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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-0898**

Salim El Eid, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 14, 2013
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. 62-K5-95-2228

Deborah Ellis, Ellis Law Office, St. Paul, Minnesota; and

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Lori Swanson, Attorney General, St. Paul, Minnesota; and

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County Attorneys, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Johnson, Chief Judge; and
Toussaint, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SCHELLHAS, Judge

This postconviction appeal is on remand from the Minnesota Supreme Court “for reconsideration in light of” *Campos v. State*, 816 N.W.2d 480 (Minn. 2012), *petition for cert. filed* (U.S. Sept. 17, 2012). Appellant seeks to withdraw a 1995 guilty plea to second-degree criminal sexual conduct. We affirm the district court’s denial of appellant’s postconviction petition.

FACTS

Appellant Salim El Eid was born in Lebanon and entered the United States legally on a student visa in 1979. Around 1981, he became a lawful permanent resident.

In 1995, respondent State of Minnesota charged El Eid with one count of second-degree criminal sexual conduct, and he pleaded guilty. The district court accepted El Eid’s plea, stayed imposition of sentence, and placed him on probation.

During the pre-plea proceedings, three different attorneys represented El Eid at different times. The record before this court does not include any transcripts of the proceedings and the records have been destroyed. The record does include a copy of El Eid’s plea petition, which does not include a warning that his guilty plea could result in immigration consequences.¹ El Eid claims that neither the district court nor his attorneys advised him that his guilty plea could have adverse immigration consequences.

¹ Prior to 1999, the Minnesota Rules of Criminal Procedure did not require that counsel or the district court provide an immigration advisory to a defendant pleading guilty. *See Campos*, 816 N.W.2d at 499; *see also* Minn. R. Crim. P. 15 cmt. (Supp. 1999) (noting that 1996 amendments to federal immigration laws greatly expanded deportation grounds

In August 2010, with the permission of his probation agent, El Eid left the United States to visit Lebanon. He successfully completed probation, the district court discharged him from probation on September 1, 2010, and, by operation of law, El Eid's felony conviction became a misdemeanor conviction. On September 12, 2010, when El Eid attempted to re-enter the United States, customs officials advised him that he was ineligible to re-enter because of his 1995 felony conviction.

In November 2011, El Eid petitioned for postconviction relief, seeking to set aside his conviction on the ground that, prior to pleading guilty, he received ineffective assistance of counsel under *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). In support of his petition, El Eid submitted an affidavit stating that had he been advised in 1995, that pleading guilty may have immigration consequences, he would not have pleaded guilty. The district court summarily denied El Eid's petition, concluding that *Padilla* was a new rule of law that was not retroactive and that El Eid's postconviction petition therefore was untimely. This court reversed the district court, and the supreme court reversed and remanded to this court "for reconsideration in light of" the Minnesota Supreme Court's decision in *Campos*, which held that *Padilla* is a new rule of criminal procedure that is not a watershed rule and is not applied retroactively. *El Eid v. State*, No. A11-0898, 2012 WL 539186 (Minn. App. Feb. 21, 2012), *rev'd and remanded* (Minn. July 17, 2012).

for non-citizens convicted of crimes, and that defense counsel should advise defendants of those consequences and courts should inquire whether such advice has been given).

DECISION

I.

We first address El Eid's request in his supplemental brief that this court stay further action in this case pending a decision by the United States Supreme Court in *Chaidez v. United States*, 655 F.3d 684 (7th Cir. 2011) (holding that *Padilla* announced new rule of criminal procedure inapplicable on collateral review), *cert. granted* 132 S. Ct. 2101 (2012). On October 30, 2012, the Supreme Court heard oral arguments in *Chaidez*, and El Eid claims that the Supreme Court should issue a decision by the end of summer 2013. El Eid argues that if the Supreme Court reverses *Chaidez* and holds that *Padilla* is not a new rule and should be applied retroactively, the decision would effectively reverse the Minnesota Supreme Court's decision in *Campos*, because states cannot deny a citizen a federally protected constitutional right. El Eid therefore argues that a stay would further the interests of judicial economy and eliminate further appeals.

For two stated reasons, the state opposes El Eid's request for a stay. First, the state notes that the Minnesota Supreme Court could have continued the stay of this appeal pending *Chaidez* but did not do, instead remanding the case to this court for reconsideration in light of *Campos*. Second, although the state agrees that a decision in *Chaidez* about the retroactivity of *Padilla* would be persuasive, the state argues that the decision would not necessarily be binding on Minnesota courts or require a reversal of *Campos*. See *Danforth v. State*, 761 N.W.2d 493, 500 (Minn. 2009) ("Still, even as we formally adopt the *Teague* standard of our own volition, we are not bound by the U.S. Supreme Court's determination of fundamental fairness. Rather, we will independently

review cases to determine whether they meet our understanding of fundamental fairness.”)

This court may defer scheduling of a case “[i]f a case pending in the [Minnesota] Supreme Court will be dispositive.” Minn. App. Spec. R. Pract. 1. In *Campos*, the Minnesota Supreme Court cites the Seventh Circuit’s opinion in *Chaidez*, noting that the Supreme Court granted certiorari. *See Campos*, 816 N.W.2d at 486, 490, 491, 492, 493, 494. The supreme court decided *Campos* without awaiting a final decision in *Chaidez*. Because the effect of the Supreme Court’s decision in *Chaidez* on the disposition in this case is unclear, El Eid has failed to establish good cause to delay the processing of this appeal and we therefore deny his request to stay this appeal.

II.

The district court determined that El Eid’s postconviction petition was untimely and failed to meet the exception for retroactive application of a new interpretation of constitutional law. *See* Minn. Stat. § 590.01, subd. 4(b)(3) (2010). The court concluded that *Padilla* announced a new rule of law and rejected El Eid’s argument that the rule was a watershed rule so as to deserve retroactive application. In *Padilla*, the Supreme Court held that the Sixth Amendment right to counsel extends to the right to be informed by counsel of the deportation consequences that arise from a guilty plea. 130 S. Ct. at 1482. The Court applied the test for ineffective assistance of counsel stated in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). *Id.* The Court held that “when the deportation consequence [of a guilty plea] is truly clear . . . , the duty to give correct advice is equally clear.” 130 S. Ct. at 1483.

In *Campos*, the supreme court held that *Padilla* announced a new rule of federal constitutional criminal procedure, that the new rule was not a watershed rule and therefore did not apply retroactively to the defendant's ineffective-assistance-of-counsel claim raised on collateral review, and that defense counsel's failure to inform the defendant of the immigration consequences of pleading guilty was not deficient under governing law at the time the defendant's conviction became final. 816 N.W.2d at 485, 490 (citing *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060 (1989)). The Supreme Court decided *Padilla* on March 31, 2010. In light of *Campos*, we conclude that the district court was correct that *Padilla* does not apply to El Eid's 1995 guilty plea.

Because *Padilla* does not apply, El Eid's attorneys did not provide ineffective assistance by not providing him with an immigration advisory. We conclude that the district court properly determined that El Eid's petition was untimely and failed to meet the exception set out in Minn. Stat. § 590.01, subd. 4(b)(3) (providing exception to two-year statute of limitations to file postconviction petition when petitioner asserts a new interpretation of law by either the United States Supreme Court or a Minnesota appellate court and petitioner establishes that this interpretation is retroactively applicable to petitioner's case).

We also conclude that El Eid's postconviction petition lacks substantive merit. When El Eid's conviction became final in 1995, prior to *Padilla*, Minnesota law did not require that defense counsel or a district court provide an immigration advisory to a criminal defendant. And ignorance of collateral immigration consequences did not entitle a criminal defendant to withdraw his plea. *Alanis v. State*, 583 N.W.2d 573, 578–79

(Minn. 1998) (affirming denial of motion to withdraw guilty plea, based on district court's and counsel's failure to advise defendant that he could be deported, because deportation is collateral and not a direct consequence of criminal conviction arising from guilty plea and does not create manifest injustice warranting withdrawal of that plea); *see Berkow v. State*, 583 N.W.2d 562, 563 (Minn. 1998) (relying on *Alanis*); *Barragan v. State*, 583 N.W.2d 571, 572–73 (Minn. 1998) (same).

Because El Eid's deportation was a collateral consequence of his 1995 plea and because neither the district court nor El Eid's attorneys were required to provide him with an immigration advisory, the district court properly denied El Eid's postconviction petition.

Affirmed.