

WISCONSIN SUPREME COURT
TUESDAY, APRIL 21, 2015
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a Milwaukee County Circuit Court decision, Judge Timothy G. Dugan, presiding.

2013AP1437-CR

[State v. Shata](#)

The central issue raised in this case, as in 2013AP2435-CR, State v. Ortiz-Mondragon, is the scope of defense counsel's obligation to advise defendants of their likely risk of deportation in light of the U.S. Supreme Court's decision in Padilla v. Kentucky, 559 U.S. 356 (2010). Padilla held that constitutionally competent counsel would have advised the defendant that his conviction for drug distribution made him subject to automatic deportation.

Some background: Hatem Shata, an Egyptian national, was charged with possession with intent to deliver marijuana as party to a crime. On Oct. 5, 2012, he appeared in court and Shata's attorney informed the court that Shata was concerned about the immigration consequences of a plea.

Shata's counsel explained that Shata was not a U.S. citizen and that there was a potential he could be deported. Shata acknowledged that, and he informed the circuit court that he wished to go forward with his plea. Shata pleaded guilty to one count of possession with intent to deliver marijuana as party to a crime. He was subsequently sentenced to one year of initial confinement and four years of extended supervision.

On March 15, 2013, Shata filed a post-conviction motion to withdraw his plea claiming that his trial attorney's performance was deficient because counsel failed to inform Shata "that federal law required he be deported following his conviction."

At the ensuing hearing, Shata's trial counsel, Atty. James Toran, testified that he knew Shata was concerned about the possibility of deportation and explained that he knew Shata's conviction would subject him to deportation, but that he did not know it was mandatory. Toran testified that he told Shata there was "a strong chance" that he would be deported. Toran also explained that he "had no viable defense," and that Shata chose to plead guilty because "we could not really prevail if we went to trial[.]" and Shata wanted to take advantage of the State's recommendation for probation. Shata testified that Toran "didn't say for sure" that he would be deported, and that he would not have pleaded guilty if he had known that his deportation was "mandatory."

The circuit court found "the testimony of Mr. Toran to be credible under the circumstances, that he did advise Mr. Shata, unlike Padilla, that there was a strong likelihood that he would be deported." The court rejected Shata's testimony "that Mr. Toran told Mr. Shata that he would be getting probation and would go back to New Jersey and nothing would happen."

Shata appealed. A majority of the Court of Appeals reversed, holding that Shata's attorney, who advised Shata that he faced a "strong likelihood" of deportation, had performed deficiently under Padilla's mandate that "counsel must inform her client whether his plea carries a risk of deportation." Padilla, 559 U.S. at 374.

The Court of Appeals remanded with directions to permit Shata to withdraw his guilty plea.

The state maintains that the Court of Appeals' majority misapplied Padilla in holding that Shata's attorney had to do more. Indeed, the state asserts that the "majority opinion in this case not only extends beyond the requirements of Padilla by imposing a new and far more stringent standard on defense attorneys in terms of how they must advise clients who face deportation due to their criminal convictions, it does so without a clear explanation of what they have to do to satisfy that standard."

The state is also aggrieved that, rather than remanding the case to permit the circuit court to perform the required analysis, the majority simply held that "Shata was prejudiced" and that "because of the inaccurate and prejudicial advice Shata received from counsel, he is entitled to withdraw his guilty plea." The state contends that "[a]t a minimum, the Court of Appeals should have remanded the case to the circuit court for additional analysis and related findings" citing a similar case in which this was done. See Mendez, 354 Wis. 2d 88, ¶¶12, 17.

A decision by the Supreme Court is expected to clarify the scope of defense counsel's obligation to advise defendants of their likely risk of deportation in light of the U.S. Supreme Court's decision in Padilla v. Kentucky, 559 U.S. 356 (2010).