IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN K. PAAJANEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40041

FILED

FEB 05 2003

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

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

On August 20, 2001, appellant was convicted, pursuant to a guilty plea, of four counts of possession of visual presentation depicting sexual conduct of a person under 16 years of age. The district court sentenced appellant to serve three concurrent prison terms of 12 to 30 months and one consecutive prison term of 12 to 30 months. The district court also imposed a special sentence of lifetime supervision. Appellant did not file a direct appeal.

On May 13, 2002, appellant 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 appellant or to conduct an evidentiary hearing. On August 28, 2002, the district court denied the petition.

In the petition, appellant first contended that his trial counsel was ineffective for failing to file a pretrial motion to suppress the pornographic photograph collages seized in the warrantless search of his

home.[1] In particular, appellant alleged that, although police detectives had consent from appellant's roommate to search the "common living area" of appellant's home, the detectives illegally, and without consent or a warrant, searched appellant's bedroom. In the course of that search, police detectives allegedly seized several pornographic photograph collages, and only then sought a search warrant for appellant's residence. Because both the arrest warrant and the search warrant for appellant's home were based upon evidence allegedly obtained in the course of the illegal search of the bedroom, appellant also contended that his trial counsel was ineffective for failing to challenge the evidence seized as a result of those warrants.[2]

The district court denied appellant's claim involving the warrantless search without an evidentiary hearing, finding it was belied

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[1]In a related argument, appellant contended that his trial counsel was ineffective in failing to challenge whether police detectives had probable cause to visit his residence and investigate appellant based solely on the fact that he was a sex offender who volunteered to work in a hospital pediatric unit. We conclude the district court did not err in rejecting appellant's claim regarding the police investigation because no probable cause was required for the police detectives to investigate appellant. See Arterburn v. State, 111 Nev. 1121, 1125, 901 P.2d 668, 670 (1995) (noting that law enforcement officers do not need probable cause to engage in consensual encounters). We therefore affirm the district court's order with respect to this claim.

[2]See Wong Sun v. United States, 371 U.S. 471, 484 (1963) (holding that evidence will be excluded if it is the result of law enforcement's unlawful actions).

by the record. We conclude that the district court erred in rejecting appellant's claim without conducting an evidentiary hearing.

In order to demonstrate trial counsel was ineffective for failing to file a motion to suppress, a petitioner must show the motion would have been meritorious, and that there was a reasonable likelihood that the exclusion of the evidence would have changed the result of the proceeding.[3] Here, we cannot determine whether appellant demonstrated that the motion would have been meritorious because the record does not disclose whether police detectives actually conducted a warrantless search of appellant's bedroom prior to obtaining a search warrant and, if so, whether a legal exception to the warrant requirement justified the warrantless search.[4] Accordingly, we conclude an evidentiary hearing is necessary on this issue.[5] At the hearing the district court should determine: (1) whether a warrantless search of appellant's residence, in fact, occurred; (2) whether a pretrial suppression motion would have been successful; and (3) whether the motion would have changed the outcome of the proceedings.

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[3]See Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996).

[4]See U.S. Const. amend. IV; State v. Taylor, 114 Nev. 1071, 1078-79, 968 P.2d 315, 321 (1998) (recognizing that a warrantless search and seizure of an individual's belongings is unconstitutional unless the search falls within an exception to the warrant requirement).

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

In the petition, appellant also contended that his guilty plea was not knowing and voluntary and his trial counsel was ineffective because he was not advised of the direct consequence of lifetime supervision.[6] We conclude that the district court erred in rejecting appellant's claim involving lifetime supervision without conducting an evidentiary hearing.

A petitioner is entitled to an evidentiary hearing on claims not belied by the record that, if true, would entitle him to relief.[7] Here, we conclude that appellant's claim that he did not know the 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 demonstrate that the defendant was not aware of the direct consequences of the guilty plea.[8] In Palmer v. State, this court recently held that lifetime supervision is a

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[6]Appellant also contended that his trial counsel was ineffective in failing object to the imposition of lifetime supervision. We conclude that appellant was not prejudiced by his trial counsel's failure to object to the imposition of lifetime supervision. Appellant was not prejudiced by his trial counsel's failure to object to the imposition of lifetime supervision because its imposition is mandatory for all defendants who have committed a sexual offense after September 30, 1995, and thus lifetime supervision would have been imposed regardless of trial counsel's objection. See NRS 176.0931; 1995 Nev. Stat., ch. 256, § 14, at 418. Accordingly, we affirm the order of the district court with regard to this claim.

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

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

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.[9] Likewise, trial counsel's conduct falls below an objective standard of reasonableness with regard to the guilty plea where he has failed to ensure that the defendant was aware of the direct consequence of lifetime supervision.[10] Although trial counsel, and the district court, should advise a defendant about lifetime supervision, the failure to do so does not warrant reversal where the record reveals the defendant was advised about lifetime supervision in the plea agreement or in some other manner.[11]

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

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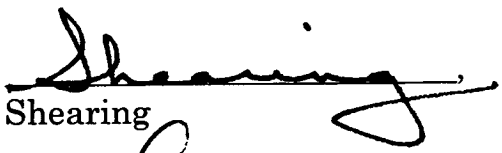
[9]118 Nev. __, __ P.3d __ (Adv. Opn. No. 81, December 19, 2002).

[10]See id. (holding that lifetime supervision is a direct consequence of guilty plea); Nollette v. State, 118 Nev. __, 46 P.3d 87 (2002) (recognizing that trial counsel must ensure that a defendant is aware of the direct consequences of the guilty plea).

[11]See Palmer, 118 Nev. at __, __ P.3d at __.

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.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[13]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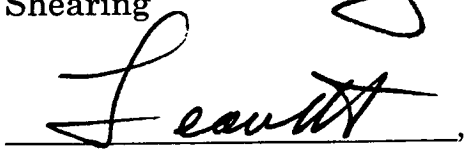
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, J.
Becker

cc: Hon. Michael L. Douglas, District Judge
Steven K. Paajanen
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

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

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