IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN IRWIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37229

FILED

FEB 0 5 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order denying appellant John Irwin's post-conviction petition for a writ of habeas corpus.

On February 22, 1996, Irwin was convicted, pursuant to a guilty plea, of one count of sexual assault of a minor under 16 years of age. The district court sentenced Irwin to serve a prison term of 9 years. Irwin did not file a direct appeal. Because the district court failed to impose a special sentence of lifetime supervision as required by law, on October 20, 1999, the district court amended the judgment of conviction to add a term of lifetime supervision.[1] Irwin did not file a direct appeal.

On September 12, 2000, Irwin filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Irwin or to conduct an evidentiary

[1]The imposition of lifetime supervision is mandatory for all defendants who have committed a sexual offense after September 30, 1995. See NRS 176.0931; 1995 Nev. Stat., ch. 256, § 14, at 418.

hearing. On November 29, 2000, the district court denied the petition. This appeal followed.[2]

In the petition, Irwin contended that his guilty plea was not knowing and voluntary because he did not know, at the time he entered his guilty plea, that the special sentence of lifetime supervision would be imposed. We conclude that the district court erred in rejecting Irwin's contention without conducting an evidentiary hearing.[3]

A petitioner is entitled to an evidentiary hearing on claims not belied by the record that, if true, would entitle him to relief.[4] Here, we conclude that Irwin's claim that he did not know lifetime supervision would be imposed before pleading guilty, if true, would entitle him to relief. 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.[5] In Palmer v.

---

[2]Although Irwin's petition was filed more than one year after entry of the original judgment of conviction, Irwin's petition was timely filed because it was filed within one year of the amended judgment of conviction and raised claims relating to the amendment.

[3]In its order denying the petition, the district court determined that Irwin waived his right to challenge the validity of his guilty plea by failing to object at the time of resentencing. We conclude the district court erred in reaching that conclusion. A petitioner may challenge the knowing and voluntary nature of his plea in a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1)(a).

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

[5]Little v. Warden, 117 Nev. ___, ___, 34 P.3d 540, 543 (2001).

State, this court recently held that lifetime supervision is a direct consequence of a guilty plea and, therefore, a defendant must be aware of the lifetime supervision requirement at the time he enters his guilty plea.[6] Although the district court should advise a defendant about lifetime supervision at the plea canvass, it's failure to do so does not warrant reversal where the record otherwise reveals the defendant was advised about lifetime supervision in the plea agreement, by counsel, or in some other manner.[7]

In the instant case, the record does not disclose whether Irwin was aware of the consequence of lifetime supervision at the time he entered his guilty plea. Accordingly, we conclude that an evidentiary hearing is necessary on this issue.[8] If Irwin was unaware of the direct consequence of lifetime supervision, the district court must allow him to withdraw his plea.

In the petition, Irwin also raised numerous other claims challenging lifetime supervision and the amended judgment of conviction. In light of our conclusion stated above that this appeal must be remanded for an evidentiary hearing, we decline to address those issues at this time. On remand, the district court shall enter a final order resolving all the

---

[6]118 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 81, December 19, 2002).

[7]Id.

[8]We note that the district court may exercise its discretion to appoint post-conviction counsel to represent Irwin. See NRS 34.750.

claims raised in Irwin's petition. If aggrieved, Irwin may challenge the district court's decision in a subsequent appeal to this court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are not warranted in this matter.[9] Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[10]

Shearing, J.

Leavitt, J.

Becker, J.

cc: Hon. John S. McGroarty, District Judge
John Irwin
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

---

[9]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[10]This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.