2026 IL App (1st) 250937

No. 1-25-0937

September 25, 2026

FIFTH DIVISION

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
| | ) | of Cook County. |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | 19 CR 01785 01 |
| | ) | |
| ALBERTO GORDON, | ) | The Honorable |
| | ) | James Michael Obbish, |
| Defendant-Appellant. | ) | Judges, presiding. |

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PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court, with opinion.
Justice Mikva concurred in the judgment and opinion.
Justice C.A. Walker specially concurred in the judgment, with opinion.

**OPINION**

¶ 1 Defendant Alberto Gordon, age 52, appeals the trial court's denial of the petition that he filed pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2024)). Section 2-1401 permits a defendant to seek relief from judgment if the judgment "was entered based on a plea of guilty," and it "has potential consequences under federal immigration law." 735 ILCS 5/2-1401(c-5) (West 2024). Defendant's section 2-1401 petition challenged his prior guilty plea, arguing that his plea counsel was ineffective for failing to advise him of mandatory federal immigration consequences, namely, deportation.

¶ 2 Denying the petition, the trial court found that defendant's plea counsel was not ineffective because the applicable federal statute did not explicitly indicate deportation. For the following reasons, we reverse.

¶ 3 BACKGROUND

¶ 4 On October 10, 2019, pursuant to an agreement with the State, defendant pled guilty to two counts: (1) one count of possession of child pornography, and (2) one count of sexual exploitation of a child under the age of 13. The child pornography count is not at issue on this appeal. At the plea, defendant was represented by a private attorney. Per the agreement with the State, defendant was sentenced to sex offender probation for two years. On March 1, 2022, the trial court terminated defendant's probation "satisfactorily." In an affidavit submitted in support of his petition, defendant averred that exactly "[t]wo years later, on the morning of March 22, 2024, ICE officers came to my residence and detained me."[1] The Public Defender of Cook County filed defendant's section 2-1401 petition shortly thereafter, on July 29, 2024.

¶ 5 In his section 2-1401 petition, defendant sought to vacate his 2019 guilty plea on the ground that his plea counsel failed to advise him that a plea to sexual exploitation of a child would subject him to "automatic or presumptively mandatory deportation." Defendant alleged that he had been a lawful permanent resident in the United State since the age of six, that he was then 50 years old, that he had no prior felony convictions, and that he had served in the Marines. In his attached affidavit, defendant averred that, if he had known that his plea to

[1]Defendant's brief asserts that ICE came to his house three weeks after defendant completed his probation. Given the conflict with defendant's own affidavit, this appears to be in error.

sexual exploitation would make his deportation "virtually certain," he would have rejected the plea offer and "taken the case to trial."

¶ 6 Defendant alleged that the forms served on him by United States Immigration and Customs Enforcement (ICE) indicated that he was deportable (1) "under section 237(a)(2)(E)(i) of the Immigration and Nationality Act (INA), which involves convictions for crimes of domestic violence, stalking, and child abuse, child neglect, or child abandonment" and (2) "pursuant to the aggravated felony deportability ground set forth under section 237(a)(2)(A)(iii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(ii) for having been convicted of murder, rape or sexual abuse of a minor pursuant to section 101(a)43(A), 8 U.S.C. § 1101(a)(43)(A)."

¶ 7 On March 26, 2025, the trial court held an evidentiary hearing on defendant's petition. Defendant's witnesses included himself; his sister Tiffany Gordon, who is an attorney and who hired private counsel to represent defendant; and David Faherty, an attorney with the National Immigrant Justice Center, who testified as an expert witness in the field of immigration law. The State called defendant's plea counsel.

¶ 8 On May 8, 2025, the trial court issued a written order in which it set forth its findings, both factual and legal. At the hearing, exactly what plea counsel told defendant was a hotly contested issue, with defendant testifying that plea counsel had not mentioned *any* immigration consequences, while plea counsel claimed that he had told defendant that the offense qualified as an aggravated felony which would result in "auto deportation."

¶ 9 Resolving this credibility dispute, the trial court apparently found neither witness particularly credible. Instead, the trial court found that "the evidentiary hearing established that [plea counsel] advised [defendant] that he faced potential deportation consequences resulting from his plea." The order then repeated the word "potential" four times in the next four sentences, thereby emphasizing the level of warning provided was potential rather than automatic, as counsel had testified. On appeal, neither party argues that the trial court abused its discretion in reaching this factual finding.

¶ 10 Further, the trial court found that the judge who took the plea failed to provide defendant with the statutorily-required admonishment regarding potential immigration consequences. Section 113-8 of the Code of Criminal Procedure of 1963 requires that, "[b]efore the acceptance of a plea of guilty, *** the court shall give the following advisement to the defendant in open court:

> " 'If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequence of deportation[.]' " 725 ILCS 5/113-8(a) (West 2024).

The trial court's factual finding regarding the plea court's failure to provide the statutorily-required admonishment is not challenged on appeal.

¶ 11 In its legal analysis, the trial court quoted the Illinois Supreme Court's opinion in *People v. Valdez*, 2016 IL 119860, ¶ 22, which stated: "[W]here the face of the [Immigration and Nationality Act (INA) (8 U.S.C. § 1101 *et seq.* (2024))] does not succinctly, clearly, and explicitly indicate that a conviction subjects a defendant to mandatory deportation, counsel need only advise a defendant that his plea 'may' have immigration consequences." Applying this quote to the statutes before it, the trial court then found that the INA did not explicitly indicate that defendant's convictions subjected him to mandatory deportation. The trial court's order devoted several pages to the child pornography count. However, defendant does not raise any issues on appeal with respect to that count.

¶ 12 With respect to the sexual exploitation offense, which is the offense at issue on this appeal, the trial court noted: "The expert may be correct in stating that sexual exploitation of a child is an aggravated felony, but the issue is whether the INA succinctly, clearly and explicitly indicates the offense is deportable." The trial court explained that, "when the government alleged a state conviction qualifies as an aggravated felony under the INA, courts use the categorical approach to determine whether the state offense is comparable to an offense listed in the INA." In support, the trial court cited *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013). The trial court found that neither the expert nor the petition addressed the categorical approach. Nonetheless, even if they had, the trial court found that this approach called for a detailed analysis and, as a result, the INA itself did not clearly indicate that the offense was deportable.

¶ 13 Based upon these factual and legal findings, the trial court found that plea counsel was not ineffective, where plea counsel advised defendant of potential consequences and that was all the law required in this case. As a result, the trial court denied defendant's petition. Defendant filed a timely notice of appeal on the same day as the trial court's order, and this appeal followed.

¶ 14 ANALYSIS

¶ 15 Defendant filed a 2-1401 petition seeking to vacate his guilty plea, on the ground that his plea counsel was ineffective. The petition argued that his plea counsel was ineffective for failing to advise defendant of mandatory immigration consequences that would result from his plea. However, the trial court found that it was not clear that defendant's conviction for sexual exploitation of a minor would subject defendant to mandatory deportation and, thus, it found that his counsel was not ineffective. On appeal, defendant argues that this legal finding by the trial court was in error, while the State agrees with the trial court that it was not clear that deportation was a mandatory consequence. For the following reasons, we reverse.

¶ 16 I. Jurisdiction

¶ 17 Although no party has challenged jurisdiction, an appellate court always has an independent duty to consider its own jurisdiction, whether or not the issue was raised by any of the parties. *National Collegiate Student Loan Trust 2007-4 v. Phelps*, 2025 IL App (1st) 231783, ¶ 18. As already noted above, Section 2-1401 permits a defendant to seek relief from judgment if the judgment "was entered based on a plea of guilty" and it "has potential consequences under federal immigration law." 735 ILCS 5/2-1401(c-5) (West 2024). Section 2-1401 permits such a petition to be filed "at any time." 735 ILCS 5/2-1401(c-5) (West 2024). Thus, the petition was timely filed, and the State does not argue otherwise.

¶ 18 Further, defendant's notice of appeal was certainly filed within 30 days of the order appealed from, since it was filed on the same day that the order was entered. Since defendant's notice was filed "within 30 days after the entry of the final judgment" denying his petition, Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017) provides us with jurisdiction to hear this appeal.

¶ 19 II. Standard of Review

¶ 20 Regarding the standard of review, both parties cite and quote *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, for our consideration. The quantum of proof needed to sustain a section 2-1401 petition is a preponderance of the evidence. *Warren County*, 2015 IL 117783, ¶ 51. To the extent that the petition presents a fact-dependent challenge, we review the trial court's ruling only for an abuse of discretion. *Warren County*, 2015 IL 117783, ¶ 51. An abuse of discretion occurs when the trial court's ruling was palpably erroneous, contrary to the manifest weight of the evidence, or manifestly unjust. *Lozman v. Putnam*, 379 Ill. App. 3d 807, 822 (2008).

¶ 21 However, when a section 2-1401 petition raises a purely legal question, then our review is *de novo*. *Warren County*, 2015 IL 117783, ¶ 47. *De novo* review means that we owe no deference to the trial court's decision and that we stand in the same position that the trial court did. *People v. Morgan*, 2025 IL 130626, ¶¶ 21-22. We perform the same analysis that a trial court would. *Townsend v. Estates of Hyde Park, LLC*, 2026 IL App (1st) 250096, ¶ 15. In the case at bar, we review *de novo* the purely legal question of whether or not it was clear that the statute indicated that a conviction for sexual exploitation of a minor would subject defendant to deportation.

¶ 22 The State also argues that, based upon plea counsel's testimony, this court "could" find that counsel advised defendant of mandatory consequences. However, the State does not argue that the trial court abused its discretion when, after a full evidentiary hearing, it resolved a credibility dispute and made a factual finding that counsel advised of "potential" consequences. Arguments not made are waived. *Lozman*, 379 Ill. App. 3d at 826 (providing a list of supporting cases); Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). Generally, if an evidentiary hearing involved fact and credibility determinations, a trial court's factual finding will not be reversed on appeal unless it is manifestly erroneous. *People v. English*, 2013 IL 112890, ¶ 23. As this court has said many times, a reviewing court accords a trial court this deference because it is the trial court who is in the best position to observe the witnesses and, hence, judge credibility. *E.g.*, *People v. McCoy*, 2026 IL 131565, ¶ 51. Thus, we decline the State's invitation to reject the trial court's factual finding, particularly when no abuse-of-discretion argument was made.

¶ 23 As a result, the issue before us is a purely legal question to which *de novo* review applies.

¶ 24 III. Ineffective Assistance of Counsel

¶ 25 As noted, defendant's petition is based on the alleged ineffective assistance of his plea counsel. It is well established that, before deciding whether or not to plead guilty, a defendant is entitled to the effective assistance of competent counsel. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). To determine whether a defendant was denied this right to effective assistance of counsel, we apply the familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984) (adopting *Strickland* for Illinois); *Padilla*, 559 U.S. at 364, 366 (applying *Strickland* to guilty-plea representation).

¶ 26 Under *Strickland*, a defendant must prove both (1) that his attorney's actions constituted errors so serious as to fall below an objective standard of reasonableness and (2) that, absent these errors, there was a reasonable probability that the outcome of the proceeding would have been different. *People v. Brown*, 2025 IL App (1st) 230772, ¶ 87. The first prong addresses counsel's performance, while the second prong asks whether defendant was prejudiced as a result. *Brown*, 2025 IL App (1st) 230772, ¶ 88.

¶ 27 However, in the case at bar, the State has conceded the second, or prejudice, prong. The State's appellate brief forthrightly states that "the State did not contest prejudice below and are [*sic*] not contesting it on appeal." Thus, only the first, or performance, prong is at issue on appeal.

¶ 28 IV. Prevailing Professional Norms

¶ 29 Under the first prong, a defendant must prove that his counsel's performance fell below an objective standard of reasonableness, as measured against prevailing professional norms. *Brown*, 2025 IL App (1st) 230772, ¶ 88. When it comes to advice regarding the deportation consequences of pleading guilty, the prevailing professional norm was set forth in the United States Supreme Court case of *Padilla*, 559 U.S. 356. In that case, the United States Supreme

Court held: "The weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation." *Padilla*, 559 U.S. at 367. Both parties agree that the *Padilla* case is the starting point for our analysis.

¶ 30 In *Padilla*, the defendant alleged, as does defendant here, that he would have insisted on going to trial if he had not received incorrect advice from his attorney and if there was no other option. *Padilla*, 559 U.S. at 359. The supreme court "agree[d] with Padilla that constitutionally competent counsel would have advised him that his conviction for drug distribution made him subject to automatic deportation." *Padilla*, 559 U.S. at 360. As in the case at bar, the court did not need to reach the issue of prejudice. *Padilla*, 559 U.S. at 360.

¶ 31 The supreme court found that, in the particular case before it, "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. The court found that "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 but specifically commands removal for all controlled substances convictions except for the most trivial of marijuana possession offenses." *Padilla*, 559 U.S. at 368. The court found that "[t]his" was "not a hard case *** to find deficiency" for three reasons which it then listed. *Padilla*, 559 U.S. at 368. Those three reasons were (1) "[t]he consequences of Padilla's plea could easily be determined from reading the removal statute, [(2)] his deportation was presumptively mandatory, and [(3)] his counsel's advice was incorrect." *Padilla*, 559 U.S. at 369.

¶ 32 The supreme court then contrasted the facts of Padilla's case with those of other future, possible cases, where a different result would be warranted. *Padilla*, 559 U.S. at 369. The court explained that there will "undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain." *Padilla*, 559 U.S. at 369. When that happens, "[t]he duty of the private practitioner in such cases is more limited." *Padilla*, 559 U.S. at 369. "When the law is not succinct and straightforward"—in other words, the opposite of Padilla's case—then " a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges *may* carry a risk of adverse immigration consequences." (Emphasis added.) *Padilla*, 559 U.S. at 369.

¶ 33 In the case at bar, defendant argues that the mandatory consequences were succinct and straightforward. In contrast, the State argues that the consequences were not succinct and clear and, thus, counsel was not ineffective for advising about potential consequences.

¶ 34 V. Statutes at Issue

¶ 35 To determine whether mandatory consequences were straightforward, we turn first to the relevant statutes. Normally, when we turn to statutes, we reiterate the oft-repeated rules of statutory interpretation. *E.g.*, *Thornley v. Board of Trustees of the River Forest Police Pension Fund*, 2022 IL App (1st) 210835, ¶ 18. However, in *Padilla*, the court did not state or apply these rules; rather what it asked was whether the mandatory consequences were succinct and clear. *Padilla*, 559 U.S. at 368. So, we do the same.

¶ 36 Defendant was convicted of sexual exploitation of a minor, under subsection (a-5) of section 11-9.1 of this state's Criminal Code of 2012. 720 ILCS 5/11-9.1(a-5) (West 2018). Subsection (a-5) provides: "A person commits sexual exploitation of a child who knowingly entices, coerces, or persuades a child to remove the child's clothing for the purpose of sexual arousal or gratification of the person or the child, or both." 720 ILCS 5/11-9.1(a-5) (West 2018).

¶ 37 Section 1227 of the INA is titled "Deportable aliens," and it specifies when aliens shall be deported. 8 U.S.C. § 1227 (2024). The section begins by stating that any alien "shall" be removed, upon the order of the Attorney General, if the alien falls "within one or more of the following classes of deportable aliens." 8 U.S.C. § 1227(a).

¶ 38 Defendant argues that his deportation was mandatory because his offense, sexual exploitation of a minor, fell within one or more of the following classes, namely, (1) an "[a]ggravated felony" (8 U.S.C. § 1227(a)(2)(A)(iii)), and (2) "a crime of child abuse" (8 U.S.C. § 1227(a)(2)(E)(i)). Another section of the INA provides a definition of the term "aggravated felony" and defines it to include "murder, rape, or sexual abuse of a minor." 8 U.S.C. § 1101(a)(43) (2024). Defendant argues that the term "sexual abuse of a minor" includes sexual exploitation of a minor, based on (1) a common-sense understanding of the term, (2) decisions of the Board of Immigration Appeals, (3) the testimony of defendant's expert at the evidentiary hearing, and (4) decisions by the Seventh Circuit Court of Appeals, including *Correa-Diaz v. Sessions*, 881 F.3d 523, 526-28 (7th Cir. 2018), *Velasco-Giron v. Holder*, 773 F.3d 774, 776 (7th Cir. 2014), *Lara-Ruiz v. Immigration & Naturalization Service*, 241 F.3d 934, 939-42 (7th Cir. 2001), *Guerrero-Perez v. Immigration & Naturalization Service*, 242 F.3d 727, 735 n.3 (7th Cir. 2001), *Espinoza-Franco v. Ashcroft*, 394 F.3d 461, 464-65 (7th Cir. 2004), *Gattem v. Gonzalez*, 412 F.3d 758, 762-66 (7th Cir. 2005), and *Gaiskov v. Holder,* 567 F.3d 832, 835 (7th Cir. 2009).

¶ 39 As for the second class, namely, "a crime of child abuse," defendant does not argue that the term is further defined in the INA, as the term "aggravated felony" was. Rather, defendant argues, as he did with the term "sexual abuse of a minor," that common sense dictates that "a crime of child abuse" includes sexual exploitation of a minor. In support, he quotes a dictionary. Where our goal is to determine whether a statute is plain, it is reasonable to look to a dictionary. Courts have often stated that, "[t]o ascertain the plain and ordinary meaning of a word, a reviewing court may use a dictionary." *E.g.*, *Thornley*, 2022 IL App (1st) 210835, ¶ 18. Defendant quotes the 1979 edition of Black's Law Dictionary which defined child abuse as "[a]ny form of cruelty to a child's physical, moral or mental well-being." Black's Law Dictionary 217 (5th ed. 1979); see Black's Law Dictionary 239 (6th ed. 1990) (providing the same definition). Twenty years later, Black's Law Dictionary similarly defined child abuse as "[a]n intentional or neglectful physical or emotional injury imposed on a child, including sexual molestation." Black's Law Dictionary 10 (7th ed. 1999). Applying the earlier definition, defendant argued that sexual exploitation undoubtedly harmed a child's moral and mental well-being. Moreover, the later definition, which added emotional injury, further supports defendant's argument.

¶ 40 Additionally, we observe that the second class is titled not simply child abuse but "a crime of child abuse." 8 U.S.C. § 1227(a)(2)(E)(i)). A key word in that title is "a." The statute does not say, "*the* crime of child abuse." Use of the definite article "the" might have suggested that there was one and only one definite crime of child abuse. But the use of "a," the indefinite article, suggests just the opposite. It would be hard to argue, given the definitions and our common-sense understanding of the term, that sexual exploitation of a minor was not *a* crime of child abuse.

¶ 41 In light of the fact that the INA explicitly classifies both sexual abuse of a minor and a crime of child abuse as offenses where a defendant "shall" be deported (8 U.S.C. § 1227(a)) and in light of the fact that defendant's offense, sexual exploitation of a minor, was clearly a crime of child abuse as explained above, the face of the statute explicitly "indicate[d]" that a conviction would subject defendant to mandatory deportation. *Valdez*, 2016 IL 119860, ¶ 22.

¶ 42 At the very least, after seeing the words "sexual abuse of a minor" in the statute, in connection with sexual exploitation of a minor, a reasonably effective practitioner in Illinois, who had any doubts, would be expected to do a routine Westlaw search among Illinois-governing caselaw, such as Seventh Circuit precedent. Such a search would have uncovered numerous on-point cases, as we discuss below.

¶ 43 The offense for which defendant was convicted provides: "A person commits sexual exploitation of a child who knowingly entices, coerces, or persuades a child to remove the child's clothing for the purpose of sexual arousal or gratification of the person or the child, or both." 720 ILCS 5/11-9.1(a-5) (West 2018). The Seventh Circuit has repeatedly affirmed the Board of Immigration Appeals' definition of "sexual abuse of a minor" under the INA, which includes the enticement, coercion, or persuasion of a child " ' to engage in, or assist another person to engage in, sexually explicit conduct *** or other form of *sexual exploitation of children.*' " (Emphasis added.) *Correa-Diaz*, 881 F.3d at 526 (quoting 18 U.S.C. § 3509(a)(8) (2012) and affirming the denial of defendant's petition); *Velasco-Giron*, 773 F.3d at 776 (noting that the Seventh Circuit had considered sexual abuse of a minor five times before and "each time" found this definition reasonable, and citing in support (1) *Lara-Ruiz*, 241 F.3d at 939-42, (2) *Guerrero-Perez*, 242 F.3d at 735 n.3, (3) *Espinoza-Franco*, 394 F.3d 461, (4) *Gattem*, 412 F.3d at 762-66, and (5) *Gaiskov*, 567 F.3d at 838).

¶ 44 Both the State and the trial court relied on the Illinois Supreme Court's opinion in *Valdez*, 2016 IL 119860, to assert that any computer search makes the consequences unclear. However, the first *Strickland* prong—which is the only issue in our case—was not at issue in

*Valdez*. Regarding the first prong, the *Valdez* court found that "[i]t is undisputed in this case that defendant received inadequate legal advice from counsel." *Valdez*, 2016 IL 119860, ¶ 27. As a result, the reviewing court's comments about the first prong were mere *dicta*.[2] *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 277 (2009) (*dicta* are statements that are not necessary to the decision).

¶ 45 Although dicta, the issues and facts in *Valdez* are a far cry from the facts of our case. First, the issue in *Valdez,* which involved burglary, is readily distinguishable from the issue before us. Although the INA did not list burglary as a class of deportable offenses, the court below had held that defense counsel had a duty to determine whether defendant's conviction fit into *any* of the possible, general categories of deportable offenses. *Valdez,* 2016 IL 119860, ¶ 21. The court below found that minimal research would have shown that burglary qualified as a crime involving moral turpitude, which was a deportable class. *Valdez*, 2016 IL 119860, ¶ 21. However, the Illinois Supreme Court disagreed, finding that there was "no clear consensus" on this issue. *Valdez*, 2016 IL 119860, ¶ 23. Further, the supreme court found that, where a crime falls into a broad classification, such as crimes involving moral turpitude, the law is not succinct and straightforward. *Valdez*, 2016 IL 119860, ¶ 22.

¶ 46 By contrast, there is a clear consensus about the definition of sexual abuse in the Seventh Circuit, which governs federal cases in our state. Second, child sex abuse, which is covered twice-over by the INA, is a far more narrow category than a crime involving moral turpitude. Third, as we already noted above (*supra* ¶¶ 39-40), the consequences were indicated

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[2]The State argues that we should disregard another case for this very reason. The State's brief argues that we should disregard *Lee v. United States*, 582 U.S. 357 (2017), because "whether plea counsel provided deficient performance in *Lee* was not even a question before the Court." In *Lee*, as in *Valdez*, it was undisputed that the defendant had received unreasonable representation. *Lee*, 582 U.S. at 360; *Valdez*, 2016 IL 119860, ¶ 27. If we should disregard *Lee* for this reason, the same should also be true for *Valdez.*

on the face of the statute. Fourth, our supreme court in *Valdez* emphasized that the trial court in that case had admonished defendant about immigration consequences, whereas in our case the plea judge failed to give even the minimum, namely, the statutorily-required one line. *Valdez*,2016 IL 119860, ¶¶ 30-32. Thus, to the extent that the *dicta* in *Valdez* is applicable, it supports our finding that *Strickland*'s first prong is satisfied in this case.

¶ 47 The State argues that federal and Illinois criminal codes define criminal sexual abuse as requiring physical contact, while sexual exploitation does not. This argument is, in effect, that counsel should have done a computer search to define these terms but should have limited his search to criminal codes,[3] *i.e.*. no caselaw. That kind of arbitrary line drawing baffles us, particularly when there is Seventh Circuit caselaw right on point, rejecting this idea that physical contact is required. Regarding the INA, the Seventh Circuit held: "The statute *indicates* that persuading, inducing, or enticing a minor to engage in sexually explicit conduct amounts to sexual abuse." (Emphasis added.) *Gattem*, 412 F.3d at 765; see *Velasco-Giron*, 773 F.3d at 776 (noting that the Seventh Circuit had considered sexual abuse of a minor five times before and "each time" found reasonable the definition that includes sexual exploitation of children).[4] Thus, we do not find this argument persuasive.

¶ 48 SUMMATION

¶ 49 In summary, *Valdez*, 2016 IL 119860, and *Padilla*, 559 U.S. 356 stand for the proposition that, if the controlling statute is succinct and straightforward, then competent counsel would definitively advise a defendant that the conviction is "automatically

[3]The term "sexual abuse" is explicitly defined elsewhere in the federal code to include "sexual exploitation of children." 18 U.S.C. § 3509 (2024).

[4]The State's brief acknowledges that "the 7th Circuit undoubtedly has interpreted immigration law to determine what constitutes sexual abuse of a minor."

deportable" or "mandatory deportation" in no uncertain terms. In short, where the statute is clear and succinct, counsel must also be clear and succinct.

¶ 50

¶ 51 Where the statute is not as clear and contains a broad classification, then more nebulous cautionary language is appropriate. *Valdez* set forth the following premise: where the question is whether a particular crime like burglary fits into a broad classification "like moral turpitude" then the statute/law is not succinct and straightforward. Therefore, counsel can use less definitive language like "may," "might", "could" or "potentially" to inform the defendant of the deportation consequences.

¶ 52 In the case at bar, the trial court found that it was not clear that defendant's conviction for sexual exploitation of a minor would subject defendant to mandatory deportation and, thus, it found that his counsel was not ineffective. This is where we disagree with the trial court. The statute lists two crimes, relevant to this case, that would be auto deportable: "a crime of child abuse" and "sexual abuse of a minor." The statute's use of "a" before "crime of child abuse" suggests that multiple crimes of child abuse are included. This phrase or category of crimes is more specific than that of *Valdez*, which dealt with "moral turpitude." Here the category sufficiently narrows the relevant crimes to those involving abuse of children. As such, the "sexual exploitation of a child" would clearly constitute "a crime of child abuse;" just as "drug distribution" constituted "a controlled substance conviction" in *Padilla.*

¶ 53 Further, on appeal, the State does not even challenge the prejudice prong. Thus, it is a given that, absent the alleged error, there was a reasonable probability that the outcome of this guilty-plea proceeding would have been different--ie. defendant would not have pled guilty.

*Brown*, 2025 IL App (1st) 230772, ¶ 87. As a result, whatever defendant was alleged to have done falls out as a consideration here. The focus is on counsel, particularly since defendant failed to receive even the statutorily-required admonishment from the plea court. After listening to both counsel and defendant in live testimony, the trial court found as a matter of fact that defendant was advised only of potential consequences. Thus, we were presented with a pure question of law, regarding whether more was required.

## ¶ 54 CONCLUSION

¶ 55 Where the statute clearly and succinctly includes sexual exploitation of a child as a deportable offense, counsel was ineffective for failing to inform defendant that a plea was subject to mandatory deportation. Therefore, since defendant has satisfied the first prong of *Strickland*. and the second prong is not at issue, we reverse and remand for further proceedings consistent with this opinion.

¶ 56 Reversed and remanded.

¶ 57 Justice C.A. Walker, specially concurring:

¶ 58 I concur in the judgment reversing and remanding for further proceedings. I write separately because this is a close case. The record reflects that defendant's plea counsel advised him that his plea carried potential immigration consequences, and I do not take lightly the circuit court's finding that counsel provided that advice. At the same time, *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010), recognizes a meaningful distinction between advising a defendant that a conviction may have immigration consequences and advising a defendant when the immigration consequence is a near certainty. But given the immigration consequences presented here and the evidence that defendant would have rejected the plea had he understood those consequences, I agree that further proceedings are warranted.

¶ 59 I emphasize that my conclusion is limited to the circumstances presented here. I do not suggest that counsel must predict the outcome of every immigration proceeding or that every conviction carrying immigration consequences requires more than a warning that such consequences are possible. As the *Padilla* court acknowledges, "immigration law can be complex" and there will "undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain." 559 U.S. at 369. I simply conclude that, on this record, defendant is entitled to further consideration of whether the advice he received satisfied *Padilla* and *Valdez*.

***People v. Gordon*, 2026 IL App (1st) 250937**

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| **Decision Under Review:** | Appeal from the Circuit Court of Cook County, No. 19-CR-1785-01; the Hon. James Michael Obbish, Judge, presiding. |
| **Attorneys for Appellant:** | James E. Chadd and Douglas R. Hoff, of State Appellate Defender's Office, of Chicago, for appellant. |
| **Attorneys for Appellee:** | Eileen O'Neill Burke, State's Attorney, of Chicago (John E. Nowak, Douglas P. Harvath, Matthew Connors, and Noah Montague, Assistant State's Attorneys, of counsel), for the People. |