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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

HARRIS ISMAELA TAIVERO,
Defendant-Appellant.

SUPREME COURT NO. CR-06-0037-GA
SUPERIOR COURT NO. 00-0271-CR

Cite as: 2009 MP 10

Decided August 7, 2009

Robert T. Torres, Saipan, Northern Mariana Islands, for Appellant
Melissa Simms and Kevin A. Lynch, Assistant Attorneys General, Commonwealth Attorney General's Office, for Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice

MANGLONA, J.:

¶ 1 Defendant Harris Ismaela Taivero ("Taivero") appeals the trial court's denial of his motion to withdraw his guilty plea, arguing that (1) he received ineffective assistance of counsel, and (2) his guilty plea constituted a manifest injustice. We hold that trial counsel's representation did not fall below an objective standard of reasonableness as he was not required to advise Taivero of the immigration consequences of his guilty plea. We further hold that the trial court did not abuse its discretion in denying Taivero's motion to withdraw his guilty plea because an alien defendant's lack of knowledge regarding the immigration consequences of a plea does not constitute a manifest injustice. Accordingly, the trial court's decision is AFFIRMED.

I

¶ 2 Taivero is a citizen of New Zealand residing on Saipan. He lawfully entered Saipan in 1996 and began working as an entertainer in a Polynesian dance group. In 1998, Taivero married Veronica Acosta Taivero ("Veronica Taivero"), who is a United States citizen. Taivero then received Immediate Relative ("IR") status under Commonwealth immigration law. Taivero's IR status was revoked, however, when he and his wife divorced in December 1999.

¶ 3 In May 2000, the Commonwealth charged Taivero with rape.[1] Assistant Public Defender Jeffrey Moots ("trial counsel") was assigned as counsel to represent Taivero, who pled not guilty and maintained that the sexual contact with the complaining witness was consensual. Several days before trial, trial counsel realized his license to practice law had expired. Consequently, the trial court rescheduled the trial so that trial counsel could reinstate his law license.[2]

¶ 4 During the period between the originally scheduled trial and the rescheduled trial, the Commonwealth charged Taivero's uncle, Mii Tekopua, with obstruction of justice after he purportedly contacted the complaining witness in violation of a court order. In October 2001, Taivero entered into an Alford plea agreement[3] with the Commonwealth, whereby he agreed to

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[1] The Commonwealth initially charged Taivero with rape in violation of 6 CMC § 1301(a), which defined rape as "an act of sexual intercourse with a person not the spouse of the perpetrator . . . where it is accomplished against a person's will by means of force or fear of immediate and unlawful injury on the person or upon another." In 2002, PL 12-82 repealed and replaced 6 CMC §§ 1301-1311. The Commonwealth also charged Taivero with sexual abuse of a minor, in violation of 6 CMC § 1311(a), which was subsequently repealed and replaced by PL 12-82. However, in November 2000, the charge was dismissed after the Commonwealth determined that the complaining witness was not a minor at the time of the alleged sexual abuse.

[2] Trial counsel was admitted to practice law pursuant to Com. R. Admiss. II(5)(J), which allows attorneys to work for the Commonwealth government for up to four years without taking the Commonwealth bar examination, provided they are admitted to practice law in another United States jurisdiction.

[3] "An Alford plea . . . is a guilty plea accompanied by a protestation of innocence." *Commonwealth v. Cabrera*, 2 NMI 311, 316 (1991) (citing *North Carolina v. Alford*, 400 U.S. 25, 38 (1970)).

plead guilty to one count of rape in exchange for the Commonwealth agreeing to drop all charges against Tekupua. The plea agreement contained the standard recitations and waivers required by Rule 11 of the Commonwealth Rules of Criminal Procedure. It also contained additional language stating that trial counsel advised Taivero of the nature, content, and legal consequences of his plea. The plea agreement was silent as to whether trial counsel advised Taivero of the immigration consequences of his plea.

¶ 5 Shortly before Taivero accepted the plea agreement, his trial counsel spoke with Veronica Taivero. During their conversation, trial counsel did not specifically mention the immigration consequences associated with Taivero's plea. However, he did tell Veronica Taivero that "[b]efore you know it, [Taivero's] home. Then you guys can start your lives together again." Appellant's Excerpts of Record ("ER") at 31.

¶ 6 In December 2001, Taivero was sentenced to three years imprisonment in accordance with the plea agreement.[4] During his incarceration, he remarried Veronica Taivero. Following Taivero's release from prison in January 2005, the Commonwealth Department of Immigration denied Taivero's application for IR status because of his rape conviction. The Commonwealth also initiated deportation proceedings based on Taivero's felony conviction. As a result of his impending deportation, Taivero, citing ineffective assistance of counsel, sought to vacate his rape conviction by filing a writ of error *coram nobis*. Alternatively, Taivero sought to withdraw his guilty plea under Rule 32(d) of the Commonwealth Rules of Criminal Procedure. He claimed his trial counsel failed to inform him of the immigration consequences associated with his plea agreement and, in some instances, misrepresented the immigration consequences of his plea. The trial court denied Taivero's petition for writ, and his motion to withdraw his guilty plea.[5]

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[4] On December 21, 2001, the Commonwealth filed a motion to dismiss the obstruction of justice charges levied against Tekopua.

[5] On appeal, the appellee failed to file a response brief. Our legal system is an adversarial one; the path to justice is traversed through competing factual allegations and legal arguments. We rely on these competing arguments in our administration of justice. However, the difficulty of our task and the opportunity for error is heightened when we are forced to decide an appeal without appellate briefs from all relevant parties. Moreover, we are particularly concerned that the failure to file response briefs has recently become an endemic problem with the Office of the Attorney General. *See, e.g.*, *In re Roy*, 2007 MP 28; *Guerrero v. Dept. of Public Lands*, 07-SCC-0025-CIV; *Commonwealth v. Pua*, CR-06-0045-GA. Consequently, we do not foreclose the possibility of sanctioning attorneys in the future who consistently fail to "act with reasonable diligence and promptness in representing a client." Model Rules of Prof'l Conduct R. 1.13 (1983).

Additionally, Taivero's counsel on appeal did not comply with Rule 28(p) of the Commonwealth Rules of Appellate Procedure. Rule 28(p) states that "[e]ach party shall identify in a statement on the last page of its initial brief any known related case pending in this Court." Taivero's counsel also served as counsel in *Commonwealth v. Shimabukuro*, 2008 MP 10, which addresses nearly identical issues as the

II

Ineffective Assistance of Counsel

¶ 7 Taivero claims his trial counsel's representation amounted to ineffective assistance. He argues that trial counsel failed to accurately advise him of the Commonwealth immigration consequences associated with his guilty plea. He claims that he would not have agreed to the plea agreement had he been advised of his potential deportation. Consequently, Taivero asserts that his trial counsel's representations fell below an objective standard of reasonableness and prejudiced him. A claim of ineffective assistance of counsel is reviewed de novo. *Commonwealth v. Diaz*, 2003 MP 14 ¶ 6.

¶ 8 The Sixth Amendment of the United States Constitution[6] states that "in all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense." U.S. Const. amend. VI. However, assistance of counsel does not have to be perfect or free from error. *McMann v. Richardson*, 397 U.S. 759, 774 (1970). Rather, "the right to counsel is the right to the *effective* assistance of counsel." *Id*. at 771 n.14 (emphasis added). Conversely, ineffective assistance of counsel occurs when a trial counsel's performance falls below that of a "reasonably competent attorney." *Id*. at 770-71.

¶ 9 The United States Supreme Court elaborated on the meaning and scope of effective assistance of counsel in *Strickland v. Washington*. 466 U.S. 668 (1984). The Court determined that the purpose of the Sixth Amendment right to counsel is to ensure a fair trial. *Id*. at 684-85 ("The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results."). Based on this purpose, the Court stated that "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id*. at 686.

¶ 10 In determining whether a criminal defendant has been deprived of effective assistance of counsel, the Court adopted a two-pronged test. *Id*. at 687. First, the defendant must "show that the counsel's *performance* was deficient." *Id*. (emphasis added). Second, the defendant must "show that the deficient performance *prejudiced* the defense." *Id*. (emphasis added). Under the

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present case. However, in submitting his appellate brief, Taivero's counsel certified that he was "unaware of any related cases pending before this Court," despite the fact that *Shimabukuro* was then pending.

[6] The Sixth Amendment of the United States Constitution is applicable in the Commonwealth via the Covenant. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note, *reprinted in* CMC at 1xxxi, § 501(a); *see, e.g.*, *Commonwealth v. Perez*, 2006 MP 24 ¶ 11 (stating that the "Sixth Amendment to the United States Constitution applies in the Commonwealth").

first prong, or the "performance prong," a defendant must show that the defense counsel's performance "fell below an objective standard of reasonableness." *Id*. at 688. In determining whether a defense counsel's advice is reasonable, a court must determine whether it is "within the range of competence demanded of attorneys in criminal cases." *Id*. (quoting *McMann*, 397 U.S. at 770-71). Furthermore, the reasonableness of counsel's conduct must be assessed according to "the facts of the particular case, viewed as of the time of counsel's conduct." *Id*. at 690. Under the second prong, or the "prejudice prong," the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 694. Therefore, the defendant must show with reasonable probability that the attorney's error caused the defendant to lose the case. *Id*. at 695.

¶ 11 In 1985, the United States Supreme Court held that *Strickland's* two-part test applies to challenges arising from the plea process. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). When a defendant challenges a guilty plea based on ineffective assistance of counsel, the defendant essentially alleges that the plea was involuntary due to counsel's deficient performance and its subsequent effects on the plea. *See id*. at 56. However, the *Hill* Court slightly modified *Strickland's* prejudice prong in claims arising out of the plea process. *Id*. at 58-59. Under *Hill*, to satisfy the prejudice prong, the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id*. at 59. Thus, the Court found that guilty pleas can be considered involuntary due to ineffective assistance of counsel when counsel's advice falls outside "the range of competence demanded of attorneys in criminal cases," *id.* at 56 (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1990)), and when counsel's "constitutionally ineffective performance affects the outcome of the plea process." *Id.* at 59. In 2008, this Court adopted the two-pronged tests set forth in *Strickland* and *Hill* in analyzing a claim of ineffective assistance of counsel. *Commonwealth v. Shimabukuro*, 2008 MP 10 ¶¶ 11-12.

¶ 12 In the present case, Taivero argues that trial counsel's representation amounted to ineffective assistance because trial counsel never informed him that his guilty plea might result in deportation. Under Commonwealth immigration law, an alien defendant convicted of a felony is subject to deportation proceedings. 3 CMC § 4340(d). In applying *Strickland's* two-pronged test, we must determine whether the performance of Taivero's trial counsel was deficient, and, if so, whether the deficient performance prejudiced him. To determine whether trial counsel's performance was deficient, we must first establish whether trial counsel was required to inform Taivero of the potential immigration consequences of his guilty plea.

¶ 13 This Court has previously held that a trial judge has no duty to inform alien defendants of the potential immigration consequences of their guilty pleas. *Commonwealth v. Chen*, 2006 MP 14 ¶ 15. In *Chen*, we determined that under the Due Process Clauses of the United States and Commonwealth Constitutions, a trial judge must apprise criminal defendants of the direct consequences of their guilty pleas, but need not inform them of the collateral consequences of their pleas. *Id*. ¶ 5; *see also Commonwealth v. Jindawong*, 2008 MP 3 ¶ 7. Direct consequences have "a definite, immediate and largely automatic effect on the range of the defendant's punishment." *Id*. Conversely, collateral consequences are not automatic, but are "contingent on action taken by an individual or individuals other than the sentencing court . . . ." *Id*. (quoting *United States v. Kihuyama*, 109 F.3d 536, 537 (9th Cir. 1997)). In *Chen*, we held that deportation is a collateral consequence of a criminal conviction based on two crucial determinations. *Id*. ¶ 15. First, the decision to initiate deportation proceedings against an alien defendant in the Commonwealth is not left to the sentencing court, but to the Attorney General's Office. *Id*. ¶ 14. Second, deportation is a civil matter, wholly separate from a criminal proceeding. *Id*. ¶ 15. Therefore, this Court concluded that a trial judge need not inform criminal defendants of the potential immigration consequences of their guilty pleas.

¶ 14 We took our *Chen* decision one step further in *Commonwealth v. Shimabukuro* and held that trial counsel, like a trial judge, has no duty to inform a criminal defendant of the potential federal immigration consequences of his or her guilty plea because deportation is a collateral consequence. *Commonwealth v. Shimabukuro*, 2008 MP 10. In *Shimabukuro*, an alien defendant pled guilty to illegal possession of a controlled substance, which subjected her to removal proceedings pursuant to federal law. *Id*. ¶ 4. After discovering that she might be deported, the defendant sought to vacate her conviction by filling a writ of error *coram nobis*. *Id*. ¶ 6. Alternatively, the defendant sought to withdraw her guilty plea. *Id*. The trial court denied her petition for a writ of error *coram nobis*, as well as her motion to withdraw her guilty plea. *Id*. In affirming the trial court's decision, we reiterated that deportation is a collateral consequence of a guilty plea. *Id*. ¶ 16. We therefore held that "defense counsel has no duty to inform defendants of the collateral consequences of their guilty pleas." *Id*. Moreover, we stated that "failure to advise a defendant of a collateral penalty is not objectively unreasonable under *Strickland's* performance prong and therefore does not amount to ineffective assistance of counsel." *Id*.

¶ 15 Our decision in *Shimabukuro* is consistent with the majority of other jurisdictions. Every United States Court of Appeal that has considered the issue has held that trial counsel has no duty to inform criminal defendants of the potential immigration consequences of their guilty pleas

because deportation is a collateral consequence.[7] Because deportation is imposed by a court other than the convicting court, deportation "remains beyond the control and responsibility of the . . . court in which that conviction was entered," and is therefore considered collateral. *Broomes v. Ashcroft*, 358 F.3d 1251, 1256 (10th Cir. 2004) (quoting *United States v. Gonzalez*, 202 F.3d 20, 27 (1st Cir. 2000)). Thus, federal courts have held that it is not ineffective assistance of counsel to fail to advise a non-citizen criminal defendant of possible deportation consequences stemming from a guilty plea. Likewise, a wide-variety of state courts also hold that there is no duty to advise non-citizen criminal defendants of possible immigration consequences of a guilty plea because those consequences are collateral.[8]

¶ 16 The rationale for denying relief for ineffective assistance claims based on the collateral consequences doctrine is multifaceted and is, in part, set forth in both *Chen* and *Shimabukuro*. However, apart from the justifications discussed in prior case law, we, like other courts, are concerned with undermining the finality of criminal convictions and overburdening criminal defense attorneys. First, allowing non-citizen criminal defendants to challenge guilty pleas based on the collateral consequence of deportation will "open[] the door to innumerable challenges to pleas based on the defendant's ignorance of other serious collateral consequences." *People v.*

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[7] *See, e.g.*, *Broomes v. Ashcroft*, 358 F.3d 1251, 1256-67 (10th Cir. 2004); *El-Nobani v. United States*, 287 F.3d 417, 421 (6th Cir. 2002); *United States v. Amador-Leal*, 276 F.3d 511, 514-17 (9th Cir. 2002); *United States v. Gonzalez*, 202 F.3d 20, 25-27 (1st Cir. 2000); *United States v. Banda*, 1 F.3d 354, 355-56 (5th Cir. 1993); *United States v. Del Rosario*, 902 F.2d 55, 59 (D.C. Cir. 1990); *United States v. George*, 869 F.2d 333, 336-38 (7th Cir. 1989); *United States v. Yearwood*, 863 F.2d 6, 7-8 (4th Cir. 1988); *United States v. Campbell*, 778 F.2d 764, 768 (11th Cir. 1985); *United States v. Santelises*, 509 F.2d 703, 704 (2d Cir. 1975) (per curiam) (all holding that deportation is a collateral consequence of a guilty plea and, therefore, counsel's failure to advise is not a basis for an ineffective assistance of counsel claim). The Third and Eighth Circuits have not addressed whether failure to advise of deportation consequences constitutes an ineffective assistance of counsel claim, but have held that deportation is considered a collateral consequence. *See United States v. Nino*, 878 F.2d 101, 105 (3d Cir. 1989) (declining to decide "whether counsel's failure to advise a client about the deportation consequences of a guilty plea can constitute deficient representation absent special circumstances"); *United States v. Romero-Vilca*, 850 F.2d 177, 179 (3d Cir. 1988) ("[W]e hold that potential deportation is a collateral consequence of a guilty plea."); *Kandiel v. United States*, 964 F.2d 794, 796 (8th Cir. 1992) ("[D]eportation proceedings are merely a collateral consequence of a conviction.").

[8] *Major v. State*, 511 So.2d 424, 427 (Fla. 2002); *State v. Montalban*, 810 So.2d 1106, 1110 (La. 2002); *State v. Zarate*, 651 N.W.2d 215, 223 (Neb. 2002); *State v. Muriithi*, 46 P.3d 1145, 1152 (Kan. 2002); *State v. Ramirez*, 636 N.W.2d 740, 746 (Iowa 2001); *State v. Martinez-Lazo*, 999 P.2d 1275, 1279 (Wash. Ct. App. 2000); *People v. Davidovich*, 606 N.W.2d 387, 390 (Mich. Ct. App. 1999); *People v. Ford*, 657 N.E.2d 265, 268 (N.Y. 1995); *State v. Rosas*, 904 P.2d 1245, 1247 (Ala. Crim. App. 1989); *State v. Dalman*, 520 N.W.2d 860, 863-64 (N.D. 1994); *State v. Figueroa*, 639 A.2d 495, 499 (R.I. 1994); *State v. McFadden*, 884 P.2d 1303, 1305 (Utah Ct. App. 1994); *Matos v. United States*, 631 A.2d 28, 31-32 (D.C. 1993); *People v. Huante*, 571 N.E.2d 736, 740-41 (Ill. 1991); *Commonwealth v. Frometa*, 555 A.2d 92, 93 (Pa. 1989); *Oyekoya v. State*, 558 So.2d 990, 990-91 (Ala. Crim. App. 1989); *State v. Santos*, 401 N.W.2d 856, 858 (Wis. Ct. App. 1987); *State v. Chung*, 510 A.2d 72, 76-77 (N.J. Super. Ct. App. Div. 1986); *Tafoya v. State*, 500 P.2d 247, 251-52 (Alaska 1972).

Pozo, 746 P.2d 523, 532 (Colo. 1987) (Erickson, J., dissenting). Allowing such challenges creates an unnecessary "inroad on the concept of finality" that "undermines confidence in the integrity of [criminal] procedures." *United States v. Timmreck*, 441 U.S. 780, 784 (1978) (denying a defendant's habeas corpus petition that alleged that his guilty plea was involuntary because he was unaware of the mandatory parole term that would result from his conviction). For example, if guilty pleas can be challenged on the basis of deportation consequences, then challenges based on other collateral consequences – such as the suspension of a driver's license, *see, e.g.*, *Moore v. Hinton*, 513 F.2d 781, 782 (5th Cir. 1975), the deprivation of the right to vote and to travel abroad, *see, e.g.*, *Meaton v. United States*, 328 F.2d 379, 380 (5th Cir. 1964), the loss of civil service jobs and other employment, *see, e.g.*, *United States v. Crowley*, 529 F.2d 1066, 1072 (3d Cir. 1976), and the possibility of undesirable discharge from the armed forces, *see, e.g.*, *Redwine v. Zuckert*, 317 F.2d 336, 338 (D.C. Cir. 1963) – will likely result.

¶ 17 Additionally, creating a duty to advise non-citizen criminal defendants of possible immigration consequences would overburden both attorneys and the reviewing courts. This is particularly true when considering the fact that immigration law is complex and "represents a body of knowledge to which some attorneys devote their full time and attention." *See Pozo*, 746 P.2d at 533 (Erickson, J., dissenting). Moreover, an ordinary level of competency by an attorney cannot require anticipation of all possible collateral consequences. "[C]ounsel can hardly conceive all possible collateral consequences of a guilty plea and need not be a crystal gazer." *See Mott v. State*, 407 N.W.2d 581, 584 (Iowa 1987). Requiring defense counsel to advise non-citizen criminal defendants of possible immigration consequences of guilty pleas would be especially burdensome for public defenders who often have large caseloads and little time to devote to individual clients. Furthermore, imposing such a duty would place an onerous burden on trial courts in reviewing whether an attorney reasonably investigated relevant immigration law. *Pozo*, 746 P.2d at 533 (Erickson, J., dissenting).

¶ 18 In light of our decisions in *Chen* and *Shimabukuro*, along with the precedent set forth in the majority of federal and state courts, we reiterate that "deportation is a collateral consequence of a guilty plea in the Commonwealth." *Shimabukuro*, 2008 MP 10 ¶ 16. Because trial counsel has no duty to inform a criminal defendant of the collateral consequences associated with his or her plea, we hold that a trial counsel's failure to advise a non-citizen criminal defendant of the immigration consequences of his or her plea is not objectively unreasonable under *Strickland's* performance prong. Consequently, such a claim does not amount to ineffective assistance of counsel.

¶ 19 Taivero attempts to distinguish the instant case from *Shimabukuro* by claiming that trial counsel not only failed to convey the potential immigration consequences of his guilty plea, but trial counsel also affirmatively misrepresented Commonwealth immigration law. Specifically, Taivero claims trial counsel led both he and his wife to believe that he would not be deported if he accepted the Alford plea. In support of this claim, Taivero points to the conversation his wife had with his trial counsel shortly before Taivero accepted the Alford plea. Although trial counsel did not specifically mention the immigration consequences associated with Taivero's plea, he did tell Veronica Taivero that "before you know it, [Taivero's] home. Then you guys can start your lives together again." ER at 31. As a result of this conversation, Taivero claims that his trial counsel led him to believe he would not be deported despite pleading guilty to rape. In essence, Taivero requests that we adopt an exception to the collateral consequence rule.

¶ 20 Although many courts hold that there is no affirmative duty to advise non-citizens of possible immigration consequences stemming from guilty pleas, Taivero correctly asserts that some of those same courts hold that affirmative misrepresentations by counsel can constitute ineffective assistance. *See, e.g.*, *State v. Roja-Martinez*, 125 P.3d 930, 935 (Ut. 2005) (stating that although attorneys have no affirmative duty to investigate and advise clients of potential immigration consequences, they must not misinform clients of immigration consequences); *United States v. Couto*, 311 F.3d 179, 187-88 (2d Cir. 2002) (holding that an affirmative misrepresentation regarding immigration consequences amounts to deficient performance under *Strickland*). Under these mistaken advice cases, "an affirmative misrepresentation by counsel as to the deportation consequences of a guilty plea is . . . objectionably unreasonable," and, therefore, satisfies "the first prong of the Strickland test." *Couto*, 311 F.3d at 188. Thus, "if the defendant can also establish that there is a reasonable probability that, but for counsel's errors, [he or] she would not have pleaded guilty and would have insisted on going to trial, then the guilty plea is invalid." *Id*.

¶ 21 In *Shimabukuro*, we indicated a willingness to adopt an exception to the collateral consequence rule when an attorney affirmatively misrepresents the immigration consequences of a guilty plea. 2008 MP 10 ¶ 18. However, just as in *Shimabukuro*, we find such an exception inapplicable to the present case. As a preliminary matter, we note that judicial scrutiny of a defense counsel's performance under *Strickland* is highly deferential. 466 U.S. at 690. "It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Id*. at 690). A fair assessment of trial counsel's performance requires this Court to "eliminate the

distorting effects of hindsight." *Id*. We also "must indulge a *strong presumption* that counsel's conduct falls within the wide range of reasonable professional assistance . . . ." *Id*. at 690 (emphasis added). In so doing, we recognize that there are "countless ways to provide effective assistance in any given case." *Id*. at 690.

¶ 22 Taivero appears to make contradictory claims with respect to trial counsel's representation. On the one hand, he makes numerous statements that trial counsel never mentioned the immigration consequences of his plea. For example, in Taivero's sworn statement, he stated that "[Trial counsel] *never* informed me that if I am convicted in the case that I would be deported back to the Cook Islands." ER at 34 (emphasis added). Taivero also stated that "[t]hroughout [his] counsel of my plea agreement, [trial counsel] *never* mentioned my immigration status of being deported." ER at 35 (emphasis added). In fact, Taivero's appellate brief unequivocally states that trial counsel never discussed the immigration consequences of his plea. Appellant's Opening Br. at 8 ("Mr. Taivero is unequivocal: at no point did his defense attorney advise him of the immigration consequences of his plea."). On the other hand, Taivero claims trial counsel affirmatively misrepresented the immigration consequences of his plea.

¶ 23 We find these two claims irreconcilable. Either trial counsel never mentioned the immigration consequences of Taivero's plea or he affirmatively misrepresented them. He could not have done both. Our review of the record has uncovered no evidence indicating that trial counsel misrepresented Taivero's immigration status. Rather, the only evidence that even remotely supports Taivero's claim is trial counsel's statement to Veronica Taivero in which he told her that "[b]efore you know it, [Taivero's] home. Then you guys can start your lives together again." ER at 31. Considering the context of the statement, we do not interpret it as an affirmative misrepresentation. Trial counsel's statement is technically true: Regardless of Taivero's immigration status, he and his wife were free to "start [their] lives together" upon his release from prison. ER at 31. This statement does not indicate that Taivero will be insulated from Commonwealth immigration laws. Rather, the statement is unrelated to immigration. Granted, under certain circumstances such a statement could implicitly lead a defendant to believe that deportation was not a possibility. However, outside the context of an immigration discussion, we fail to see the link between trial counsel's statement and Taivero's claim of affirmative misrepresentation. Taivero states in his sworn statement and in his appellate brief that trial counsel never discussed the immigration consequences of his plea. As a result, he essentially culled both his recollections and the trial court record to find one statement, which was wholly unrelated to immigration, and construe it as a misstatement of immigration law. However, trial counsel could not have misrepresented what he did not address.

¶ 24 In light of the presumption we adopted in *Shimabukuro*, we find trial counsel's performance was not deficient as there is no evidence indicating that trial counsel affirmatively misrepresented the immigration consequences of Taivero's guilty plea. Thus, we have no need to address *Strickland's* prejudice prong as it relates to the immigration consequences of Taivero's plea.

Motion to Withdraw Guilty Plea

¶ 25 Taivero argues that the trial court exceeded the bounds of its discretion in refusing to allow him withdraw his guilty plea after he was convicted of rape and sentenced to three years imprisonment. We review a trial court's denial of a post-conviction motion to withdraw a guilty plea for abuse of discretion. *Chen*, 2006 MP 14 ¶ 6.

¶ 26 The trial court abuses its discretion when it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Commonwealth v. Campbell*, 4 NMI 11, 17 (1993); *Chen*, 2006 MP 14 ¶ 6. Commonwealth Rule of Criminal Procedure 32(d) provides that a guilty plea may be withdrawn after imposition of a sentence only "to correct manifest injustice." This standard is significantly higher than the "fair and just" standard for withdrawing guilty pleas prior to sentencing. *See Kerchival v. United States*, 274 U.S. 220, 224 (1927). In *Chen*, we determined that an alien defendant's ignorance of the immigration consequences of a guilty plea did not constitute manifest injustice sufficient to withdraw a guilty plea under Com. R. Crim. P. 32(d). 2006 MP 14 ¶¶ 6, 19.

¶ 27 In the present case, the trial court applied *Strickland's* two-pronged test and correctly determined that trial counsel's performance did not amount to ineffective assistance of counsel. Additionally, the trial court's denial of Taivero's motion properly followed the precedent set in *Shimabukuro* and *Chen*. *See id*. ¶ 6 ("A lawyer's failure to inform his client of the consequences of a guilty plea does not amount to 'manifest injustice.'"). Furthermore, we have no evidence suggesting that the trial court based its ruling on an erroneous view of the law or a clearly erroneous assessment of the evidence. Therefore, the trial court did not abuse its discretion in denying Taivero's motion to withdraw his guilty plea.[9]

III

¶ 28 For the foregoing reasons, we reject Taivero's claim of ineffective assistance of counsel, as trial counsel's performance did not fall below an objective standard of reasonableness.

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[9] Finally, Taivero argues that the errors in the case cumulatively require reversal. *See, e.g.*, *Commonwealth v. Camacho*, 2002 MP 6 ¶ 120 (stating that "[i]n some cases, although no single trial error examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice a defendant"). As we find no merit in any of Taivero's individual arguments, we similarly find no merit in them cumulatively.

Furthermore, the trial court did not abuse its discretion in denying Taivero's motion to withdraw his guilty plea because an alien defendant's lack of knowledge regarding the immigration consequences of a guilty plea does not constitute a manifest injustice. Accordingly, the trial court's decision is AFFIRMED.

Concurred:
Demapan, C.J., Castro, J.