



sentenced on the two counts of burglary to three years' imprisonment for each offense, with the sentences to run concurrently. At some point thereafter, defendant was notified that he was eligible for deportation based on his convictions for burglary (see 8 U.S.C.A. § 1101(a)(43)(G)). In January of 2012, defendant sought to withdraw his guilty plea and vacate the judgment. The court denied his motion as being untimely. Defendant then sought postconviction relief, which was also denied. Defendant now appeals to this court claiming the trial court improperly denied his petition for postconviction relief on the issue of ineffective assistance of counsel.

¶ 4 Defendant argues on appeal that his rights were substantially violated in that he was denied effective assistance of counsel. Because he was not admonished about the consequences a plea of guilty would have on his status as an alien in the United States, defendant believes, following the reasoning in *Padilla v. Kentucky*, 559 U.S. 356 (2010), his counsel was deficient. Defendant claims had he been advised of the consequences of his plea, he would not have pled guilty.

¶ 5 We begin by noting that any possible immigration consequences of a guilty plea are collateral. See *People v. Delvillar*, 235 Ill. 2d 507, 521, 922 N.E.2d 330, 338 (2009). Collateral consequences are ones that result from an action that may or may not be taken by an agency that the trial court does not control. Generally, due process does not require that a defendant be informed of the collateral consequences of a guilty plea. *People v. Williams*, 188 Ill. 2d 365, 371, 721 N.E.2d 539, 543 (1999).

¶ 6 Defendant argues, relying on the United States Supreme Court's holding in *Padilla*, that the law is clear regarding the immigration consequences attached to the crimes he was charged with committing. Therefore his attorney, in order to be considered effective, should have advised him that he was facing deportation should he plead guilty. Defendant's reliance on *Padilla* is misplaced, however. According to the Supreme Court's more recent holding

in *Chaidez v. United States*, 133 S. Ct. 1103 (2013), the ruling in *Padilla* is not retroactive and, therefore, cannot benefit those defendants whose convictions were final before March 31, 2010, the date of the *Padilla* decision. *Chaidez*, 133 S. Ct. at 1113. Defendant's convictions for burglary were entered in 2008. While the sentence imposed on those convictions changed with the revocation of his probation, his convictions did not. We also note that defendant is subject to deportation for the crime he committed in 2009, also before the *Padilla* decision, which triggered the revocation of his probation for the burglary convictions (see 8 U.S.C.A. § 1227(a)(2)(B)(i)). Moreover, as recognized in *People v. Gutierrez*, 2011 IL App (1st) 093499, 954 N.E.2d 365, even if defendant could satisfy the first prong of the test for ineffective assistance of counsel for counsel's failure to advise him of possible deportation consequences of entering a plea of guilty, his claim would still fail under the second prong. Defendant did not show, had he been properly admonished, that the outcome at a trial would have been any different, given that the evidence of his guilt was overwhelming. See also *People v. Delvillar*, 235 Ill. 2d 507, 522, 922 N.E.2d 330, 339 (2009) (court's failure to admonish defendant of potential immigration consequences did not rise to the level of a constitutional violation).

¶7 More importantly, there is nothing in the record that establishes defendant's claim that he was given incorrect advice by counsel at the time he pled guilty. There is nothing in the record establishing that defendant told the court or counsel what his legal status was. There is also nothing in the record establishing that counsel knew that defendant was a legal permanent resident at the time he pled guilty to two counts of burglary. Accordingly, there is nothing in the record establishing that counsel had any duty to advise defendant of possible deportation consequences. With no support in the record for any of his allegations, defendant was required to support them with sworn affidavits. See *People v. Niezgoda*, 337 Ill. App. 3d 593, 597, 786 N.E.2d 256, 259-60 (2003). Defendant's postconviction petition, however,

is not supported by the record or any valid affidavits. In fact, defendant failed to comply with section 122-1(b) of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(b) (West 2010)) which requires that his petition be verified by affidavit. No notarized affidavit of defendant accompanied the petition. The petition was signed by counsel who prepared it, but it was not verified by defendant. Merely being in custody does not make it impossible for a defendant to execute such an affidavit. Failure to comply with the Act is fatal and further justifies a petition's summary dismissal. *People v. Delton*, 227 Ill. 2d 247, 255, 882 N.E.2d 516, 520 (2008); *People v. Harris*, 224 Ill. 2d 115, 126, 862 N.E.2d 960, 967 (2007). Given that defendant's unverified postconviction petition is not supported by the record or any valid affidavits, the trial court properly dismissed his petition without an evidentiary hearing.

¶ 8 For all of the foregoing reasons, we affirm the judgment of the circuit court of Johnson County.

¶ 9 Affirmed.