

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio ,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-723
Francis P. Walker,	:	(C.P.C. No. 03CR-03-1550)
Defendant-Appellant.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on March 31, 2015

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*Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

*Muchnicki & Bittner, LLP*, and *Brian J. Hoffman*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Francis P. Walker is appealing from the denial of his motion to withdraw a guilty plea. He assigns two errors for our consideration:

**ASSIGNMENT OF ERROR NO. 1**

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA.

**ASSIGNMENT OF ERROR NO. 2**

THE TRIAL COURT ERRED IN FAILING TO HOLD AN EVIDENTIARY HEARING ON DEFENDANT'S MOTION TO WITHDRAW HIS PLEA.

{¶ 2} Crim.R. 32.1 requires that motions to withdraw guilty pleas are to be granted only to correct a manifest injustice if an offender has already been sentenced. The

case law in situations where an offender is in danger of deportation seems to assume that a manifest injustice has occurred if the offender was entitled to but was not advised that he or she may be deported as a result of the conviction which results from his or her guilty plea.

{¶ 3} Walker entered his guilty plea to a charge of burglary in the Spring of 2003. In 1989, the Ohio Legislature had enacted R.C. 2943.031 which required and requires very specific advice to be given by a trial court considering a guilty plea from a person in danger of deportation. The advice is set forth in R.C. 2943.031(A):

(A) Except as provided in division (B) of this section, prior to accepting a plea of guilty or a plea of no contest to an indictment, information, or complaint charging a felony or a misdemeanor other than a minor misdemeanor if the defendant previously has not been convicted of or pleaded guilty to a minor misdemeanor, the court shall address the defendant personally, provide the following advisement to the defendant that shall be entered in the record of the court, and determine that the defendant understands the advisement.

"If you are not a citizen of the United States you are hereby advised that conviction of the offense to which you are pleading guilty (or no contest, when applicable) 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."

Upon request of the defendant, the court shall allow him additional time to consider the appropriateness of the plea in light of the advisement described in this division.

{¶ 4} Walker was not given the required advice at the time of his guilty plea, or any advice about potential deportation consequences at all. Walker did not file a motion seeking to set aside his guilty plea until April 29, 2014, over ten years after the plea.

{¶ 5} The judge who accepted Walker's guilty plea has since retired. Her replacement denied the motion to set aside the guilty plea without an evidentiary hearing. The replacement judge did, however, issue an extended written decision explaining his reasoning.

{¶ 6} R.C. 2943.031(D) requires:

Upon motion of the defendant, the court shall set aside the judgment and permit the defendant to withdraw a plea of guilty or no contest and enter a plea of not guilty or not guilty by reason of insanity, if, after the effective date of this section, the court fails to provide the defendant the advisement described in division (A) of this section, the advisement is required by that division, and the defendant shows that he is not a citizen of the United States and that the conviction of the offense to which he pleaded guilty or no contest may result in his being subject to deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

{¶ 7} The trial court viewed the Supreme Court of Ohio's opinion in *State v. Francis*, 104 Ohio St.3d 490, 2004-Ohio-6894 as placing an additional condition into the mix, namely that the accused demonstrate that he or she was prejudiced. The two paragraphs of the syllabus to the *Francis* case read:

1. A trial court accepting a guilty or no-contest plea from a defendant who is not a citizen of the United States must give verbatim the warning set forth in R.C. 2943.031(A), informing the defendant that conviction of the offense for which the plea is entered "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."

2. If some warning of immigration-related consequences was given at the time a noncitizen defendant's plea was accepted, but the warning was not a verbatim recital of the language in R.C. 2943.031(A), a trial court considering the defendant's motion to withdraw the plea under R.C. 2943.031(D) must exercise its discretion in determining whether the trial court that accepted the plea substantially complied with R.C. 2943.031(A).

{¶ 8} The syllabus addresses only situations where a question of substantial compliance with R.C. 2943.031(A) is the issue. The State of Ohio appropriately does not argue that the judge who accepted Walker's guilty plea in 2003 substantially complied with R.C. 2943.031(A).

{¶ 9} We view R.C. 2943.031(D) as mandating that Walker's guilty plea be set aside once he has demonstrated that his conviction on the burglary charge may result in his being subject to deportation. The trial court judge found that the burglary conviction

may result in Walker's deportation without carefully analyzing the issue, in part, because the judge viewed the State as not contesting the issue. The State is now at least vigorously contesting the issue.

{¶ 10} We view R.C. 2943.031(D) as mandating that the guilty plea be set aside under the circumstances where no advice about deportation consequences was given and the resulting burglary conviction may result in Wallace being subject to deportation. We vacate the trial court's ruling on the motion to set aside the guilty plea. We remand the case to the trial court for it to conduct an evidentiary hearing on the issue of whether the burglary conviction may result in Wallace being subject to deportation.

{¶ 11} As a result of the above, we sustain the second assignment of error. Our ruling on the second assignment of error renders the first assignment of error moot for now.

*Judgment reversed and remanded for  
further proceedings.*

BROWN, P.J., and SADLER, J., concur.

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