

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY RAY SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48959

FILED

JUL 26 2007

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Jeffrey Ray Smith's post-conviction motion to withdraw his no contest plea. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

On July 28, 2006, the district court convicted Smith, pursuant to a no contest plea, of one count of abuse, neglect, or endangerment of a child, a gross misdemeanor. The district court sentenced Smith to serve a term of 12 months in the county jail, ordered the sentence to be suspended, and placed Smith on probation for a period of 18 months. Smith did not file a direct appeal.

On August 8, 2006, Smith filed a motion to withdraw his no contest plea. The State opposed the motion. Without conducting an evidentiary hearing, the district court denied the motion. Smith filed this timely appeal.

Smith contends that the district court erred by concluding that its failure to advise Smith that, as a consequence of his plea, he would lose his right to possess firearms did not constitute a manifest injustice under NRS 176.165. Smith specifically claims that the district court erred in

determining that the loss of this constitutional right was a collateral consequence of the conviction.

We have “previously held that, prior to pleading guilty, a defendant must be aware of the direct consequences arising from his criminal conviction,” and that “[a] defendant’s awareness of a collateral consequence is not a prerequisite to a valid plea and, consequently, may not be the basis for vitiating it.”¹ “The distinction between a direct and collateral consequence of a plea turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant’s punishment.”² A consequence is collateral if the defendant has control over whether it occurs, it is not under the control of the sentencing judge, or it is a procedure under the control of a different sovereign.³

Here, the consequence of losing the right to possess firearms under 18 U.S.C. § 922(g)(9) is a collateral consequence of a state no contest plea because it does not affect the range of the defendant’s punishment, it is controlled by the federal government, and it is not controlled by the sentencing judge. Accordingly, the district court was not required to inform Smith that he would lose his right to possess firearms as a consequence of pleading no contest to the gross misdemeanor domestic

¹Palmer v. State, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002) (internal citations omitted).

²Torrey v. Estelle, 842 F.2d 234, 236 (9th Cir. 1988) (internal quotations omitted).


³State v. Liefert, 43 P.3d 329, 335 (Mont. 2002) (citing United States v. Long, 852 F.2d 975, 979 (7th Cir. 1988)).

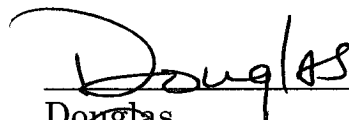
violence charge. The district court properly determined that there was no manifest injustice and, therefore, it did not err in denying Smith's motion to withdraw his plea.

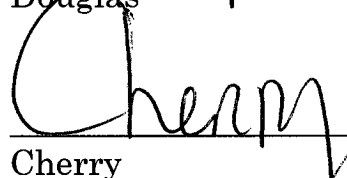
Smith also contends that the district court erred by failing to conduct an evidentiary hearing on the merits of his motion. Smith was entitled to an evidentiary hearing if he raised claims that, if true, would have entitled him to relief and if his claims were not belied by the record.⁴ Here, Smith claimed that he was not informed that as a consequence of his plea he would lose the right to possess firearms. However, as discussed above, the district court's failure to inform Smith of this consequence did not entitle him to relief. Therefore, the district court did not err by failing to conduct an evidentiary hearing.

Having considered Smith's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

cc: Hon. John M. Iroz, District Judge
State Public Defender/Carson City
State Public Defender/Winnemucca
Attorney General Catherine Cortez Masto/Carson City
Humboldt County District Attorney
Pershing County Clerk