

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCISO PALACIOS A/K/A NARCISCO  
PALACIOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48875

**FILED**

JUN 18 2008

IRACIE W. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

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; Valerie Adair, Judge.

On February 10, 2006, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a minor under the age of 14. The district court sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole after 10 years. The district court also imposed a special sentence of lifetime supervision. No direct appeal was taken.

On November 13, 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 February 1, 2007, the district court denied appellant's petition. This appeal followed.<sup>1</sup>

In his petition, appellant contended that he received 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 was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>2</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>3</sup>

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<sup>1</sup>This court requested certain transcripts to be prepared and filed in this court. While this court has not received one of the requested transcripts, further review of the record on appeal reveals that the record is sufficient to resolve appellant's claims.

<sup>2</sup>Hill v. Lockhart, 474 U.S. 52, 57-60 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107-08 (1996).

<sup>3</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that his counsel was ineffective for failing to advise appellant that the charges to which appellant pleaded guilty were barred by the statute of limitations. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Our review of the record indicates that the victims were fourteen and seventeen years old at the time the complaint was filed against appellant. Therefore, the statute of limitations had not run when the complaint was filed.<sup>4</sup> Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for failing to investigate. Specifically, he claimed that his counsel did not interview the victim or scrutinize the records of the Child Protective Services ("CPS"), including a record that indicated that appellant passed two polygraph examinations. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant did not indicate what specific information his counsel would have discovered had his counsel interviewed the victim or scrutinized CPS

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<sup>4</sup>See NRS 171.095(1)(b)(1) ("An indictment must be found, . . . or complaint filed, for any offense constituting sexual abuse of a child, as defined in NRS 432B.100, before the victim of sexual abuse is: (1) Twenty-one years old if he discovers or reasonable should have discovered that he was a victim of the sexual abuse by the date on which he reaches that age.").

records.<sup>5</sup> Further, appellant did not provide sufficient information to determine if the asserted polygraph results were admissible.<sup>6</sup> Moreover, appellant benefited by his plea agreement in that by pleading guilty, he avoided five counts of sexual assault of a minor under fourteen years of age, three counts of sexual assault of a minor under sixteen years of age, and three counts of open and gross lewdness. Appellant faced significantly more time if he went to trial and was convicted of all charges. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for failing to advise appellant that he faced lifetime supervision. Further, appellant claimed that his counsel failed to advise him that the sentence of lifetime supervision was unconstitutional. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. 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

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<sup>5</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

<sup>6</sup>See Santillanes v. State, 102 Nev. 48, 50, 714 P.2d 184, 186 (1986) (providing that polygraph results are not admissible unless both parties have signed a stipulation to that effect).

custody.<sup>7</sup> 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, an advisement about those conditions is not a requisite of a valid guilty plea. Rather, all that is constitutionally required is that the totality of the circumstances demonstrate that appellant was aware that he would be subject to the consequence of lifetime supervision before entry of the plea.<sup>8</sup>

Appellant's claim that he was unaware of the consequence of lifetime supervision is belied by the record.<sup>9</sup> The plea agreement, which appellant signed, provided that appellant's sentence would include lifetime supervision "commencing after any period of probation or any term of imprisonment and period of release upon parole" and that the "special sentence of lifetime supervision must begin upon release from incarceration." Moreover, because the conditions of lifetime supervision are not determined until after a hearing is conducted just prior to the sex offender's completion of a term of parole or probation, or release from

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<sup>7</sup>Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002).

<sup>8</sup>Id. at 831, 59 P.3d at 1197.

<sup>9</sup>See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

custody,<sup>10</sup> appellant's counsel could not have challenged any particular condition as unconstitutional. Therefore, the district court did not err in denying this claim.<sup>11</sup>

Fourth, appellant claimed that his counsel failed to file an appeal despite his request to do so. "[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."<sup>12</sup> "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal."<sup>13</sup> A petitioner is entitled to an evidentiary hearing on claims supported by specific facts, which if true, would entitle the petitioner to relief.<sup>14</sup>

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<sup>10</sup>NRS 213.1243(1); NAC 213.290.

<sup>11</sup>To the extent that appellant claimed that his guilty plea was invalid due to ineffective assistance of counsel, appellant failed to carry his burden of demonstrating that his guilty plea was entered involuntarily or unknowingly for the reasons discussed above. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).

<sup>12</sup>Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994); see Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999) (quoting Lozada, 110 Nev. at 354, 871 P.2d at 947)).

<sup>13</sup>See Davis, 115 Nev. at 20, 974 P.2d at 660.

<sup>14</sup>See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

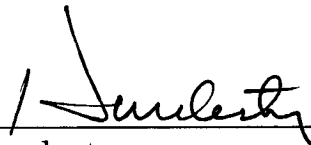
It appears from this court's review of the record on appeal that the district court erred in denying this claim without first conducting an evidentiary hearing. Appellant's appeal deprivation claim was supported by specific facts and was not belied by the record on appeal, and if true, would have entitled him to relief. Therefore, we reverse the district court's order to the extent that it denied appellant's appeal deprivation claim relating to the probation revocation hearing, and we remand this matter to the district court to conduct an evidentiary hearing on appellant's appeal deprivation claim. The district court may exercise its discretion to appoint post-conviction counsel to represent appellant at the evidentiary hearing. If the district court determines that appellant was not deprived of a direct appeal without his consent, the district court shall enter a final written order to that effect. We affirm the remainder of the district court's order denying the petition for the reasons set forth above.

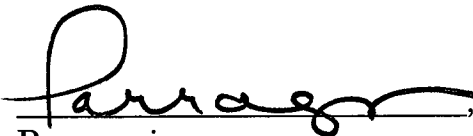
Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.<sup>15</sup> Accordingly, we

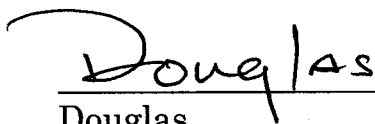
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<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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.<sup>16</sup>

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

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

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

cc: Hon. Valerie Adair, District Judge  
Narciso Palacios  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk  
Renee Silvaggio, Court Reporter  
JoAnn Orduna, Court Reporter

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<sup>16</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.