

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

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,  
Plaintiff-Appellee,

v.

PRANEE JINDAWONG,  
Defendant-Appellant.

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SUPREME COURT NO. TR-07-0005-GA  
SUPERIOR COURT NO. 06-1159

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**Cite as: 2008 MP 3**

Decided March 10, 2008

Jeffrey L. Warfield, Sr., Assistant Attorney General, Commonwealth Attorney General's Office,  
for Plaintiff-Appellee.

Douglas W. Hartig, Assistant Public Defender, Commonwealth Public Defender's Office, for  
Defendant-Appellant.

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

MANGLONA, J.:

¶ 1 Defendant Pranee Jindawong appeals the trial court’s denial of her motion to set aside her conviction for reckless driving on the grounds that the trial court violated her due process rights in failing to inform her that a second reckless driving conviction would result in the denial of her taxicab license. Because the Due Process Clauses of the United States and Commonwealth Constitutions do not require courts to advise defendants of the collateral consequences of their guilty pleas, we AFFIRM the trial court’s decision.

## I

¶ 2 In March 2006, defendant, a taxicab driver, received a traffic citation for reckless driving, driving under the influence of alcohol, and failing to submit to a breath test. Shortly before trial, in January 2007, defendant signed a plea agreement with the Commonwealth, and agreed to plead guilty to reckless driving, and failing to submit to a breathalyzer test. In return for her guilty plea, the Commonwealth dropped the charge of driving under the influence of alcohol. Before accepting the plea agreement, the trial judge engaged in the standard colloquy of asking defendant if she understood the nature of her crimes, and whether she understood the direct penalties associated with her guilty pleas. Defendant replied in the affirmative. Consequently, the trial court accepted the plea agreement, convicted defendant of reckless driving and failing to submit to a breathalyzer test, and sentenced her to thirty days in jail and six months of probation.<sup>1</sup>

¶ 3 In February 2007, the Commonwealth Department of Commerce denied defendant’s certification of fitness and taxicab operator’s identification card (“taxicab license”). In denying her taxicab license, the Commonwealth Department of Commerce relied on 9 CMC § 2301(b), which states that “[n]o person shall be licensed as a taxicab driver who has ever been . . . twice convicted of reckless driving . . . .” Because defendant was previously convicted of reckless driving in an unrelated case, her guilty plea in the present case constituted her second reckless driving conviction, which, in turn, resulted in the denial of her taxicab license. The Commonwealth Department of Commerce informed defendant that, if requested, she was entitled to a hearing. Defendant, however, did not request one.

¶ 4 Thereafter, defendant filed a motion to set aside her reckless driving guilty plea because the trial court did not inform her that a second reckless driving conviction would result in the

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<sup>1</sup> The trial court suspended Jindawong’s thirty-day jail sentence for six months. Additionally, the trial court ordered Jindawong to pay probation and court assessment fees, abstain from possessing or consuming alcohol, and attend alcohol counseling classes.

denial of her taxicab license. The trial court denied her motion, determining that the denial of defendant's taxicab license was a collateral consequence of her conviction, and courts are not obligated to advise defendants of the collateral consequences associated with their guilty pleas.

## II

¶ 5 Defendant argues that her guilty plea for reckless driving was not voluntary and intelligent in accordance with her due process rights because the trial court did not inform her of the direct consequences of her guilty plea. Relying on our decision in *Commonwealth v. Chen*, defendant argues that the loss of her taxicab license was a “definite, immediate and largely automatic” consequence of pleading guilty to reckless driving, and therefore constituted a direct consequence of her guilty plea. Appellant's Opening Br. at 8 (quoting *Chen*, 2006 MP 14 ¶ 8). Whether a guilty plea is voluntary and intelligent is a constitutional question and is reviewed de novo. *Chen*, 2006 MP 14 ¶ 5; see also *Commonwealth v. Yi Xiou Zhen*, 2004 MP 4 ¶ 10; *Commonwealth v. Martinez*, 2000 MP 5 ¶ 4.

¶ 6 Under the Due Process Clauses of the United States and Commonwealth Constitutions, a trial court must ensure that a defendant's guilty plea is entered knowingly, voluntarily, and intelligently. U.S. Const. amend. V; N.M.I. Const. art. I § 5; see *Chen*, 2006 MP 14 ¶ 5; *Brady v. United States*, 397 U.S. 742, 748 (1970). A voluntary and intelligent plea is necessary because a defendant waives a number of constitutional rights when pleading guilty.<sup>2</sup> *Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (stating that courts must ensure that the accused fully understands the consequences of a guilty plea). In order for a guilty plea to be voluntary and intelligent, “the defendant must be aware of the range of allowable punishment that will result from the plea.” *Chen*, 2006 MP 14 ¶ 5; see also *Brady*, 397 U.S. at 748 (“Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.”). Thus, trial courts are obligated to advise defendants of the consequences of their pleas. *Chen*, 2006 MP 14 ¶ 7; Com R. Crim. P. 11(d).<sup>3</sup>

¶ 7 Under various provisions of civil and criminal statutes, a conviction for a crime may result in numerous legal consequences. Although the United States Supreme Court stated that defendants must be “fully aware of the direct consequences” of their pleas, *Brady*, 397 U.S. at 755 (quoting *Shelton v. United States*, 246 F.2d 571, 572 n.2 (5th Cir. 1957)), it is unrealistic, if not impossible, for a trial court to advise a defendant of all legal consequences stemming from a

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<sup>2</sup> By pleading guilty, defendants waive their right against compulsory self-incrimination. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). Defendants also waive their right to be tried by a jury and to confront their accusers. *Id.*

<sup>3</sup> Because traffic cases involving misdemeanor offenses are criminal offenses, the Commonwealth Rules of Criminal Procedure apply. *Commonwealth v. Castro*, 2002 MP 13 ¶¶ 16-19.

guilty plea. Thus, this Court, along with a majority of federal courts, interpret the language in *Brady* to mean that trial courts are only required to advise defendants of the direct, as opposed to the collateral, consequences of their pleas. *Chen*, 2007 MP 14 ¶ 5; *see, e.g., United States v. Sambro*, 454 F.2d 918, 922 (D.C. Cir. 1971) (stating that it is “well settled that, before pleading, the defendant need not be advised of all collateral consequences of his plea”); *Johnson v. United States*, 460 F.2d 1203, 1204 (9th Cir. 1972) (“We presume that the Supreme Court meant what it said when it used the word ‘direct’; by doing so, it excluded collateral consequences.”). As such, this Court distinguishes between direct consequences and collateral consequences. *Chen*, 2006 MP 14 ¶ 8. Direct consequences have “a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” *Id.* ¶ 8. 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)); *see also United States v. Gonzalez*, 202 F.3d 20, 27 (1st Cir. 2000) (stating that collateral consequences remain “beyond the control and responsibility of the . . . court in which [the] conviction was entered”).

¶ 8 We have not set forth a definitive list of direct consequences flowing from a conviction. However, the United States Court of Appeals for the Third Circuit provides persuasive authority in holding that the “[t]he only consequences considered direct are the maximum prison term and fine for the offense charged.” *United States v. Salmon*, 944 F.2d 1106, 1130 (3d Cir. 1991). On the other hand, a survey of United States common law provides numerous examples of collateral consequences, which include the following: ineligibility to serve on a jury, *see, e.g., State v. Vasquez*, 889 S.W.2d 588, 590 (Tex. App. 1994); disqualification from public benefits, *see, e.g., United States v. Okelberry*, 112 F. Supp. 2d 1246, 1248 (D. Utah 2000); ineligibility to possess firearms, *see, e.g., Saadiq v. State*, 387 N.W.2d 315, 325 (Iowa 1986); ineligibility for parole, *see, e.g., Holmes v. United States*, 876 F.2d 1245, 1548-49 (11th Cir. 1989); revocation of parole, *see, e.g., Sanchez v. United States*, 572 F.2d 210, 211 (9th Cir. 1977); dishonorable discharge from the armed services, *see, e.g., Torrey v. Estelle*, 842 F.2d 234, 236 (9th Cir. 1988); revocation of a pilot’s license, *see, e.g., Kratt v. Garvey*, 342 F.3d 475, 485 (6th Cir. 2003); loss of the right to vote and travel abroad, *see, e.g., Meaton v. United States*, 328 F.2d 379 (5th Cir. 1964); and revocation of a business or professional license, *see, e.g., Landry v. Hoepfner*, 840 F.2d 1201, 1217 (5th Cir. 1988) (en banc).

¶ 9 We recognize that the meaning and distinction between direct and collateral consequences is, at times, unclear. As the United States Court of Appeals for the District of Columbia Circuit stated, “[t]he distinction between a collateral and direct consequence of a criminal

conviction . . . is obvious at the extremes and often subtle at the margin.” *United States v. Russell*, 686 F.2d 35, 38 (D.C. Cir. 1982). However, in light of our decision in *Chen*, defendant’s argument does not fall within the subtle margin of uncertainty. Rather, the loss of her taxicab license was a collateral consequence of her guilty plea for reckless driving.

¶ 10 In *Chen*, we determined that collateral consequences are not automatic, but are “contingent on action taken by an individual or individuals other than the sentencing court – such as another government agency or the defendant . . . .” *Id.* ¶ 8 (quoting *United States v. Kihuyama*, 109 F.3d 536, 537 (9th Cir. 1997)). Unlike direct consequences, collateral consequences remain beyond the control and responsibility of the trial court in which a conviction is entered. *See, e.g., El-Nobani v. United States*, 287 F.3d 417, 421 (6th Cir. 2002). Applying these principles in *Chen*, we determined that deportation is a collateral consequence of a criminal conviction. *Id.* ¶ 15. In *Chen*, an alien defendant pled guilty to prostitution-related charges and, consequently, agreed to pay a number of monetary fines imposed by the trial court. *Id.* ¶ 2. As a result of the defendant’s criminal conviction, the Attorney General’s Office instituted deportation proceedings. *Id.* ¶ 3. To avoid deportation, defendant moved to withdraw her plea on the basis that the trial court did not inform her that her criminal conviction could have immigration consequences. *Id.* ¶ 3. The trial court granted defendant’s motion to withdraw her guilty plea. *Id.* ¶ 3. In reversing the trial court’s decision, we determined that deportation is a collateral consequence of a guilty plea based on two crucial determinations. First, the decision to initiate deportation proceedings against an alien defendant 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, we held that the trial court need not advise an alien defendant that pleading guilty to criminal charges may result in deportation. *Id.* ¶¶ 15-17.

¶ 11 Our determinations in *Chen* clearly disallow defendant’s claim in the present case. Just as we determined in *Chen* that the Attorney General’s Office, and not the sentencing court, instituted deportation proceedings against an alien defendant, we likewise find that the Commonwealth Department of Commerce, and not the sentencing court, denied defendant’s taxicab license. The Commonwealth Department of Commerce falls under the purview of the executive branch, operating independently from the trial court. The Commonwealth Department of Commerce, in denying defendant’s taxicab license, neither acted under the authority of the trial court, nor carried out a court order. Rather, it acted under the authority of 9 CMC § 2301(b), which states that “[n]o person shall be licensed as a taxicab driver who has ever been . . . twice convicted of reckless driving . . . .”

¶ 12 Additionally, just as deportation is a civil matter, separate and distinct from a criminal proceeding, *see Chen*, 2006 MP 14 ¶15, the denial of defendant’s taxicab license was an administrative matter, separate and distinct from defendant’s criminal proceeding for reckless driving. After defendant pled guilty to reckless driving and failing to submit to a breathalyzer test, the trial court merely accepted the guilty plea and imposed a criminal sentence, which included thirty days in jail, and six months probation. Following defendant’s conviction, the Commonwealth Department of Commerce instituted a separate administrative proceeding to review the status of defendant’s taxicab license. This administrative process entitled defendant to a hearing before the Commonwealth Department of Commerce, which, had defendant requested such a hearing, would have been wholly separate from her criminal proceeding before the trial court. It is clear that the denial of defendant’s taxicab license was not a punishment imposed by the trial court, but a collateral consequence of her reckless driving conviction.

¶ 13 In holding that the denial of defendant’s taxicab license was a collateral consequence of her reckless driving conviction, we note that our decision is in line with federal court precedent.<sup>4</sup> As a matter of public policy, courts universally agree that it would be incredibly burdensome, if not impossible, to require trial courts to research and disclose every conceivable consequence of a guilty plea. *See Fruchtmann v. Kenton*, 531 F.2d 946, 949 (9th Cir. 1976) (stating that forcing courts to advise defendants of all collateral consequences flowing from guilty pleas would impose an “unmanageable burden” on trial judges). Clearly, requiring the trial court to advise a defendant of every potential consequence of a guilty plea would cripple judicial efficiency and fundamentally alter the functions of the court system. If anyone has an obligation to inform a defendant of the consequences associated with a guilty plea, it is a defendant’s attorney. *Michel v. United States*, 507 F.2d 461, 466 (2d Cir. 1974). “Defense counsel is in a much better position to ascertain the personal circumstances of his client so as to determine what indirect consequences the guilty plea may trigger.” *Id.* at 465; *see also In re Resendiz*, 19 P.3d 1171, 1181 (Cal. 2001) (“Defense counsel clearly has far greater duties toward the defendant than has the court taking a plea.”).

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<sup>4</sup> *See, e.g., United States v. Morse*, 36 F.3d 1070, 1072 (11th Cir. 1994) (potential loss of federal benefits is a collateral consequence); *King v. Dutton*, 17 F.3d 151, 153 (6th Cir. 1994) (use of murder conviction as aggravating circumstance in sentencing for unrelated murder charge is a collateral consequence); *United States v. Salmon*, 944 F.2d 1106, 1130 (3d Cir. 1991) (effect of conviction on sentencing for later offense under career offender law is a collateral consequence); *United States v. Campusano*, 947 F.2d 1, 5 (1st Cir.1991) (ability to use state court conviction against defendant in subsequent federal prosecution is collateral consequence); *United States v. Russell*, 686 F.2d 35, 39 (D.C. Cir. 1982) (deportation is a collateral consequence); *Moore v. Hinton*, 513 F.2d 781, 782-83 (5th Cir. 1975) (suspension of defendant’s driver’s license is a collateral consequence); *Wall v. United States*, 500 F.2d 38, 39 (10th Cir. 1974) (possibility of consecutive sentences is a collateral consequence).

#### IV

¶ 14 For the foregoing reasons, we hold that the trial court did not violate defendant's due process rights in failing to inform her that a second reckless driving conviction would result in the loss of her taxicab license. The denial of defendant's taxicab license by the Commonwealth Department of Commerce was a collateral consequence of her guilty plea for reckless driving. However, the trial court is not obligated to inform defendants of the collateral consequences of their pleas. Accordingly, the trial court's denial of defendant's motion to set aside her conviction is AFFIRMED.

Concurring:  
Demapan, C.J., Castro, J.