

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH WEBSTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35921

FILED

FEB 03 2003

ORDER OF REVERSAL AND REMAND

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced appellant Joseph Webster to serve a prison term of 24 to 60 months.

Webster contends that the district court improperly denied his presentence motion to withdraw his guilty plea. Webster argued below that his guilty plea was not knowing and voluntary because the requirement of lifetime supervision was a direct consequence of the guilty plea, and that he was not adequately advised of the requirement prior to entering his plea.¹ The district court denied the motion, ruling that

¹Webster also contends that his plea was involuntary because the district court coerced him into pleading guilty by informing Webster, at the plea canvass, that if he agreed to the State's in-court modification to the plea agreement, the district court was "inclined to give [Webster] house arrest" pending sentencing. The in-court modification of the plea agreement consisted of a provision where the State could deviate from a sentencing cap and argue for the maximum sentence if Webster failed to appear at the sentencing hearing. We conclude that Webster's guilty plea was not coerced by the district court. The district court's statement about house arrest was an isolated comment about the plea offer, and did not convey to Webster any suggestion that the district court believed he should avoid a trial. Cf. Standley v. Warden, 115 Nev. 333, 990 P.2d 783

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lifetime supervision was a collateral, rather than a direct, consequence of the guilty plea. We conclude that the district court erred, and we remand this matter for an evidentiary hearing on Webster's motion.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason and if it is fair and just.² On a motion to withdraw a guilty plea, the defendant has the burden of showing that the guilty plea was not entered knowingly and intelligently.³ A guilty plea is not knowing and intelligent where the totality of the circumstances revealed by the record demonstrates that the defendant was not aware of the direct consequences of the guilty plea.⁴

In Palmer v. State, this court recently held that lifetime supervision is a direct consequence of a guilty plea, and that a defendant must be aware of the lifetime supervision requirement at the time he enters his guilty plea.⁵ Although the district court should advise a defendant about lifetime supervision at the plea canvass, its failure to do

... continued

(1999) (holding that a plea was coerced where the district court effectively convinced the defendant to plead guilty through extensive discourse). Further, assuming the district court's promise of house arrest pending sentencing became an implicit condition of the plea negotiation, the promise was fulfilled. Cf. Crawford v. State, 117 Nev. 718, 30 P.3d 1123 (2001) (holding that breach of promise made by district court rendered conditional guilty plea invalid).

²State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

³Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).


⁴Little v. Warden, 117 Nev. ___, ___, 34 P.3d 540, 543-44 (2001).


⁵118 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 81, December 19, 2002).


so does not warrant reversal where the record reveals the defendant was advised about lifetime supervision in the plea agreement, by counsel, or in some other manner.⁶

In the instant case, the record on appeal is silent with respect to whether Webster was aware of the consequence of lifetime supervision. Accordingly, we conclude that an evidentiary hearing is necessary to determine whether Webster was aware, at the time he pleaded guilty, that lifetime supervision would be imposed. If Webster was unaware of the direct consequence of lifetime supervision, the district court must allow him to withdraw his plea. Based on the foregoing analysis, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁷

 J.
Shearing

 J.
Leavitt

 J.
Becker

⁶Id.

⁷We note that the judgment of conviction made no reference to the imposition of lifetime supervision. A special sentence of lifetime supervision is mandatory for defendants who have committed a sexual offense after September 30, 1995, and must be imposed at sentencing and included in the judgment of conviction. See NRS 176.0931; NRS 176.105(1)(c); 1995 Nev. Stat., ch. 256, § 14, at 418.

cc: Hon. Jackie Glass, District Judge
Kirk T. Kennedy
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk