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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0506**

Qays Abdi Ahmed, petitioner,  
Respondent,

vs.

State of Minnesota,  
Appellant.

**Filed December 5, 2022  
Reversed  
Jesson, Judge**

Polk County District Court  
File Nos. 60-CR-16-2332, 60-CR-17-1307

Mark D. Nyvold, Fridley, Minnesota (for respondent)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Gregory A. Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney, Crookston, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Worke, Judge; and  
Jesson, Judge.

**NONPRECEDENTIAL OPINION**

**JESSON**, Judge

Respondent Qays Abdi Ahmed pleaded guilty, on the advice of his attorney, to charges which he acknowledged would make his deportation presumptively mandatory. But two years after the plea, an immigration court concluded that Ahmed would be subject

to mandatory deportation because he was ineligible to apply for cancellation of removal. Ahmed was deported in January 2021.

Ahmed brought a petition for postconviction relief based on an ineffective-assistance-of-counsel claim, and he sought to vacate his guilty plea and reinstate the charges against him so he could go to trial. After the postconviction court granted Ahmed's petition for postconviction relief, appellant State of Minnesota appealed. Because the relevant immigration statute was unclear at the time of Ahmed's plea and no additional research by defense counsel could have clarified the potential immigration consequences, Ahmed did not meet his burden to show that he received ineffective assistance of counsel. Accordingly, we reverse.

### FACTS

In December 2016, Ahmed was charged with felony fourth-degree assault, misdemeanor refusal to submit to testing, and misdemeanor driving while impaired.<sup>1</sup> Ahmed applied for and was appointed a public defender, waived the omnibus hearing, and intended to plead guilty. The district court scheduled a pretrial hearing, but Ahmed did not appear, and a warrant was issued for his arrest in May 2017.

Ahmed was arrested in August 2018 and charged with failure to appear.<sup>2</sup> The state offered Ahmed a universal plea deal to resolve all charges against him: both the original

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<sup>1</sup> These offenses violated the following three Minnesota statutes: Minnesota Statutes section 609.2231, subdivision 1(c)(2) (2016), Minnesota Statutes section 169A.52, subdivision 1(a) (2016), Minnesota Statutes section 169A.20, subdivision 1(1) (2016).

<sup>2</sup> Failure to appear violates Minnesota Statutes section 609.49, subdivision 1(a) (2016). The failure-to-appear charge is under file 60-CR-17-1307. The original three charges from December 2016 are under file 60-CR-16-2332.

2016 charges and the new failure-to-appear charge. From the beginning of his representation, Ahmed’s public defender knew that Ahmed was a noncitizen resident in the United States. Ahmed’s public defender communicated with an immigration lawyer about Ahmed’s case in April 2017 and again in October 2018.<sup>3</sup> The immigration lawyer informed the attorney that if Ahmed received a stay of imposition<sup>4</sup> on the felony assault and felony failure-to-appear charges, they would not be considered aggravated felonies for immigration purposes. And that outcome would be important, she advised, because a conviction for an aggravated felony would make Ahmed ineligible to contest his deportation. The immigration attorney also told defense counsel that the felony assault and felony failure-to-appear charges were crimes of moral turpitude, and that convictions for two or more crimes of moral turpitude would make Ahmed’s deportation presumptively mandatory.<sup>5</sup> But even if Ahmed’s deportation was presumptively mandatory, he could still make arguments against detention and deportation.

The defense attorney relayed this advice to Ahmed, and Ahmed pleaded guilty to felony assault, misdemeanor driving while impaired, and felony failure to appear. As part

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<sup>3</sup> Ahmed’s public defender testified at the postconviction hearing that as a public defender, he was required to consult an immigration lawyer when he represented a non-U.S. citizen. The postconviction court determined, and neither party contests, that since the immigration attorney was part of Ahmed’s defense team, he can bring an ineffective-assistance-of-counsel claim based on the advice she gave the defense attorney.

<sup>4</sup> Under a stay of imposition, successful completion of probation results in felony convictions being classified as misdemeanors. Minn. Sent’g Guidelines 1.B(19)(a) (2022).

<sup>5</sup> The Immigration and Nationality Act provides that any noncitizen resident who “is convicted of a crime involving moral turpitude . . . for which a sentence of one year or longer may be imposed, is deportable.” 8 U.S.C. § 1227(a)(2)(A)(i)(I), (II) (2018). And multiple convictions for crimes involving moral turpitude also require that a noncitizen resident be deported. *Id.* at (a)(2)(A)(ii).

of the plea process, Ahmed signed a plea petition that contained language advising him that he could be subject to immigration consequences. At the plea hearing, Ahmed's attorney stated on the record that Ahmed could be subject to immigration consequences and Ahmed testified that he understood that his plea may affect his immigration consequences and did not get him "out of the woods with immigration."

The district court followed the plea agreement and sentenced Ahmed to a 60-day executed sentence and three years of probation.

A probation report was filed in October 2019, stating that Ahmed violated his probation by failing to remain law abiding when he was charged with seven offenses in North Dakota after a June 2019 incident. These offenses included driving under the influence, fleeing a peace officer, and possession of controlled substances. Ahmed pleaded guilty to all the North Dakota charges except for a reckless endangerment charge, which was dismissed. After Ahmed failed to appear at his probation violation hearing, another warrant was issued for his arrest. After Ahmed was arrested, he asked the district court to reinstate his probation, which ultimately occurred.<sup>6</sup>

After Ahmed was reinstated on probation, the United States Department of Homeland Security (DHS) initiated removal proceedings against Ahmed. DHS alleged three grounds for removal proceedings against Ahmed: (1) he had been convicted of two or more crimes of moral turpitude, (2) he had been convicted of an aggravated felony, and (3) he was convicted of a crime relating to a controlled substance. Ahmed admitted the

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<sup>6</sup> Ahmed was also sentenced to an additional 90 days in jail.

factual basis for these claims, but contested his removability, arguing he had not been convicted of an aggravated felony. The immigration court did not allow Ahmed to contest removability because it concluded that he had been convicted of an aggravated felony. Ahmed was deported in January 2021.

Three months later, Ahmed petitioned for postconviction relief, arguing that his defense counsel was ineffective because they improperly advised him on the immigration consequences of pleading guilty to the felony assault and failure-to-appear charges. The postconviction court held an evidentiary hearing and granted postconviction relief. The postconviction court found that there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.

The state appeals.

## **DECISION**

The postconviction court found that Ahmed received ineffective assistance of counsel when his attorney advised him that he would be subject to presumptive mandatory deportation based on his plea—as opposed to being unable to contest deportation altogether. The crux of this advice stemmed from the immigration attorney's assessment that Ahmed would not be pleading to an aggravated felony when he pleaded guilty to failure to appear in court. We review a postconviction court's findings of fact for clear error and issues of law de novo. *McKenzie v. State*, 872 N.W.2d 865, 870 (Minn. 2015). Because the facts are not in dispute, and whether Ahmed received effective assistance of counsel requires us to examine the postconviction court's legal conclusions, we review the postconviction court's conclusion de novo. *Id.*

With this standard of review in mind, we turn to the requirements of an ineffective-assistance-of-counsel claim. To withdraw a plea due to ineffective assistance of counsel, the postconviction court must determine “(1) that plea counsel’s representation ‘fell below an objective standard of reasonableness,’ and (2) ‘that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Sanchez v. State*, 890 N.W.2d 716, 720 (Minn. 2017) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984)). Whether counsel’s conduct meets the objective standard of reasonableness depends on the reasonableness of the advice *at the time it was given*. See *Strickland*, 466 U.S. at 689 (“A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.”).

When assessing reasonableness, we apply a strong presumption that an attorney’s performance falls within the wide range of reasonable professional assistance. *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). General assertions of error without evidentiary support are inadequate to establish ineffective assistance of counsel. See *State v. Miller*, 666 N.W.2d 703, 717-18 (Minn. 2003) (rejecting claim that trial counsel was ineffective because of a conflict of interest where defendant provided no evidence to show that conflict of interest existed).

Our analysis of the reasonableness of counsel’s advice begins with the seminal case on this topic—*Padilla v. Kentucky*. 559 U.S. 356, 369 (2010). In *Padilla*, the United States Supreme Court held that one component of providing constitutionally effective

representation is informing a noncitizen defendant about the immigration consequences of pleading guilty, particularly, the risk of deportation. *Id.* When criminal-defense counsel advises noncitizen clients that a plea may result in deportation when the immigration consequences are “unclear,” or that deportation is presumptively mandatory when the immigration consequences are “truly clear,” they have provided effective assistance of counsel. *Id.* Thus, what an attorney must do to provide effective assistance depends on whether the immigration consequences are clear from the statute.

When “the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence for [a defendant’s] conviction,” then a defense attorney must give their client correct immigration advice. *Id.* at 368-69, 381. But not all statutes are clear. A statute is ambiguous when its language is subject to more than one reasonable interpretation. *Christianson v. Henke*, 831 N.W.2d 532, 537 (Minn. 2013).

Here, the statute in question reads as follows: “The term ‘aggravated felony’ means . . . an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a *felony for which a sentence of 2 years’ imprisonment or more may be imposed.*” 8 U.S.C. § 1101, subd. (a)(43)(T) (2018) (emphasis added). But which offense’s maximum sentence does the definition refer to? The maximum sentence for failure to appear on a felony assault charge is one and a half years, less than the two-year threshold. Minn. Stat. § 609.49, subd. 1(a). But the maximum sentence for the underlying felony assault is three years. Minn. Stat. § 609.2231, subd. 1(c) (2016).

At the postconviction evidentiary hearing, the immigration attorney testified that when advising Ahmed in October 2018, she believed that the maximum sentence at issue referred to the sentence for the failure-to-appear charge. Because she believed the maximum sentence at issue was less than two years, the immigration attorney advised Ahmed that he was not pleading guilty to an aggravated felony, and while he would be subject to presumptively mandatory deportation on other grounds, he would be able to contest it.

The issue before us is whether this advice was objectively reasonable when it was given. To assess the objective reasonableness of this advice, we engage in statutory interpretation. The “felony for which a sentence of 2 years’ imprisonment or more may be imposed” could either refer to the felony failure-to-appear charge or the underlying felony charge because of the sentence structure. 8 U.S.C. § 1101, subd. (a)(43)(T); *see Martin v. Dicklich*, 823 N.W.2d 336, 342 (Minn. 2012). The placement of the phrase “*for which a sentence of 2 years’ imprisonment or more may be imposed*” next to the word “felony” suggests that the sentence corresponds to that felony, not the failure-to-appear charge. 8 U.S.C. § 1101, subd. (a)(43)(T). Yet in a neighboring definition of an aggravated felony, the statute explicitly refers to the sentence for the “underlying offense.” 8 U.S.C. § 1101, subd. (a)(43)(Q) (2018). If Congress intended the sentence to refer to the underlying felony, it knew how to say so clearly. *See Henke*, 831 N.W.2d at 535-36 (explaining that multiple parts of a statute may be read together to ascertain whether a statute is ambiguous). Reading the statute to refer to the sentence for the underlying felony would be adding a word that is not there, and courts cannot add to a



statute “what the legislature purposely omits or inadvertently overlooks.” *Ullom v. Indep. Sch. Dist. No. 112, Chaska*, 515 N.W.2d 615, 617 (Minn. App. 1994) (quotation omitted). Because the statute can reasonably be interpreted in two ways, the statute is ambiguous.

When the terms of the statute alone are unclear, viewpoints diverge on what guidance *Padilla* gives regarding what an attorney must do to provide effective assistance of counsel. *Sanchez*, 890 N.W.2d at 721. As the Minnesota Supreme Court explained, “What *Padilla* fails to resolve, however, is what an attorney must do when the applicable immigration statutes are less than truly clear, but administrative interpretations or case law indicate that a conviction will render the defendant deportable.” *Id.* (citing *Padilla*, 559 U.S. at 381). The supreme court went on to state that a strict interpretation of *Padilla* suggests that an attorney’s obligation to investigate potential immigration consequences ends at the relevant immigration statutes, even if binding caselaw establishes that a conviction will subject a noncitizen defendant to deportation. *Id.* (citing *Padilla*, 559 U.S. at 368-69). In contrast, an expansive interpretation would require a defense attorney to research all relevant court decisions and administrative interpretations because of the harsh consequences that flow from potential erroneous advice to a noncitizen defendant. *Id.* at 721-22.

Minnesota courts have yet to decide which interpretation of *Padilla* is correct, but we need not decide this issue here. Under either interpretation, the defense attorney’s advice was objectively reasonable.

According to the strict interpretation of *Padilla*, Ahmed received effective assistance of counsel. “When the law is not succinct and straightforward . . . 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.” *Padilla*, 559 U.S. at 369 (emphasis added). The immigration attorney reviewed the statute and, based on her advice, the defense attorney advised Ahmed that he may be subject to immigration consequences.<sup>7</sup> That is enough to provide effective assistance of counsel under the strict interpretation of *Padilla*.

Nor does our assessment of the reasonableness of advice change under the expansive *Padilla* interpretation. *Padilla* states that “[i]t is quintessentially the duty of counsel to provide her client with *available advice* about an issue like deportation.” *Id.* at 371 (emphasis added). The Minnesota Supreme Court interpreted *available advice* and a reference to ‘the law’ in *Padilla* to include “the full array of legal sources, including case law and administrative interpretations, not just relevant statutes.” *Sanchez*, 890 N.W.2d at 724.

But available advice at the time was sparse. The parties here only point to two sources, a 2018 decision from the U.S. Court of Appeals for the Second Circuit and a 2016 Board of Immigration Appeals (BIA) decision, which could have informed an immigration attorney on this issue. *Henriquez v. Sessions*, 890 F.3d 70, 73 (2d Cir. 2018); *In re*

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<sup>7</sup> At the plea hearing, the defense attorney stated on the record that Ahmed was “aware that there is a possibility that the immigration people may take some action against him.” Additionally, the plea that Ahmed signed contained language advising him that he could be subject to immigration consequences.

*Garza-Olivares*, 26 I. & N. Dec. 736, 739 (B.I.A. 2016). These decisions do not represent binding precedent in Minnesota. Nor do they contradict the advice provided here. *Henriquez* held that the maximum sentence referred to in the immigration statute referred to the maximum penalty for the failure-to-appear charge, *not the underlying charge*. 890 F.3d at 73. This is the same conclusion that Ahmed’s immigration attorney reached in 2018. The BIA decision does not interpret the immigration statute, rather, it analyzes whether a federal failure-to-appear conviction fits under the statutory definition of an aggravated felony. *Garza–Olivares*, 26 I. & N. Dec. at 739. Accordingly, even if the immigration attorney had conducted further research on the aggravated-felony issue beyond reading the statute, she could not have found sources which clearly support a different approach from the advice she gave at the time. Thus, the advice Ahmed received met the effective assistance of counsel standard under the expansive interpretation of *Padilla*. 559 U.S. at 371.

To persuade us otherwise, Ahmed argues that we must defer to the postconviction court’s determination of witness credibility, and the postconviction court credited the immigration attorney’s testimony that she gave incorrect legal advice. But the postconviction court’s credibility determination only holds weight for findings of fact, not conclusions of law. And whether the advice met an objective standard of reasonableness is a legal conclusion that we review de novo. *McKenzie*, 872 N.W.2d at 870. This court does not defer to the immigration attorney’s postconviction interpretation of the statute when we engage in statutory interpretation. *See generally Henke*, 831 N.W.2d at 532.

Nor does the fact that the immigration court later determined that the sentence at issue was for the underlying felony assault charge, not the failure to appear charge, change our decision that Ahmed received effective assistance of counsel. The advice Ahmed received was objectively reasonable at the time it was given. Therefore, the immigration court's decision, rendered after the advice was given, can have no bearing on this analysis. *Strickland*, 466 U.S. at 689.<sup>8</sup>

In sum, because the immigration statute relevant here is ambiguous and additional research at the time would not have revealed precedent to change the immigration attorney's advice, that advice was objectively reasonable. Ahmed received effective assistance of counsel.

**Reversed.**

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<sup>8</sup> Because Ahmed received effective assistance of counsel when his defense attorney advised him that he may face immigration consequences from his plea, we need not consider the prejudice prong. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020) (stating that if one prong of *Strickland* is not satisfied, we may dispose of the claim without considering the other prong).