STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2013AP2435-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

FERNANDO ORTIZ-MONDRAGON,

Defendant-Appellant.

APPEAL FROM AN ORDER DENYING POSTCONVICTION RELIEF, ENTERED IN BROWN COUNTY CIRCUIT COURT, THE HONORABLE DONALD R. ZUIDMULDER, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did the circuit court correctly determine that Ortiz-Mondragon was not entitled to plea withdrawal based on his claim that he received ineffective assistance of counsel regarding the immigration consequences of his plea?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This court may resolve this case by applying well-established legal principles to the facts presented.

SUPPLEMENTAL STATEMENT OF FACTS AND STATEMENT OF THE CASE

As respondent, the State exercises its option not to present a full statement of the case. Wis. Stat. § 809.19(3)(a)2.[1] Instead, the State offers the following summary and will present additional facts, if necessary, in the argument portion of its brief.

By criminal complaint dated September 14, 2012, the Brown County District Attorney's Office charged Fernando Ortiz-Mondragon with several domestic abuse offenses stemming from an incident between him and his live-in girlfriend, Jenni Sulprizio (1). Ortiz-Mondragon was present for his initial appearance, and the State requested $25,000 cash bond, noting that "the defendant is not here legally. I believe there is going to be an immigration hold on him very shortly. These are very serious charges, and he does present a very significant flight risk" (42:1, 3).

Ultimately, Ortiz-Mondragon pleaded no contest to three domestic abuse charges: substantial battery, criminal damage to property, and disorderly conduct (45:4). At that time, the circuit court informed him that "[i]f you're not a citizen of the United States, the plea you offer me could result in your deportation, the exclusion of admission, or the denial of naturalization under federal law" (45:4). The court then verified that Ortiz-Mondragon understood that admonishment (45:5). In addition, the court confirmed that he had signed the plea questionnaire after reviewing and discussing it with his attorney (45:5-6). The second of several "Understandings" included in the questionnaire reads "I understand that if I am not a citizen of the United States, my plea could result in deportation, the exclusion of admission to this country, or the denial of naturalization under federal law" (20:3).

[1] Unless indicated otherwise, all citations to Wisconsin Statutes refer to the 2011-12 edition.

After accepting Ortiz-Mondragon's pleas, the court proceeded with sentencing. The victim, Jenni Sulprizio, chose to address the court. She first attempted to persuade the court that Ortiz-Mondragon had not hit her, and that she injured herself in a fall (45:9). Then, when the court asked her what kind of sentence she felt would be appropriate, Sulprizio said:

> Well, I – like as far as – excuse me. As far as like the felony is concerned, like I would just like for it to be turned into a misdemeanor because he has four kids here, like he's got my son and my daughter and then two more children, and, you know, **we were trying to keep them here in the states, but if he ends up with a felony charge, that's not going to happen**.

(45:10) (emphasis added). When the court reminded her that Ortiz-Mondragon had been convicted of a felony and asked again about sentencing, Sulprizio concluded her remarks (45:10). At that point, Ortiz-Mondragon's attorney interjected to discuss sentence credit (45:11). The court asked whether he was on an immigration hold, and his attorney stated "I think there is, but the information I get is secondhand" (45:11). The court then adopted the parties' joint recommendation to withhold sentence and place Ortiz-Mondragon on probation for three years (45:12-13). The court also ordered him to serve four months in jail as a condition of his probation (45:13).

At the close of the hearing, Sulprizio asked about Ortiz-Mondragon's possible release:

> JENNI SULPRIZIO: Does that mean that he's going to get out today then?
>
> THE COURT: No. He has another month or two months to serve. It's 120 days. He gets credit for 76. So he's probably got another 20 days or 24 days to serve.
>
> JENNI SULPRIZIO: And then he'll be let go?

> THE COURT: If he – if – if the immigration doesn't put a hold on him. If the immigration people put a hold on him, that's a federal issue. Our officers have nothing to do with that. My order has nothing to do with that.
>
> JENNI SULPRIZIO: Thank you.

(45:14).

On September 17, 2013, Ortiz-Mondragon filed a motion to withdraw his pleas, claiming that he had received ineffective assistance of counsel because his trial attorney did not properly advise him of the adverse immigration consequences of his pleas (35). In that motion, Ortiz-Mondragon acknowledged that the circuit court had given him the statutory immigration warning as required by Wis. Stat. § 971.08(1)(c), and that he had signed the plea questionnaire containing the same warning (35:2). He claimed that Immigration Customs Enforcement ("ICE") instituted removal proceedings against him "based on his convictions," and that to avoid a deportation on his record, he had agreed to a voluntary departure from the country (35:2). He also claimed that his conviction for substantial battery/domestic abuse was a crime involving moral turpitude, which mandated his removal and permanently excluded him from legal re-entry into the United States (35:2-3). Ortiz-Mondragon argued that his trial attorney had been ineffective because he failed to advise Ortiz-Mondragon of those specific consequences (35:4-5).

On October 9, 2013, the circuit court issued a written decision and order denying Ortiz-Mondragon's motion (36). The court acknowledged that, pursuant to *Padilla v. Kentucky*, 559 U.S. 356 (2010), attorneys must inform their clients whether their pleas carry a risk of deportation (36:4-5). The court also noted, however, that "[w]hen the law is not succinct and straightforward…a criminal defense attorney need do no more than advise a noncitizen client that criminal charges may carry a risk of adverse immigration consequences" (36:4) (quoting

Padilla, 559 U.S. at 369). Applying *Padilla*, the circuit court rejected Ortiz-Mondragon's claim:

> Ortiz now asks the Court to allow him to withdraw his plea because his "trial counsel failed to advise him of adverse immigration consequences of his plea, specifically that the convictions mandated removal and resulted in his permanent exclusion from the country once removed." (Postconviction Motion, ¶ 15.) Despite this claim, Ortiz acknowledges that he was given *equivocal* immigration warnings by both the Court, as required by Wisconsin Statutes section 971.08, and the Plea Questionnaire/Waiver of Rights form. (See Postconviction Motion, ¶ 2.) Therefore, the Court views the issue before it as, essentially, whether the circumstances were such that trial counsel was required to provide Ortiz with *unequivocal* advice regarding the immigration-related consequences of his plea to the charge of substantial battery. In other words, is the law regarding the immigration consequences of Ortiz's conviction "succinct and straightforward." See Padilla at 369.
>
> The Court determines that Ortiz's trial counsel was *not* required to provide Ortiz with unequivocal advice regarding the immigration-related consequences of his plea because the law elucidating the consequences is not succinct and straightforward. Ortiz's conviction, and thus the advice trial counsel was required to provide, is distinguishable from that in Padilla.
>
> . . . .
>
> Unlike the clarity that exists with a crime involving a controlled substance conviction [like the one at issue in *Padilla*], a "crime involving moral turpitude" is a broad, rather than specific, classification of crimes. Notably, Ortiz does not provide any citation to statutory or case law to explain *why* Ortiz's conviction for substantial battery is a crime of moral turpitude. Instead, he simply asserts that it is. The Court searched for a definition for "crime of moral turpitude" within the federal immigration statutes and was unable to find one. Black's Law Dictionary does not have a definition for "crime of moral turpitude" but defines "moral

> turpitude" as "[c]onduct that is contrary to justice, honesty, or morality". Black's Law Dictionary, 1030 (8th ed., 2004). This definition is extremely broad.
>
> Even if, ultimately, Ortiz's crime *is* one of moral turpitude, as the term is used in 8 U.S.C. § 1227(a)(2)(A)(i), that statute, which does not provide or point one to a definition for the term, can hardly be said to be "succinct and straightforward." Because the law is not succinct and straightforward, Ortiz's counsel "need do no more than advise [Ortiz] that pending criminal charges may carry a risk of adverse immigration consequences." Padilla at 369. Ortiz does not assert that trial counsel did not so advise him, and the record affirmatively establishes that trial counsel *did* so advise him.
>
> Under the circumstances, Ortiz has not stated sufficient facts which entitle him to a hearing on his postconviction motion. The facts, as alleged, demonstrate that Ortiz's counsel did not perform deficiently by providing Ortiz with equivocal, rather than unequivocal, advice regarding the immigration-related consequences of his plea. Therefore, Ortiz's motion to withdraw his plea must be dismissed.

(36:4-7). Ortiz appeals.

ARGUMENT

THE CIRCUIT COURT PROPERLY DENIED ORTIZ-MONDRAGON'S MOTION FOR PLEA WITHDRAWAL WITHOUT AN EVIDENTIARY HEARING.

A. Legal Standards for Plea Withdrawal.

A defendant seeking to withdraw a plea after sentencing must prove by clear and convincing evidence that refusal to permit withdrawal would result in "manifest injustice." *State v. Thomas*, 2000 WI 13, ¶ 16, 232 Wis. 2d 714, 605 N.W.2d 836; *see also State v. Bentley*, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996).

To establish "manifest injustice," a criminal defendant must show a "serious flaw in the fundamental integrity of the plea." *State v. Nawrocke*, 193 Wis. 2d 373, 379, 534 N.W.2d 624 (Ct. App. 1995) (citation omitted).

A circuit court's decision to grant or deny a motion to withdraw a guilty plea will stand on appeal unless it represents an erroneous exercise of the court's discretion. *Thomas*, 232 Wis. 2d 714, ¶ 13. The circuit court's exercise of discretion will be affirmed if the record demonstrates that legal standards were correctly applied to the facts and a reasoned conclusion was reached. *Nawrocke*, 193 Wis. 2d at 381. A defendant may meet his burden of establishing a manifest injustice by demonstrating, among other things, that his plea was involuntary or that he received ineffective assistance of counsel. *See State v. Daley*, 2006 WI App 81, ¶ 20 n.3, 292 Wis. 2d 517, 716 N.W.2d 146 (citation omitted).

If, as in this case, a defendant argues that he is entitled to withdraw his plea because of something outside of the plea colloquy, like ineffective assistance of counsel, plea withdrawal follows the *Nelson/Bentley* line of cases.[2] *State v. Howell*, 2007 WI 75, ¶ 74, 301 Wis. 2d 350, 734 N.W.2d 48. As to these claims, the defendant bears the burden of proving by clear and convincing evidence that plea withdrawal is necessary to avoid a manifest injustice. *Bentley*, 201 Wis. 2d at 311. "[T]he manifest injustice test is met if the defendant was denied the effective assistance of counsel." *Id*. (internal quotation marks and citation omitted).

To prove ineffective assistance of counsel, a defendant must satisfy a two-prong test by demonstrating both that counsel's performance was deficient and that he/she suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Smith*, 207 Wis. 2d 258, 273, 558 N.W.2d 379 (1997). A court may

[2]The full citations for these cases are *Nelson v. State*, 54 Wis. 2d 489, 194 N.W.2d 629 (1972), and *State v. Bentley*, 201 Wis. 2d 303, 548 N.W.2d 50 (1996).

begin its analysis of such a claim with either prong, and if the defendant fails to make a proper showing on one, the court need not address the other. *Strickland*, 466 U.S. at 697.

In addition, a defendant is not entitled to an evidentiary hearing simply because he alleges ineffective assistance of counsel. *See State v. Curtis*, 218 Wis. 2d 550, 555 n.3, 582 N.W.2d 409 (Ct. App. 1998). A circuit court may deny a postconviction motion without a hearing "if all the facts alleged in the motion, assuming them to be true, do not entitle the movant to relief; if one or more key factual allegations in the motion are conclusory; or if the record conclusively demonstrates that the movant is not entitled to relief." *State v. Allen*, 2004 WI 106, ¶ 12, 274 Wis. 2d 568, 682 N.W.2d 433 (footnote omitted).

B. The Circuit Court Correctly Denied Ortiz-Mondragon's Ineffective Assistance Of Counsel Claim Without An Evidentiary Hearing.

In *Padilla*, the Supreme Court held that counsel was required to inform the defendant that his conviction for distributing drugs would render him deportable because "the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence for Padilla's conviction. *Padilla*, 559 U.S. at 368 (citing 8 U.S.C. § 1227(a)(2)(B)(i)[3]). As the court noted:

> Padilla's counsel could have easily determined that his plea would make him eligible for deportation simply from reading the text of the statute, **which addresses not some broad classification of crimes**

[3] 8 U.S.C. § 1227(a)(2)(B)(i) provides that "[a]ny alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States or a foreign country relating to a controlled substance …, other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable."

> but specifically commands removal for all controlled substances convictions except for the most trivial of marijuana possession offenses. Instead, Padilla's counsel provided him false assurance that his conviction would not result in his removal from this country. This is not a hard case in which to find deficiency. The consequences of Padilla's plea could easily be determined from reading the removal statute, his deportation was presumptively mandatory, and his counsel's advice was incorrect.

Padilla, 359 U.S. at 368-69 (emphasis added). The court also explained, however, that:

> Immigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. **When the law is not succinct and straightforward (as it is in many of the scenarios posited by Justice ALITO), a criminal defense attorney need do no more than advise a noncitizen client that pending charges may carry a risk of adverse immigration consequences**. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.

Padilla, 359 U.S. at 369 (emphasis added). Among the scenarios Justice Alito addressed in his concurring opinion were crimes against moral turpitude:

> [P]roviding advice on whether a conviction for a particular offense will make an alien removable is often quite complex. "Most crimes affecting immigration status are not specifically mentioned by the [Immigration and Nationality Act (INA)], but instead fall under a broad category of crimes, such as *crimes involving moral turpitude* . . . ." M. Garcia & L. Eig, CRS Report for Congress, Immigration Consequences of Criminal Activity (Sept. 20, 2006) (summary) (emphasis in original). As has been widely acknowledged, determining whether a particular crime is … a "crime involving moral

> turpitude [(CIMT)]" is not an easy task. See R. McWhirter, ABA, The Criminal Lawyer's Guide to Immigration Law: Questions and Answers 128 (2d ed. 2006) … ABA Guidebook § 4.65, at 130 ("Because nothing is ever simple with immigration law, the terms 'conviction,' 'moral turpitude,' and 'single scheme of criminal misconduct' are terms of art"); *id.*, § 4.67, at 130 ("[T]he term 'moral turpitude' evades precise definition").
>
> . . . .
>
> Determining whether a particular crime is one involving moral turpitude is no easier. See *id.*, at 134 ("Writing bad checks *may or may not* be a CIMT" (emphasis added)); *ibid*. ("[R]eckless assault coupled with an element of injury, but not serious injury, is *probably* not a CIMT" (emphasis added)); *id.*, at 135 (misdemeanor driving under the influence is generally not a CIMT, but may be a CIMT if the DUI results in injury or if the driver knew that his license had been suspended or revoked); *id.*, at 136 ("If there is no element of actual injury, the endangerment offense *may* not be a CIMT" (emphasis added)); *ibid*. ("Whether [a child abuse] conviction involves moral turpitude *may* depend on the subsection under which the individual is convicted. Child abuse done with criminal negligence *probably* is not a CIMT" (emphasis added)).
>
> . . . .
>
> In short, the professional organizations and guidebooks on which the Court so heavily relies are right to say that "nothing is ever simple with immigration law" – including the determination whether immigration law clearly makes a particular offense removable. ABA Guidebook § 4.65, at 130; Immigration Law and Crimes § 2:1.

Padilla, 359 U.S. at 377-81 (Alito, J., concurring). Justice Alito's comments accurately reflect the difficulty inherent in determining the immigration consequences of certain

convictions, particularly those that may or may not be crimes involving moral turpitude.[4]

The Immigration and Nationality Act does not define what constitutes a crime involving moral turpitude. Despite the vagueness of the phrase, the Supreme Court has held that it is not unconstitutional. *Jordan v. De George*, 341 U.S. 223, 240 (1951). In his dissent, however, Justice Jackson observed that:

> What is striking about the opinions in these "moral turpitude" cases is the wearisome repetition of cliché[s] [] attempting to define "moral turpitude," usually a quotation from Bouvier. But the guiding line seems to have no relation to the result reached. The chief impression from the cases is the caprice of the judgments. How many aliens have been deported who would not have been had some other judge heard their cases, and vice versa, we may only guess. That is not government by law.

Jordan, 341 U.S. at 239 (Jackson, J., dissenting) (footnote omitted). In keeping with that sentiment, courts often have criticized the murkiness of how crimes involving moral turpitude are defined. *See, e.g., Partyka v. Att'y Gen. of U.S.*, 417 F.3d 408, 409 (3d Cir. 2005) (referencing the "amorphous morass of moral turpitude law"); *Marmolejo-Campos v. Holder*, 558 F.3d 903, 909 (9th Cir. 2009) (en banc) ("'[M]oral turpitude' is perhaps the quintessential example of an ambiguous phrase."); *id.* at 921 (Berzon, J., dissenting) (referring to precedent on the definition of crimes involving moral turpitude as "a mess of conflicting authority."). One example of just how murky this area of the law is illustrated by the split in the federal circuits concerning the proper methodology for immigration judges and courts to use in assessing whether convictions are crimes involving moral turpitude.

[4] Even Ortiz-Mondragon acknowledges that "the concept of a [crime involving moral turpitude] is not clear on its face" (Ortiz-Mondragon Br. at 7).

The split stems largely from the United States Attorney General's opinion in *Matter of Silva-Trevino*, 24 I. & N. Dec. 687 (A.G. 2008). In that opinion, the Attorney General attempted to clarify earlier decisions concerning crimes involving moral turpitude:

> [T]his opinion rearticulates the Department's definition of the term [CIMT] in a manner that responds specifically to the judicial criticism. . . . [T]his opinion makes clear that, to qualify as a crime involving moral turpitude for purposes of the Act, a crime must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness.

Silva-Trevino, 24 I. & N. Dec. at 689 n.1. In addition, the Attorney General analyzed the Immigration and Nationalization Act and concluded that immigration judges may consult evidence outside the record of conviction to determine whether an alien has been convicted of a crime involving moral turpitude.[5] It appears that the Attorney General chose to permit immigration judges to consult information outside the record of conviction because "[t]he relevant provisions contemplate a finding that the particular alien did or did not commit a crime involving moral turpitude before immigration penalties are or are not applied." *Id*. at 699. The Attorney General also concluded that immigration judges should not be confined to the record of conviction when deciding whether an alien has been convicted of a

[5] The Attorney General established a three-step process for this assessment. First, the immigration judge must determine if the crime at issue is categorically a crime involving moral turpitude. *Matter of Silva-Trevino*, 24 I. & N. Dec. 687, 689-90 (A.G. 2008). If it is not, the immigration judge moves to the second step to decide whether the conviction is a crime involving moral turpitude under the modified categorical approach, which permits the immigration judge to consider the "record of conviction[,]" including "documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea and the plea transcript." *Id*. at 690. Finally, if the offense is not a crime involving moral turpitude under the modified categorical approach, the immigration judge goes on to the third step and considers evidence outside of the record of conviction. *Id*.

crime involving moral turpitude because "moral turpitude" is not "an element of an offense." *Id*. at 699-700. The federal circuits disagree on the *Silva-Trevino* opinion.

Some circuits, including the Seventh and Eight Circuit, are in accord with *Silva-Trevino* and allow immigration judges to consider evidence outside the record of conviction to determine whether an alien's conviction is a crime involving moral turpitude. *Ali v. Mukasey*, 521 F.3d 737, 741 (7th Cir. 2008) (regarding "crimes involving moral turpitude," there are two questions a court must answer: first, "the fact of the prior conviction," for which the immigration judge cannot go outside the record of conviction, and second, "the appropriate classification of that conviction, which may require additional information."); *Bobadilla v. Holder*, 679 F.3d 1052, 1055 (8th Cir. 2012) ("[b]ecause 'moral turpitude' is not an element of any criminal offense," the [immigration judge] can look beyond the fact of conviction to the circumstances of the crime to determine whether moral turpitude was involved). The Third, Fourth, Fifth, Ninth, and Eleventh Circuits, however, have explicitly rejected the *Silva-Trevino* three-step analysis. *See Jean-Louis v. Attorney General of U.S.*, 582 F.3d 462 (3d Cir. 2009); *Prudencio v. Holder*, 669 F.3d 472 (4th Cir. 2012); *Silva-Trevino v. Holder*, 742 F.3d 197 (5th Cir. 2014); *Olivas-Motta, v. Holder*, 716 F.3d 1199 (9th Cir. 2013), *republished* at 746 F.3d 907; *Fajardo v. U.S. Atty. Gen.*, 659 F.3d 1303 (11th Cir. 2011). The Supreme Court may well resolve this split, but it has not done so yet. *Silva-Trevino* remains as precedent, but with such significant disagreement across the circuits, the law is far from settled. Naturally, different methodologies can and do yield different results in cases that are otherwise similar.

In addition, the assessment of what constitutes a crime involving moral turpitude is further complicated under any methodology because of the wide variety of criminal statutes and related offenses that may qualify.

The elements and terms of individual state statutes for something as simple as battery often vary significantly. As a result, decisions regarding whether and when a given offense amounts to a crime involving moral turpitude vary as well.

To determine whether a crime is one of moral turpitude, adjudicators examine the elements of the applicable statute. *See Matter of Torres-Varela*, 23 I. & N. Dec. 78, 84-85 (B.I.A. 2001). At the same time, neither the seriousness of the offense, nor the severity of the sentence imposed is conclusive as to whether a crime involves moral turpitude. *Matter of Serna*, 20 I. & N. Dec. 579, 581 (B.I.A. 1992). For example, a simple assault and battery offense generally is not a crime of moral turpitude, but an aggravating factor can alter that determination. *See, e.g., Yousefi v. U.S. INS*, 260 F.3d 318, 326-27 (4th Cir. 2001); *Matter of Fualaau*, 21 I. & N. Dec. 475 (B.I.A. 1996); *Matter of Danesh*, 19 I. & N. Dec. 669 (B.I.A. 1988). The analysis is far from precise, and decisions from both the Board and the courts reflect that.

For instance, the Board and the courts have held that a conviction for domestic assault involves moral turpitude if an essential element of the crime is intent to cause physical harm to a spouse, child, or domestic partner. *In re Tran*, 21 I. & N. Dec. 291 (B.I.A. 1996); *Gradega v. U.S. I.N.S.*, 12 F.3d 919 (9th Cir. 1993), *superceded by statute as stated in Planes v. Holder*, 652 F.3d 991 (9th Cir. 2011). The Board also held, however, that a Virgina conviction for domestic assault and battery is not necessarily a crime of moral turpitude despite the fact that the statute requires an intent to cause injury. *In re Sejas*, 24 I. & N. Dec. 236 (B.I.A. 2007).

In another context, the Fifth Circuit held that a Texas conviction for failing to provide assistance after a car accident that resulted in injury or death was a crime involving moral turpitude. *Garcia-Maldonado v. Gonzales*, 491 F.3d 284, 290 (5th Cir. 2007). The Ninth

Circuit then distinguished that decision and found that a conviction for leaving the scene after an accident did not necessarily involve moral turpitude when the minimum violation included refusal to provide identification information. *Cerezo v. Mukasey*, 512 F.3d 1163, 1169 (9th Cir. 2008).

The above discussion does not capture nearly all of the nuances and discrepancies that exist in this area of the law, but it does illustrate the complexity of deciphering whether a given offense is a crime involving moral turpitude. While Ortiz-Mondragon's conviction may well qualify as a crime of moral turpitude, that conclusion is not "clear and certain" or "succinct and straightforward[,]" as he argues on this appeal (Ortiz-Mondragon Br. at 9). The circuit court correctly found that:

> Even if, ultimately, Ortiz's crime *is* one of moral turpitude, as the term is used in 8 U.S.C. § 1227(a)(2)(A)(i), that statute, which does not provide or point one to a definition for the term, can hardly be said to be "succinct and straightforward." Because the law is not succinct and straightforward, Ortiz's counsel "need do no more than advise [Ortiz] that pending criminal charges may carry a risk of adverse immigration consequences." Padilla at 369. Ortiz does not assert that trial counsel did not so advise him, and the record affirmatively establishes that trial counsel *did* so advise him.[6]

[6] As the circuit court noted, Ortiz-Mondragon conceded in his motion for plea withdrawal that he had received the statutory immigration warning, Wis. Stat. § 971.08(1)(c), from both the circuit court and his trial counsel prior to entering his pleas (36:2). The transcript from his plea and sentencing hearing is also illuminating. When the victim addressed the court, she specifically stated "we were trying to keep them here in the states, but if he ends up with a felony charge, that's not going to happen" (45:10). Then, when the circuit court asked whether Ortiz-Mondragon was on an immigration hold, his attorney stated "I think there is, but the information I get is secondhand" (45:11). Those statements corroborate Ortiz-Mondragon's understanding that the charges against him "may carry

(36:6) (footnote added). This court should affirm the circuit court's decision to deny Ortiz-Mondragon's motion for plea withdrawal without an evidentiary hearing.[7]

CONCLUSION

For the above reasons, the State of Wisconsin asks this court to affirm the circuit court's denial of Fernando Ortiz-Mondragon's motion to withdraw his plea.

Dated this 11th day of June, 2014.

Respectfully submitted,

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a risk of adverse immigration consequences." *Padilla*, 559 U.S. at 369.

[7] Should this court disagree, however, the case should be remanded to the circuit court for an evidentiary hearing on Ortiz-Mondragon's ineffective assistance of counsel claim.

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4503 words.

Dated this 11th day of June, 2014.

_____
Nancy A. Noet
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 11th day of June, 2014.

_____
Nancy A. Noet
Assistant Attorney General