally reject a plea bargain agreement and proceed to trial must take into account the particular circumstances informing the defendant's desire to remain in the United States. *People v. Picca, supra* at 183-184.

Were defendant a citizen—or even a non-citizen without asylum status—it would be almost inconceivable that defendant would have chosen to go to trial in these cases rather than accept a clearly favorable plea. The evidence against defendant appears to be overwhelming and defendant, at least in 2015, faced two separate felony indictments, two misdemeanor charges and a felony violation of probation. But here, defendant and his sister both believed that he would be killed if he were deported to Armenia. This was a belief that was supported by defendant's grant of asylum status. *People v. Mebuin, supra.* For this defendant, therefore, the calculus of pleading guilty or going to trial was substantially different from that of the average citizen or non-citizen. *See People v.*

Mebuin, supra; People v. Picca, 97 AD3d 170, 185 (2d Dept 2012).⁸ Defendant has established the second prong of *Strickland*.⁹

Based on the forgoing, defendant's motion pursuant to CPL §440.10, to vacate his convictions under Indictments 1333/14 and 1874/15 is granted.

This opinion constitutes the decision and order of the defendant.

Dated: New York, New York
January 25, 2018



THOMAS FARBER

THOMAS FARBER

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⁸ Furthermore, if the true deportation consequences had been factored into the plea discussions, an attorney may have been able to negotiate a more favorable disposition for the defendant. *People v. Chacko*, 99 AD2d 527, 527-528 (1st Dept 2012).

⁹ Since I am granting the motion, it is unnecessary for me to reach the *Peque* issue. *See People v. Peque*, 22 NY3d 168 (2013). Were I to reach this issue, I would find that while the warnings given by the court were inadequate under *Peque*, under the unusual circumstances of this case, defendant was not prejudiced. This is because, based on defendant's testimony, he was prepared to plead guilty, regardless of what the trial court said about deportation, based upon his understanding of his asylum status. Indeed, defendant did plead guilty in 2015, in spite of being told by the court that the plea might subject him to deportation proceedings.