

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LYNN DRIVER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47124

**FILED**

JUL 05 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On March 22, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a minor under the age of sixteen. The district court sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. The district court further imposed the special sentence of lifetime supervision. No direct appeal was taken.

On February 10, 2006, appellant 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 appellant or to conduct an evidentiary hearing. On April 25, 2006, the district court denied appellant's petition. This appeal followed.

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

In Palmer v. State,<sup>1</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 petitioner 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 plea.<sup>2</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>3</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>4</sup> Here, appellant was informed in the written guilty plea agreement that he was subject to the special sentence of lifetime supervision. In exchange for his guilty plea, the State agreed to a stipulated sentence of five to twenty years and did not prosecute appellant for an additional fifteen counts of sexual assault on a minor under the age of fourteen and eight counts of lewdness with a child under the age of fourteen. In light of the many potential life sentences he

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<sup>1</sup>118 Nev. 823, 59 P.3d 1192 (2002).

<sup>2</sup>Id. at 831, 59 P.3d at 1197.

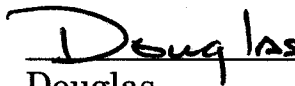
<sup>3</sup>See NRS 213.1243(1); NAC 213.290.


<sup>4</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).

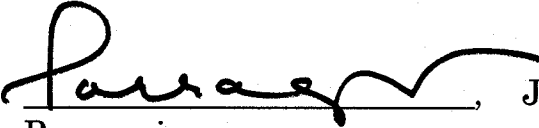
faced with the original charges, appellant failed to demonstrate that his counsel was ineffective for failing to advise him of the precise conditions or that his plea was invalid because he was not otherwise informed by the district court of the precise conditions.<sup>5</sup> Finally, appellant's challenge to the constitutionality of lifetime supervision fell outside the scope of a petition challenging a judgment of conviction based upon a guilty plea.<sup>6</sup>

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>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

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<sup>5</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).

<sup>6</sup>See NRS 34.810(1)(a).

<sup>7</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge  
John Lynn Driver  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk