IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellant,

v.

SHUANGLAN CHEN,
Defendant/Appellee.

Supreme Court Appeal No. 03-0025-GA
Superior Court Civil Action No. 01-0277

FOR PUBLICATION

OPINION

Cite as: *CNMI v. Chen, 2006 MP 14*

Argued and submitted
Saipan, Northern Mariana Islands

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO, *Associate Justice*; JOHN A. MANGLONA, *Associate Justice*.

CASTRO, Associate Justice:

¶1 The Commonwealth of the Northern Mariana Islands (the “Government") appeals a Superior Court's order allowing Defendant Shuanglan Chen ("Chen") to withdraw her Guilty plea for the crime of Promoting Prostitution on the grounds that she was not warned of the civil deportation consequences of her plea. Because the due process clause of both the U.S. and the Northern Mariana Islands Constitutions do not require that a defendant be advised of all possible collateral consequences of a plea of guilty, we REVERSE the Superior Court's order.

I.

¶2 Chen was arrested for the crimes of Prostitution and Promoting Prostitution (second degree) on June 12, 2001. The AG’s Office filed an information against Chen. During the pendency of the case, Chen married a United States citizen. Rather than proceed with a trial, Chen agreed to enter a plea of guilty to the Promoting Prostitution charge and a one-year imprisonment. In return, the Government agreed to dismiss the remaining count of the Information. The prison time would be suspended, however, if Chen met the following conditions: pay a fine of $1,000; pay, under 6 CMC § 1346(e), an assessment of $2,000; obey all Commonwealth, Federal, and state laws; and accept liability for all fees imposed by the court. As part of the plea, Chen expressly represented and warranted that she was entering the agreement “voluntarily, knowingly, and intelligently and that no threats or promises, other than those set forth in [the] Agreement [had] been made to her.” The trial court accepted this plea.

¶3 On August 19, 2002, the AG’s Office instituted deportation proceedings against Chen. These proceedings stemmed from Chen’s guilty plea in this matter. To avoid deportation, Chen moved to withdraw her plea on the basis she had not been informed that the resulting conviction

could have immigration consequences. The trial court granted Chen's motion and the Government timely appealed.

II.

¶4 We have jurisdiction pursuant to Article IV, section 3 of the Commonwealth Constitution, 1 CMC § 3102(a), and 6 CMC § 8101(b).

III.

¶5 The NMI and U.S. Constitutions' due process guarantees require that a guilty plea be voluntary and intelligent. In order for a plea to be voluntary and intelligent, the defendant must be aware of the range of allowable punishment that will result from the plea. Thus, a trial court accepting a guilty plea has an obligation to advise a pleading defendant of consequences that represent a definite, immediate and largely automatic effect on the range of defendant's punishment before accepting such a plea. Due process is not, however, impaired when the consequence is not automatic but contingent on some other factor. We review whether Chen's guilty plea was voluntary as a constitutional question and, therefore, we use the *de novo* standard of review. *See Commonwealth v. Martinez,* 2000 MP 5 ¶ 4.

¶6 An abuse of discretion exists if a court bases its ruling on an erroneous view of the law. Commonwealth Rule of Criminal Procedure 32(d) provides that a guilty plea may be withdrawn after imposition of sentence only "to correct manifest injustice." A lawyer's failure to inform his client of the consequences of a guilty plea does not amount to "manifest injustice." We review a trial court's granting of a motion to withdraw a guilty plea for an abuse of discretion. *See Commonwealth v. Cabrera,* 2 N.M.I. 311, 316 (1991), *aff'd,* 979 F.2d 854 (9th Cir. 1992).

A. Due Process and Immigration

¶7 To satisfy due process requirements in criminal matters, a guilty plea must be voluntary and intelligent. *See Torrey v. Estelle*, 842 F.2d 234, 235 (9th Cir. 1988). In order for a plea to be voluntary and intelligent, a defendant must be aware of the range of allowable punishment that will result from the plea. *Id.* at 235. Thus, a trial court accepting a guilty plea has an obligation to advise a pleading defendant of the direct consequences that flow from such a plea. *See, e.g.*, *United States v. Amador-Leal*, 276 F.3d 511, 514 (9th Cir. 2001).

¶8 Direct consequences are those that have "a definite, immediate and largely automatic effect on the range of the defendant's *punishment*." *Id.* at 514 (emphasis added). Where, however, a consequence is not automatic, but "is contingent on action taken by an individual or individuals other than the sentencing court – such as another government agency or the defendant himself – the consequence is generally 'collateral.'" *United States v. Kikuyama*, 109 F.3d 536, 537 (9th Cir. 1997).

¶9 Federal case law is quite clear: consequences that are not within the "range of the defendant's punishment" are collateral to the guilty plea and resulting conviction. *Amador-Leal*, 276 F.3d at 516. By their very nature, immigration laws are not criminal and are never considered penal. "Deportation, however severe its consequences, has been consistently classified as a civil rather than a criminal procedure." *Harisiades v. Shaughnessy*, 342 U.S. 580, 594, 72 S.Ct. 512, 521, 96 L.Ed. 586 (1952). Under federal law, immigration consequences are not "direct" and, therefore, there is no mandatory requirement for a defendant to be advised of the consequences. *See Amador-Leal*, 276 F.3d at 514. The federal system, however, differs slightly from our Commonwealth system.

¶10 While Chen concedes the general rule regarding immigration consequences, she argues that the nature of immigration law in the Commonwealth differs radically from that in the United States. In the U.S., deportation functions are performed by the U.S. Citizenship and Immigration Services, while, in the Commonwealth, they are performed by the same AG's Office, and in this case the same attorney, that prosecuted the criminal case.

¶11 The trial court found this to be significant. In its ruling, the trial court noted:

> [I]n a practical sense, [the U.S. system of separation] means that the criminal case and deportation proceeding will be tried by entirely different sets of lawyers and heard by entirely different panel of judges [in the U.S.]. This is important, because many of the courts that have decided against requiring sentencing judges to notify a defendant of the immigration consequences of a guilty plea have cited the independent nature of the deportation hearing.

Although Chen and the trial court's facts are, to a point, correct, their reasoning ignores obvious instances of separation, places too much emphasis on the agencies involved and not enough on the nature of the proceeding. Obviously, these laws lead to results that significantly affect the lives of many persons, including United States citizens, but no more than any important civil lawsuit. To argue, however, that *civil* deportation is a direct consequence of a *criminal* conviction fundamentally misapprehends the nature of immigration and deportation.

¶12 A deportation hearing is a civil proceeding, not a criminal one, and a deportation order is not criminal punishment. *See, e. g. Woodby v. Immigration Service*, 385 U.S. 276, 285, 87 S.Ct. 483, 17 L.Ed.2d 362 (1966); s*ee also Reno v. American-Arab Anti-Discrimination Comm.,* 525 U.S. 471, 119 S.Ct. 936, 947, 142 L.Ed.2d 940 (1999); *Fong Yue Ting v. United States,* 149 U.S. 698, 730, 13 S.Ct. 1016, 37 L.Ed. 905 (1893). Moreover, deportation is not "cruel and unusual punishment" even though the "penalty" may be severe. *See, e.g., Urbina-Mauricio v. INS,* 989 F.2d 1085, 1089 n. 7 (9th Cir.1993); *LeTourneur v. INS,* 538 F.2d 1368, 1370 (9th Cir.1976);

Van Dijk v. INS, 440 F.2d 798 (9th Cir.1971). In no way can the argument be made that the direct outcome of a guilty plea is the "punishment," *de facto* or *de jure*, of civil deportation. Indeed, to argue that deportation stems from a guilty plea is to argue that deportation is punishment.

¶13 Chen's argument, and the trial court's decision, can best be understood as an attempt to make deportation in the Commonwealth a criminal punishment. For example, Chen argues that the AG's Office and the Division of Immigration "work hand in hand." Additionally, the trial court held that deportation is a "*de facto*" part of the sentence. These arguments and rulings were made with the concession that a civil deportation hearing is not a part of the actual trial. Moreover, the trial court conceded that the "individual prosecutor's discretion is limited by the judgment and supervision of superiors."

¶14 Even if the Division of Immigration works with the AG's Office, the decision to deport is not left up to the sentencing court. Instead, of the criminal court expelling the defendant, the AG's Office and the Division of Immigration bring a separate civil removal action before the Commonwealth Superior Court. *See* 3 CMC § 4341. Further, the AG's Office is not required to seek deportation. *See, e.g.,* 3 CMC § 4340 (listing the grounds for deportation but not requiring same). The deportation court and not the criminal court issues the deportation decision. The trail court's ruling ignored these important distinctions.

¶15 Moreover, the trial court's ruling confuses why deportation is collateral and not related to a guilty plea. Deportation isn't a collateral issue because it is prosecuted by a different department; it is collateral because it is a civil matter wholly separate from the criminal. The trial court ignored the fact that: "[w]hat renders the plea's immigration effects 'collateral' is not that they arise 'virtually by operation of law,' but the fact that deportation is 'not the sentence of

the court which accept[s] the plea but of another agency over which the trial judge has no control . . .'" *U.S. v. Gonzalez,* 202 F.3d 20, 27 (1st Cir. 2000) (quoting *Fruchtman v. Kenton,* 531 F.2d 946, 949 (9th Cir.1976)). The fact that the same judges and attorneys try these cases in our small community does not change the fact that there is no requirement of deportation and that the criminal case has no control over the deportation matter. That the same lawyer and judge may hear and argue an immigration case is, perhaps, more protection not less. As judges in this jurisdiction see the same attorneys every week, they are free to educate anyone making a plea in their court. This is more than can be said for a defendant in the U.S.

¶16 Although certain due process rights are extended to alien residents of the United States, the right to stay in the Commonwealth, or in the United States, is not protected. "Under our law, the alien in several respects stands on equal footing with citizens, but in others has never been conceded legal parity with the citizen. Most importantly, to protract this [alien] status within the country is not his right but is a matter of permission and tolerance." *Harisiades v. Shaughnessy*, 342 U.S. 580, 586-587 (1952). Accepting the argument that deportation flows from a guilty plea bestows added rights to aliens that were previously unknown. This destroys the ability of the Commonwealth to control its immigration policy because it makes a deportation a criminal consequence and requires additional constitutional protection offered nowhere else in the United States.

¶17 For example, were we to allow the idea that deportation is a *de facto* outcome of a guilty plea, double jeopardy problems might attach. Under the Double Jeopardy Clause, "once a defendant is placed in jeopardy for an offense ··· the defendant may neither be tried nor punished a second time for the same offense." *Sattazahn v. Pennsylvania*, 537 U.S. 101, 106, 123 S.Ct. 732, 154 L.Ed.2d 588 (2003). If we were to let this *de facto* analysis stand, future aliens who

plead guilty could use the double jeopardy clause to prevent deportation. After all, if deportation is a *de facto* part of an individual's sentence, they have an argument that a second and distinct court case, which deportation is, is a second trial and punishment for their crime. Here, as in the United States, the criminal judge does not control deportation; it is always a separate matter. We find no support for the trial court's position that deportation is a *de facto* punishment and we decline to break with applicable precedent to endorse it.

B. Abuse of Discretion

¶18 An abuse of discretion exists if the 'court based its ruling on an erroneous view of the law or on clearly erroneous assessment of the evidence.'" *Commonwealth v. Campbell*, 4 N.M.I. 11, 17 (1993). Commonwealth Rule of Criminal Procedure 32(d) provides that a guilty plea may be withdrawn after imposition of sentence only "to correct manifest injustice." A number of courts have held that the trial judge's failure to inform the defendant of the immigration consequences of his guilty plea does not render the plea constitutionally deficient. *See, e.g. Amador-Leal*, 276 F.3d at 517, n. 4 (citations omitted). Moreover, several courts have held that a defendant's ignorance of the immigration consequences of his guilty plea does not constitute the requisite "manifest injustice" for withdrawing the plea under Fed.R.Crim.P. 32(d). *See, e.g., Nunez Cordero v. United States*, 533 F.2d 723 (1st Cir.1976); *United States v. Sambro*, 454 F.2d 918 (D.C.Cir.1971) (*per curiam*). The trial court's opinion ignored these standards and focused on what it perceived were problems in the Commonwealth's immigration policy. As discussed above, those concerns ignore the separation between the criminal sentencing and civil deportation courts, while relying too heavily on hypothetical problems with the AG's Office. Because the trial court relied on a blurred distinction and ignored relevant precedent concerning "manifest injustice," it abused its discretion when it allowed Chen to withdraw her plea.

IV

¶19 It is apparent from the record that the trial court was concerned that the same courts and same lawyers try the criminal and deportation cases in the Commonwealth. This argument, however, blurs the distinction between criminal and civil. Thus, the trial court relied on the lack of separation in its decision instead of focusing on the nature of each action. Because a civil deportation proceeding does not represent a definite, immediate and largely automatic effect on the range of a defendant's punishments, advising a defendant of possible future deportation is not required. Further, because the decision to allow Chen to withdraw her plea was based on an erroneous view of the law, we REVERSE the trial court's decision.

SO ORDERED THIS 23RD DAY OF JUNE 2006.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN
CHIEF JUSTICE

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE

/s/ John A. Manglona
JOHN A. MANGLONA
ASSOCIATE JUSTICE