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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,
Plaintiff and Respondent,
v.
RICHARD HENRY,
Defendant and Appellant.

A107275

(San Mateo County
Super. Ct. No. SC025494)

In November of 1990, appellant Richard Henry pleaded no contest to cultivating marijuana and a charge of possessing marijuana for sale was dismissed. On January 24, 1991, imposition of sentence was suspended and appellant was granted probation. On this same date, the trial court issued a judicial recommendation against deportation (JRAD).¹

On May 4, 2004, appellant filed a petition for writ of error coram nobis. It was alleged that at the time he entered his plea, his attorney advised him that he (appellant) “could not be deported or suffer adverse immigration consequences” as a result of his conviction if a JRAD issued. At “the end of 2003,” appellant was contemplating filing to become a United States citizen and consulted with an immigration attorney. He was informed that the JRAD was ineffective to prevent “immigration consequences” other than possession of a small amount of marijuana and that “he was permanently ineligible for citizenship and faced apprehension and

¹ Appellant was, and is, a British citizen.

removal with no ability to return.” Appellant claimed that his trial attorney was ineffective in misadvising him of the immigration consequences of his plea and that he would not have entered the plea had he been properly advised by his attorney.

In an “Order of Denial” filed May 25, 2004, apparently without a hearing and without a response from the prosecution, the trial court denied the petition stating in part: “Petitioner’s allegation being that he received ineffective assistance of counsel, his request for relief by writ of error coram nobis is denied. Coram nobis will not issue to vacate a plea where the claim is that the defendant did not receive effective assistance from counsel.”

In its respondent’s brief, the Attorney General concedes error, stating “we agree [with appellant] that the court should not have summarily dismissed the petition” on the basis that coram nobis was unavailable for an ineffective assistance of counsel claim. In support of the concession, the Attorney General cites *In re Azurin* (2001) 87 Cal.App.4th 20 for the proposition that coram nobis is available for an ineffective assistance of counsel claim when, as here, the traditional remedy of habeas corpus is unavailable because the petitioner is not in custody. We accept the concession.²

The order denying the petition for error coram nobis is reversed and the cause is remanded to the trial court to consider the petition on the merits or in the light of any other procedural defenses the People may assert.

Reardon, J.

We concur:

Kay, P.J.

Rivera, J.

² The Attorney General limits the concession and states that it makes “no concession here as to the merits of the petition.”