

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD WAYNE SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44941

**FILED**

JUL 21 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On November 13, 2003, the district court convicted appellant, pursuant to a guilty plea, of three counts of sexual assault on a minor under the age of sixteen years. The district court sentenced appellant to serve terms totaling fifteen to sixty years in the Nevada State Prison and imposed a special sentence of lifetime supervision. No direct appeal was taken.

On November 5, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant also filed a motion for the appointment of counsel. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 22, 2005, the district court entered an order summarily denying appellant's petition, and on March 3, 2005, the district court entered a written order containing specific findings of fact

and conclusions of law. The district court further denied the motion for the appointment of counsel.<sup>1</sup> This appeal followed.<sup>2</sup>

In his petition, appellant contended that his guilty plea was involuntarily and unknowingly entered because he was not informed by the his trial counsel or the district court of the precise conditions of lifetime supervision.

In Palmer v. State,<sup>3</sup> this court concluded that lifetime supervision is a direct consequence of a guilty plea. Consequently, the totality of the circumstances must demonstrate that a defendant was aware of the consequence of lifetime supervision prior to the entry of a guilty plea; otherwise, the petitioner must be allowed to withdraw the

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<sup>1</sup>We conclude that the district court did not abuse its discretion in denying appellant's motion for the appointment of counsel. On February 22, 2005, appellant submitted a reply and supplemental habeas corpus petition. The district court did not consider these documents in denying appellant's petition, and we conclude that the district court did not err as these documents were submitted after the district court's oral decision to deny the petition and on the same date as the first order denying the petition. Further, appellant was not given permission to file additional pleadings in this matter. See NRS 34.750(5).

<sup>2</sup>The record on appeal contains an affidavit from appellant's trial counsel. This court has held that a petitioner's statutory rights are violated when the district court improperly expands the record with an affidavit presented by the State refuting the claims in the petition in lieu of conducting an evidentiary hearing when an evidentiary hearing is required. Mann v. State, 118 Nev. 351, 46 P.3d 1228 (2002). Although we conclude that the district court erred to the extent that it considered the affidavit submitted by appellant's former trial counsel, appellant was not prejudiced by the error because appellant was not entitled to an evidentiary hearing on the claims that he raised in the petition. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>3</sup>118 Nev. 823, 59 P.3d 1192 (2002).

plea.<sup>4</sup> 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.<sup>5</sup> Thus, all that is constitutionally required is that the totality of the circumstances demonstrate that a petitioner was aware that he would be subject to the consequence of lifetime supervision before entry of the plea and not the precise conditions of lifetime supervision.<sup>6</sup> Here, appellant was informed in the written guilty plea agreement that he was subject to the special sentence of lifetime supervision. Appellant acknowledged reading, signing and understanding the plea agreement during the plea canvass. Thus, appellant failed to demonstrate that his counsel was ineffective for failing to advise him of the precise conditions or that his plea was invalid because he was not otherwise informed by the district court of the precise conditions.<sup>7</sup>

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<sup>4</sup>Id. at 831, 59 P.3d at 1197.


<sup>5</sup>See NRS 213.1243(1); NAC 213.290.


<sup>6</sup>Palmer, 118 Nev. 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).

<sup>7</sup>See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); see also State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Stewart L. Bell, District Judge  
Harold Wayne Smith  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).