

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
June 14, 2011

v

HUSNAIN ALI ABBAS,
Defendant-Appellee.

No. 298862
Kalamazoo Circuit Court
LC No. 2006-000719-FH

Before: SHAPIRO, P.J., and O'CONNELL and OWENS, JJ.

PER CURIAM.

The prosecutor appeals as on leave granted from the trial court's order allowing an evidentiary hearing on defendant's motion for relief from judgment. We conclude that a hearing in the trial court is necessary to determine whether defendant may meet the standard for establishing relief from judgment absent retroactive application of *Padilla v Kentucky*, 599 US ___; 130 S Ct 1473; 176 L Ed 2d 284 (2010). Accordingly, we affirm on grounds other than those stated by the trial court.

I. FACTS AND PROCEDURAL HISTORY

Defendant is a native of Pakistan with legal permanent residence status. In 2006, defendant entered into a plea agreement in which the prosecution stated that it would take no position with respect to the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq.* As a result, defendant pleaded guilty to possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and operating a motor vehicle while impaired, MCL 257.625(3). The trial court sentenced defendant to time served for the impaired driving conviction and to two years' probation for the possession with intent to deliver conviction under the HYTA. Several months later, the prosecution filed a motion under MCR 6.429 to correct an invalid sentence, on the ground that the cocaine charge rendered defendant ineligible for HYTA status. See MCL 762.11(2)(b). In 2007, the trial court amended defendant's sentence nunc pro tunc to revoke defendant's HYTA status.

In 2009, after successfully completing his probation, defendant faced deportation proceedings. He sought post-judgment relief from the trial court pursuant to MCR 6.500. The trial court determined that *Padilla* applied retroactively to defendant's case and granted defendant's request for an evidentiary hearing on his claim that he was deprived of the effective assistance of counsel. However, the court opined from the bench that defendant was not

otherwise entitled to relief under “pre *Padilla*” case law. The prosecution applied for leave to appeal the trial court’s order granting an evidentiary hearing. This court denied the leave application. *People v Abbas*, unpublished order of the Court of Appeals, entered August 3, 2010 (Docket No. 298862). The prosecutor filed an application for leave to appeal in our Supreme Court. On March 9, 2011, in lieu of granting leave to appeal, the Supreme Court remanded the case to this Court for consideration as on leave granted.

II. ANALYSIS

MCR 6.508(D)(3) allows a trial court to grant relief from judgment when a defendant demonstrates good cause and actual prejudice, including a defect in guilty plea proceedings that “renders the plea an involuntary one to a degree that it would be manifestly unjust to allow the conviction to stand.” MCR 6.508(D)(3)(b)(ii). If a defendant is misinformed about the benefits of his plea, the plea is not understandingly and voluntarily made. *People v Graves*, 207 Mich App 217, 219-220; 523 NW2d 876 (1994). Our review of the record in this case indicates that there is a material factual issue as to whether defendant’s plea was knowing and voluntary. The record indicates that when defendant entered his guilty plea, the trial court, the parties, and the probation department all mistakenly assumed that defendant was eligible for HYTA status. We conclude that defendant is entitled to a hearing to determine whether the initial, erroneous assumption regarding his eligibility for the HYTA was a defect that requires relief from the trial court’s nunc pro tunc judgment.

The prosecutor argues that HYTA status was neither an inducement nor a condition of defendant’s plea, and that as such the court’s nunc pro tunc judgment was proper. This argument vastly understates the significance of HYTA status. In *People v Dipiazza*, 286 Mich App 137, 141-142; 778 NW2d 264 (2009), this Court summarized the import of assignment to youthful trainee status as follows:

An assignment to youthful trainee status does not constitute a conviction of a crime unless the court revokes the defendant’s status as a youthful trainee. MCL 762.12. If the defendant’s status is not revoked and the defendant successfully completes his or her status as a youthful trainee, the court “shall discharge the individual and dismiss the proceedings.” MCL 762.14(1). A defendant assigned to the status of youthful trainee “shall not suffer a civil disability or loss of right or privilege following his or her release from that status because of his or her assignment as a youthful trainee.” MCL 762.14(2). “Unless the court enters a judgment of conviction against the individual for the criminal offense . . . , all proceedings regarding the disposition of the criminal charge and the individual’s assignment as youthful trainee shall be closed to public inspection” MCL 762.14(4).

Regardless of defendant’s immigration status, he is entitled to a hearing with regard to the trial court’s misconception of his eligibility for HYTA status. Given this conclusion, we need not determine at this time whether *Padilla* applies to defendant’s case.

The trial court's order for an evidentiary hearing is affirmed, and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro

/s/ Peter D. O'Connell

/s/ Donald S. Owens