

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN NELSON IRWIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43235

FILED

DEC 02 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant's motion to modify his sentence. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

Appellant was originally convicted, pursuant to a guilty plea, of one count of sexual assault of a minor under the age of 16 years. The district court sentenced appellant to a prison term of nine years. Although mandated by statute, the district court failed to impose a sentence of lifetime supervision, as required by NRS 176.0931.<sup>1</sup> The judgment of conviction was entered on February 22, 1996, and an amended judgment of conviction was entered on October 20, 1999, adding the sentence of lifetime supervision.

On January 5, 2004, appellant filed the instant motion seeking to remove the term of lifetime supervision. Following an evidentiary hearing, the district court found that appellant had not been advised of the requirement of lifetime supervision at the time he pleaded guilty. The district court therefore concluded that appellant should be

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<sup>1</sup>At the time of appellant's conviction, the statute in question was NRS 176.113. It was renumbered as NRS 176.0931 in 1997.

allowed to withdraw his plea.<sup>2</sup> The district court rejected appellant's argument that instead of withdrawing his guilty plea, the lifetime supervision provision should be stricken.

Appellant contends that the imposition of lifetime supervision "is clearly inappropriate and manifestly unjust." Appellant's remedy, however, is to withdraw his guilty plea and go to trial on the original charges. Appellant cites to no authority for the proposition that he should be allowed to selectively invalidate portions of his sentence because his plea was invalid. We therefore conclude that the district court did not err by denying appellant's motion to modify his sentence.

Appellant also argues that the 1997 amendments to the statute cannot be applied to him because to do so would violate the Ex Post Facto Clauses of the United States and Nevada Constitutions.<sup>3</sup> The amendments of which appellant complains, however, relate to the reporting requirements for individuals who have been released from lifetime supervision.<sup>4</sup> We conclude that because appellant is still subject to lifetime supervision, these provisions do not apply to him, and the issue is therefore not ripe for our review.

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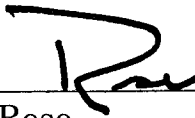
<sup>2</sup>See Palmer v. State, 118 Nev. 823, 831, 59 P.3d 1192, 1197 (2002) (holding that where an individual pleads guilty without being informed of the direct consequence of lifetime supervision, he must be allowed to withdraw his guilty plea).

<sup>3</sup>U.S. Const. art. I, § 10, cl. 1; Nev. Const. art. 1, § 15.

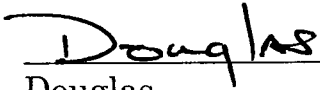
<sup>4</sup>NRS 176.0931(4).

Having considered appellant's contentions and concluded that they are either without merit or not ripe for review, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. John S. McGroarty, District Judge  
William J. Taylor  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk