POST PLEA RELIEF IN A POST PADILLA WORLD

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UTAH RULES OF CRIMINAL PROCEDURE
RULE 11

- The court may not accept a plea of guilty until the court has found:
  - Waiver of counsel
  - Plea is voluntary
  - Advised of constitutional protections
  - Nature and elements of the offense
  - Burden of proof
  - Maximum sentence, minimum mandatory sentences (DUI), including possibility of consecutive sentences
  - Time limits for filing motion to withdraw plea
  - Limited right of appeal
- May be based on oral questioning of defendant or a written statement
UNLESS SPECIFICALLY REQUIRED BY STATUTE OR RULE, A COURT IS NOT REQUIRED TO INQUIRE INTO OR ADVISE CONCERNING ANY COLLATERAL CONSEQUENCES OF A PLEA
Collateral Consequences of Convictions

- Loss or restriction of professional licenses
- Public assistance
- Student Loans
- Voting rights
- Jury Duty
- Driver’s License
- Employment
- Deportation

Traditionally, counsel was not required to advise defendants of collateral consequences of convictions...
PADILLA V. KENTUCKY
- 559 U.S. 356 (2010)

- Lawful permanent resident, Vietnam War vet
- Charged with transporting marijuana
- Defense attorney told Padilla he “did not have to worry” about conviction affecting his immigration status
- Pleaded guilty pursuant to agreement with prosecution
- Padilla later learned that his conviction made deportation virtually automatic
- Padilla filed for post-conviction relief based on ineffective assistance of counsel (IAC) under 6th Amendment
  • Established standard for determining when a defendant’s 6th Amendment right to counsel is violated by IAC
  • In laying out a two-part test, Supreme Court said that a defendant must show:
    1. Counsel’s performance fell below an objective standard of reasonableness; and
    2. Counsel's performance gives rise to a reasonable probability that if counsel had performed adequately, the result would have been different.
Back to Padilla....

- Defendant argued that the bad advice he had been given was IAC and that his conviction was in violation of 6th Amendment
- Padilla won in Kentucky Appellate Court, but Kentucky Supreme Court applied a harsher version of the Collateral Consequences Rule:
  - Held that whether Padilla’s attorney failed to advise him or affirmatively misadvised him before his plea made no difference due to it being a collateral consequence.
Two questions posed before the court:
1. Whether mandatory deportation resulting from a guilty plea is a “collateral consequence” and counsel is thereby relieved of an affirmative duty to advise; and
2. Assuming deportation is a “collateral consequence”, whether counsel’s gross misadvice about deportation constitutes grounds for setting aside a guilty plea induced by that advice.
Supreme Court punted on these questions and reframed the entire case!
“We, however, have never applied a distinction between direct and collateral consequences to define the scope of constitutionally “reasonable professional assistance” required under Strickland, 466 U.S., at 689. Whether that distinction is appropriate is a question we need not consider in this case because of the unique nature of deportation.”
- Justice Stevens majority opinion
• Deportation is uniquely difficult to classify as either a direct or a collateral consequence due to its close connection to the criminal process.
• Court found that it was too difficult to “divorce the penalty from the conviction in the deportation context.”
APPLYING THE STRICKLAND STANDARD:

• “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.”

• Court declined to address second prong of Strickland, prejudice, because it had not been addressed in the lower courts.

The court did, however, create a new rule regarding immigration consequences.
Padilla Rule

• If the law is unambiguous regarding deportation, attorneys must advise their criminal clients that deportation will result from a conviction.
• If the immigration consequences of a conviction are unclear or uncertain, attorneys must advise criminal defendants that deportation “may” result from a plea or conviction.
• Counsel for a criminal may not remain silent in regards to immigration consequences.
  • In other words, the Court didn’t limit this holding only to affirmative misadvice, as the government requested.
Supreme Court cases cannot be applied retroactively if they apply a “new rule” or obligation on the part of the government

Chaidez v. United States
- 133 S.Ct. 1103 (2013)

- Court found that Padilla presented a new rule and therefore does not apply retroactively to cases decided before March 31, 2010.
What does that mean for us?

Cases decided prior to Padilla do not qualify for relief under the new rule.

If case was decided after Padilla, defendant can challenge plea if counsel did not meet requirements set forth.
Other avenues to post plea relief in the immigration realm?

- Rule 402
- Post-Conviction Remedies Act
  - Rule 65C, Utah Rules of Civil Procedure
- Expungement
- Rule 60(b), Utah Rules of Civil Procedure
Expungements (briefly)

- Cases that have been expunged in state courts can still be used against an individual in immigration court.
- Immigration courts deem expungements to be rehabilitative measures and therefore are not recognized.
Utah Code Ann 76-3-402
- “402 reduction”

Not always helpful in cases with immigration consequences, as immigration courts generally only care about the nature of the offense as opposed to the level of offense.

However, it is sometimes used in cases where deportation is a result of multiple convictions.
Important Notes on 402 Reductions

- **NOT RETROACTIVE**: Courts must apply the version of Rule 402 in effect at time of conviction.
  - State v. Johnson, 2012 UT 68
- Certain offenses have time restrictions (Sex Offender, Child Abuse Offender cases)
- Discretionary, not entitled to reduction as matter of law.
- Court may only grant one step reduction, unless prosecutor specifically agrees to a two-step reduction.
- **IN NO CASE MAY AN OFFENSE BE REDUCED UNDER RULE 402 BY MORE THAN TWO DEGREES**
- Rule 402 can only be used in a case where the court suspends the execution of the sentence and places the defendant on probation
  - Should not apply to cases of “Credit for time served, case closed”
PCRA
Utah Code Ann 78B-9

PCRA establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal.
PCRA Cont.

A defendant who has been convicted and sentenced for a criminal offense may file a PCRA action upon the following grounds:

a. Conviction was obtained or sentence was imposed in violation of the US or Utah Constitution;
b. Conviction was obtained or sentence imposed under a statute that is in violation of the US or Utah Constitution;
c. Sentence was imposed or probation was revoked in violation of the controlling statutory provisions;
d. Defendant has ineffective assistance of counsel in violation of US or Utah Constitution;
e. Newly discovered material evidence exists that requires court to vacate conviction because:
   i. Defendant and counsel didn’t know of the evidence at the time of trial or sentencing or in time to include evidence in previously filed post-trial proceedings, and the evidence could not have been discovered through reasonable diligence;
   ii. Material evidence is not merely cumulative of evidence that was known;
   iii. Not merely impeachment evidence; and
   iv. Viewed with all other evidence, newly discovered material evidence demonstrates that no reasonable trier of fact could have found defendant guilty of the crime; or
f. Rule announced by upper court after conviction and sentence became final on direct appeal, and the rule was dictated by precedent existing at time of conviction or if the rule decriminalizes the elements of the crime.
PCRA Cont.

• Petitioner has burden of proof, preponderance of the evidence standard
• Respondent has burden of pleading preclusion of relief, and once a ground of preclusion has been pled, petitioner has burden to DISPROVE its existence by preponderance of the evidence.

• Preclusion
• Not eligible for relief under PCRA upon any ground that:
  • May still be raised on direct appeal or post trial motion;
  • Was raised or addressed at trial or on appeal;
  • Could have been but was not raised at trial or on appeal (unless due to IAC)
  • Was raised or addressed in any previous request for post-conviction relief or could have been, but was not raised previously; or
  • Is barred by the limitation period established in Section 78B-9-107.
78B-9-107 Statute of limitations for post-conviction relief:

- Petition must be filed within one year after the cause of action has accrued.
- Cause of action accrues on the latest of the following:
  - Last day for filing an appeal from entry of final judgment of conviction, if no appeal is taken;
  - Entry of decision of appellate court, if an appeal is taken;
  - Last day for filing petition for writ of certiorari, if no petition for writ is filed;
  - Entry of denial for writ of certiorari if filed;
  - Date on which petitioner knew or should have known, in exercise of reasonable diligence, of evidentiary facts on which the petition is based; or
  - Date on which a new rule is established if under 78B-9-104(1)(F).
Effect of Granting relief under PCRA

- If the court grants petitioner’s request for relief, it shall either;
  - Modify the original conviction or sentence; or
  - Vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate.
Meza v. State
- 359 P.3d 592 (2015)

Does the PCRA apply to a defendant’s successfully completed plea in abeyance?
- District court denied and dismissed Meza’s claim of IAC under the PCRA.
- Utah Supreme Court affirmed dismissal of Meza’s PCRA claim.
  - PCRA is available to any person who challenges a CONVICTION or SENTENCE for a criminal offense.
  - Meza was never convicted or sentenced! Successful PIA, plea was withdrawn and case was dismissed without a conviction being entered or a sentence being imposed.
Utah Code Ann 77-2a governs and defines PIAs

A “plea in abeyance” means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but **not**, at that time, entering judgment of conviction against him **nor** imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

Upon finding that the defendant has successfully completed the terms of a PIA, the court may allow for the withdrawal of the guilty plea and order the dismissal of the case.

**SOOOO…. No conviction and no sentence! Successful PIAs do not qualify for relief under the PCRA.**
HOWEVER.....

Justice Parrish and the Meza majority sua sponte come up with a way to challenge pleas held in abeyance under Rule 60(b)(6) of the Rules of Civil Procedure
Rule 60(b)

- On motion and upon just terms, the court may relieve a party or its legal representative from a judgment, order, or proceeding for the following reasons:
  - (b)(1) mistake, inadvertence, surprise, or excusable neglect;
  - (b)(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
  - (b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party;
  - (b)(4) the judgment is void;
  - (b)(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application; or
  - (b)(6) any other reason that justifies relief.
Rule 60(c)

- **Timing and effect of the motion.** A motion under paragraph (b) must be filed within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than 90 days after entry of the judgment or order or, if there is no judgment or order, from the date of the proceeding. The motion does not affect the finality of a judgment or suspend its operation.

- Very ambiguous, leaves discretion for “reasonable time” presumably up to the court hearing the motion.
So where do we stand now?

• Padilla
• 402
• Expungements
• PCRA
• Meza and PIAs
• Rule 60(b)(6)