IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD DWAYNE INLOW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47322

FILED

NOV 28 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from the order of the district court denying appellant Donald Dwayne Inlow's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Churchill County; David A. Huff, Judge.

The district court convicted Inlow, pursuant to a guilty plea, of one count of attempted lewdness on a child under age 14. The district court sentenced Inlow to serve a prison term of 24 to 96 months. Inlow did not file a direct appeal.

Inlow filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Inlow, and counsel supplemented Inlow's petition. The State filed a motion to dismiss Inlow's petition, and the district court granted the State's motion without the benefit of an evidentiary hearing. This appeal follows.

First, Inlow claimed that his guilty plea was invalid because he was not adequately informed of the consequences of lifetime supervision before he entered his plea.

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In Palmer v. State,[1] we determined 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 plea.[2] 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.[3] 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.[4]

Here, Inlow acknowledged in the written plea agreement that he voluntarily entered the plea, understood the consequences of the plea, and understood that he was "subject to lifetime supervision as required by NRS 176.0931." Accordingly, Inlow has not demonstrated that the district court erred in denying this claim.

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[1]118 Nev. 823, 59 P.3d 1192 (2002).

[2]Id. at 831, 59 P.3d at 1197.

[3]See NRS 213.1243(1); NAC 213.290.

[4]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).

Second, Inlow claimed that counsel was ineffective for failing to file an appeal, despite his request to do so. The district court found that (1) Inlow waived his right to appeal the conviction in the written plea agreement and the waiver was valid and enforceable,[5] (2) Inlow could not claim that counsel was ineffective for failing to perfect an appeal when he had validly waived that right, and (3) Inlow's claim was procedurally barred because his "conviction was upon a plea of guilty and the petition [was] not based upon an allegation that the plea was involuntary or unknowingly entered or that the plea was entered without effective assistance of counsel."[6] We conclude that the district court erred as a matter of law.

The written plea agreement informed Inlow that as a result of his plea, he waived the right to appeal "unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035." This language is taken from NRS 177.015(4). In Davis v. State,[7] we held that this language does not constitute an unequivocal waiver of the right to appeal. Rather, "[q]uoting the statutory language in a plea agreement merely informs the defendant of the limitations of a potential appeal; it alerts the defendant who pleads

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[5]The district court cites to Cruzado v. State, 110 Nev. 745, 879 P.2d 1195 (1994).

[6]The district court quotes NRS 34.810(1)(a).

[7]115 Nev. 17, 19, 974 P.2d 658, 659 (1999).

guilty to the permissible scope of his appeal as a matter of law."[8] Accordingly, Inlow did not waive his right to appeal entirely.

A claim that counsel failed to perfect an appeal is a claim of ineffective assistance of counsel. "[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction."[9] When an attorney does not fulfill this duty, he provides ineffective assistance that prejudices his client by depriving him of the right to an appeal.[10] Accordingly, Inlow's claim was properly before the district court and it was not procedurally barred. [11]

Inlow's claim is not belied by the record and, if it is true, he will be entitled to relief. Accordingly, we remand this case to the district court for an evidentiary hearing to determine whether Inlow requested an appeal from counsel. If the district court determines that Inlow was denied the right to a direct appeal, it shall appoint counsel to represent Inlow and shall permit Inlow to file a petition for a writ of habeas corpus raising issues appropriate for direct appeal.[12]

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[8]Id.

[9]Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994).

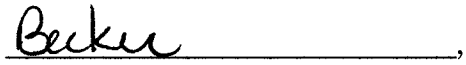
[10]Id. at 354-57, 871 P.2d 947-50; see also Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003) (Prejudice is presumed if a petitioner demonstrates that counsel ignored his request for an appeal).

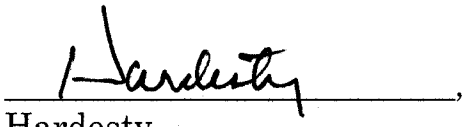
[11]NRS 34.810(1)(a); see Means v. State, 1001, 1014-15, 103 P.3d 25, 33-34 (2004); Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

[12]Lozada, 110 Nev. at 359, 871 P.2d at 950.

Having reviewed the record on appeal, and for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[13]

 , J.
Becker

 , J.
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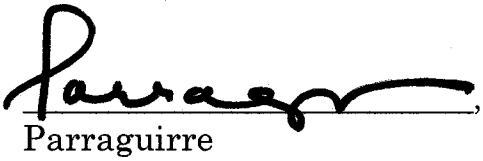 , J.
Parraguirre

cc: Hon. David A. Huff, District Judge
Martin G. Crowley
Attorney General George Chanos/Carson City
Churchill County District Attorney
Churchill County Clerk

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[13]This order constitutes our final disposition of this appeal. Any subsequent appeal from an order of the district court denying Inlow's appeal deprivation claim and the claims not reached in this order shall be docketed as a new matter.