

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MICHAEL DOYLE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50027

**FILED**

MAR 06 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant David Doyle's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On May 31, 2006, the district court convicted Doyle, pursuant to a guilty plea, of two counts of sexual assault of a minor under the age of sixteen. The district court sentenced Doyle to serve a two concurrent prison terms of 60 to 240 months.<sup>1</sup> Doyle did not file a direct appeal.

On November 15, 2006, Doyle filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel, and after conducting an evidentiary hearing, the district court denied Doyle's petition. This appeal follows.

Doyle claims that his defense counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must

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<sup>1</sup>1995 Nev. Stat., ch. 443, § 58, at 1187.

demonstrate that, his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulted in 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> A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.<sup>4</sup> Further, the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>5</sup>

First, Doyle claims that his defense counsel was ineffective for failing to adequately investigate. Specifically, Doyle claims that if his counsel had investigated, he would have discovered that the victim had recanted her accusations and that Doyle was innocent. Attached to the petition was an affidavit, purportedly signed by the victim and notarized, stating that the victim had fabricated her statement to the police because she was angry with Doyle.

After conducting an evidentiary hearing, the district court found that Doyle had not made a credible showing of actual innocence and his claim was without merit. The district court's findings are supported by

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

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

<sup>4</sup>Means v. State, 120 Nev. 1001, 1013, 103 P.3d 25, 33 (2004).

<sup>5</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

substantial evidence. In particular, the victim testified during the evidentiary hearing that she never recanted her statement and that she did not sign the affidavit. Defense counsel explained to the district court that her investigator discovered that the notary stamp had been stolen prior to the preparation of the affidavit. Accordingly, counsel was not deficient for failing to investigate Doyle's claim of innocence, and the district court did not err in denying this claim.

Second, Doyle contends that his defense counsel was ineffective for failing to investigate a statute of limitations defense. Specifically, Doyle claims that he was charged with conduct that occurred when the victim was fourteen years old and that the allegations did not arise until the victim was nineteen years old, five years after the conduct was alleged to have occurred. Doyle contends that if counsel had properly investigated, he would have discovered that the statute of limitations had run.

Pursuant to NRS 171.085, the statute of limitations for sexual assault is four years after the commission of the offense. However, pursuant to NRS 171.095(1)(b)(1), the four-year statute of limitations is tolled when the victim is a child. In this case, because the victim was under twenty-one years old when she reported the sexual abuse, the statute of limitations had not run. Accordingly, defense counsel's performance was not deficient, and the district court did not err in denying this claim.

Third, Doyle contends that his defense counsel was ineffective for failing to file a direct appeal after Doyle asked him to do so.<sup>6</sup> In

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<sup>6</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

support of this claim, Doyle attached affidavits to his petition from witnesses who purportedly heard Doyle request a direct appeal following sentencing. Additionally, Doyle attached a letter that he had purportedly mailed to counsel reminding him of his requested direct appeal.

After the evidentiary hearing, the district court denied this claim, finding that Doyle's allegations were not credible. The district court's findings are supported by substantial evidence. In particular, the district court found that the affidavits were not credible because, at the time of sentencing, Doyle was in custody. As the court stated, it was standard procedure not to allow bystanders close enough to in-custody defendants such that they would be able to overhear comments as alleged in the affidavits. Additionally, defense counsel testified that he did not recall Doyle requesting a direct appeal and that it was standard office procedure to note and calendar a direct appeal when one was requested. Defense counsel also testified that he had never seen the letter purportedly sent by Doyle, and it was not included in Doyle's file. Finally, defense counsel testified that Doyle did not have any non-frivolous issues to raise on direct appeal. Accordingly, defense counsel's performance was not deficient, and the district court did not err in denying this claim.

Finally, Doyle contends that his guilty plea is invalid. He specifically claims that the district court erred in finding that he was adequately informed of the consequences of lifetime supervision before he entered his plea.

In Palmer v. State,<sup>7</sup> we determined that lifetime supervision is a direct consequence of a guilty plea. Consequently, the totality of the

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<sup>7</sup>118 Nev. 823, 59 P.3d 1192 (2002).

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.<sup>8</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>9</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>10</sup>

Here, Doyle was aware that he would be subject to the consequence of lifetime supervision before he entered his plea. In the written plea agreement, Doyle acknowledged 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. We conclude that Doyle has not demonstrated that his guilty plea is invalid. Accordingly, the district court did not err in denying this claim.

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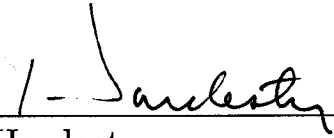
<sup>8</sup>Id. at 831, 59 P.3d at 1197.


<sup>9</sup>See NRS 213.1243(1); NAC 213.290.

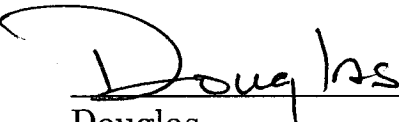
<sup>10</sup>Palmer, 118 Nev. at 831, 59 P.3d at 1197. We note that in Palmer this court recognized that under Nevada's statutory scheme, a defendant is provided with written notice and an explanation of the specific conditions of lifetime supervision that apply to him "[b]efore the expiration of a term of imprisonment, parole or probation." Id. at 827, 59 P.3d at 1194-95 (emphasis added).

Having reviewed Doyle's claims and determined that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. David B. Barker, District Judge  
Kristina M. Wildeveld  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk