

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM KELLY JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43952

FILED

NOV 09 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant William Kelly Jones' post-conviction petition for a writ of habeas corpus. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge.

On March 10, 2003, the district court convicted Jones, pursuant to a guilty plea, of five counts of possession of visual presentation depicting sexual conduct of a person under 16 years of age. The district court sentenced Jones to five concurrent terms of 12 to 30 months in the Nevada State Prison. No direct appeal was taken.

On February 19, 2004, Jones filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Jones or to conduct an evidentiary hearing. On August 20, 2004, the district court denied Jones' petition. This appeal followed.

In his petition, Jones challenged the voluntariness of his plea, claiming that he was unaware of the consequences of lifetime supervision at the time he entered his plea. Specifically, Jones argued that his guilty plea was involuntary because the district court improperly canvassed him by failing to explain the consequences of lifetime supervision. Jones also

complained that his guilty plea was involuntary because the plea and the plea agreement violated State and federal contract law by failing to explain the conditions of lifetime supervision.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.¹ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.² Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³

Under Nevada law, the particular conditions of lifetime supervision are tailored to each individual case and, notably, are not determined until after a hearing is conducted just prior to the expiration of the sex offender's completion of a term of parole or probation, or release from custody.⁴ In light of the fact that the conditions of lifetime supervision applicable to a specific individual are not generally determined until long after the plea canvass, we disagree that an advisement about those conditions is a requisite of a valid guilty plea. Rather, as we discussed in Palmer v. State,⁵ all that is constitutionally required is that the totality of the circumstances demonstrate that Jones

¹Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

²State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

³Hubbard, 110 Nev. at 675, 877 P.2d at 521.

⁴See NRS 213.1243(1); NAC 213.290.

⁵118 Nev. 823, 59 P.3d 1192 (2002).

was aware that he would be subject to the consequence of lifetime supervision before entry of the plea.⁶

Here, the totality of the circumstances reveals that Jones was made aware of the consequences of his plea, including the imposition of lifetime supervision. During the plea canvass, the district court advised Jones that lifetime supervision would begin after any period of imprisonment or probation or any period after release on parole. The district court further advised Jones that lifetime supervision "doesn't go away after a certain time period" and that such supervision would "follow [Jones] around for the rest of [his] life." Jones responded that he understood.

Based on our review of the entire record, we conclude that Jones was properly advised of the imposition of lifetime supervision and that his plea was not involuntary in this regard.⁷

Jones also argued that his plea was involuntary because sentencing him to lifetime supervision was unconstitutional in that such supervision violated his right to travel. Jones failed to provide any factual

⁶Id. at 831, 59 P.3d at 1197. We note that in Palmer this court recognized that under Nevada's statutory scheme, a defendant is provided with written notice and an explanation of the specific conditions of lifetime supervision that apply to him "[b]efore the expiration of a term of imprisonment, parole or probation." Id. at 827, 59 P.3d at 1194-95 (emphasis added).

⁷Jones also argued that he is entitled to an evidentiary hearing to address his claim that his plea was involuntary because he was unaware of the consequences of lifetime supervision. However, as we concluded that Jones was properly advised in this regard, an evidentiary hearing is unwarranted.

support for his allegation.⁸ The record does not indicate and there is no statutory authority to support Jones' claim that he would be prohibited from leaving Nevada once lifetime supervision commenced.⁹ Accordingly, we conclude that Jones' claim is without merit.

Finally, Jones argued that his plea was involuntary because the collection of his DNA, pursuant to NRS 176.0913, violated his Fourth Amendment right against unreasonable search and seizure. However, we have previously held that NRS 176.0913 does not violate the Fourth Amendment.¹⁰ Accordingly, we conclude Jones' guilty plea was not involuntary in this regard.

Jones also asserted two claims of ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.¹¹ Further, a petitioner must demonstrate "a reasonable probability that, but for counsel's errors, [petitioner] would not have pleaded guilty and would have insisted on going to trial."¹² The court may dispose of a claim if the petitioner makes an insufficient showing on either prong.¹³

⁸See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁹See NRS 213.1243.

¹⁰See Gaines v. State, 116 Nev. 359, 368, 998 P.2d 166, 172 (2000).

¹¹See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

¹²Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).


¹³See Strickland, 466 U.S. at 697.

First, Jones contended that his counsel was ineffective because he failed to advise Jones of the direct consequences of lifetime supervision. The record clearly reveals that Jones was properly advised concerning the imposition of lifetime supervision. Accordingly, we conclude that Jones failed to demonstrate any prejudice suffered even assuming counsel failed to advise Jones concerning lifetime supervision.

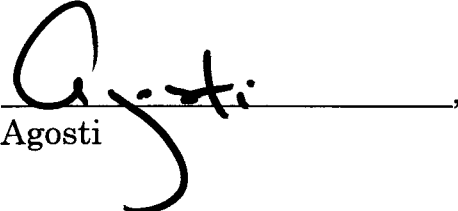
Second, Jones complained that his counsel was ineffective for not pursuing a direct appeal. However, Jones failed to support his allegation with any specific facts.¹⁴ Accordingly, we conclude that Jones did not demonstrate that his counsel was ineffective in this regard.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Jones is not entitled to relief and that briefing and oral argument are unwarranted.¹⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Becker

 _____, J.
Agosti

¹⁴See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

¹⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michael P. Gibbons, District Judge
William Kelly Jones
Attorney General Brian Sandoval/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk