IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES M. PROBSTFIELD,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35557

FILED

JAN 30 2001

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was convicted, pursuant to a guilty plea, of six counts of lewdness with a minor under the age of fourteen years. The district court initially sentenced appellant to prison for six consecutive terms of 10 years with lifetime supervision after release or parole pursuant to NRS 176.0931.

Appellant filed a proper person post-conviction petition for a writ of habeas corpus contending that his guilty plea was not knowing or voluntary because he did not know about or agree to the lifetime supervision portion of the sentence. Appellant's newly appointed counsel decided appellant's best chance for success was to instead file a motion to correct an illegal sentence because the offenses to which appellant pleaded guilty occurred prior to the application of NRS 176.0931.[1]

[1]NRS 176.113, the predecessor to NRS 176.0931, did not apply to offenses that occurred prior to October 1, 1995. See 1995 Nev. Stat., ch. 256, §§ 4, 14, at 414, 418. The charging document alleged appellant committed the offenses on unspecified dates during a period of time between June 1995 and January 1996.

At the habeas proceeding, the State conceded it did not know the exact dates when the offenses occurred and that it was possible that all of them occurred prior to October 1, 1995. The district court granted appellant's motion to correct an illegal sentence. The district court entered an amended judgment of conviction, striking the lifetime supervision provision and simply providing a period of supervision covering the terms of appellant's imprisonment, 60 years.

Appellant contends his plea was not entered knowingly and voluntarily and that the district court therefore erred by failing to permit him to withdraw his plea. A guilty plea is presumptively valid, and the defendant has the burden to prove that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). The district court must review the entire record and determine whether the plea was valid under the totality of circumstances. Id. This court will not overturn the lower court's decision absent a clear showing of an abuse of discretion. Id.

The entry of a plea must be a "'voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill v. Lockhart, 474 U.S. 52, 56 (1985) (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)). Failure to adequately inform a defendant of the consequences of a guilty plea may warrant withdrawal of the plea. See Meyer v. State, 95 Nev. 885, 888, 603 P.2d 1066, 1067 (1979) (failure to advise that probation was not available).

Appellant contends that the district court abused its discretion in denying his post-conviction petition for a writ of habeas corpus. In particular, appellant argues that

his plea was not entered knowingly and voluntarily because neither the district court nor counsel informed him of the lifetime supervision provision.

We conclude that appellant failed to prove that the plea was not entered knowingly or voluntarily. Because appellant was never actually subject to the lifetime supervision provision, the inclusion of the lifetime supervision provision was error. Further, it was an error made at sentencing, not at the time appellant pleaded guilty, and was ultimately corrected. Therefore, we conclude that the district court did not err by not permitting appellant to withdraw his guilty plea.

Appellant also argues he is entitled to relief on appeal because nearly 30 days passed between the district court orally granting the motion to correct the sentence and the filing of the amended judgment of conviction. Appellant fails to assert how he was prejudiced by this delay. Therefore, we conclude his argument is without merit.

Having considered appellant's contentions and concluded they are without merit, we affirm the order of the district court.

It is so ORDERED.[2]

_____, J.
Young

_____, J.
Rose

_____, J.
Becker

[2]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. David A. Huff, District Judge
Attorney General
Churchill County District Attorney
Lyon County Public Defender
Churchill County Clerk