

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS MARQUEZ PEREZ,
Appellant,
vs.
CRAIG FARWELL,
Respondent.

No. 41642

FILED

APR 14 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM,
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

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

On October 23, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a child under the age of fourteen years and two counts of lewdness with a child under the age of fourteen years. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole for the sexual assault and a consecutive term of twenty-four to one hundred and twenty months for lewdness.¹ This court dismissed appellant's appeal from his judgment of conviction.² The remittitur issued on May 18, 1999.

On February 21, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. Pursuant to NRS

¹A second term of twenty-four to one hundred and twenty months was run concurrently.

²Perez v. State, Docket No. 31453 (Order Dismissing Appeal, April 20, 1999).

34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On June 16, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In his petition, appellant claimed that his guilty plea was not entered knowingly and voluntarily because he was not informed of the nature of lifetime supervision, and in fact, he was misinformed about the meaning of lifetime supervision.⁵ He further claimed that the State breached the plea agreement because the special sentence of lifetime supervision exceeded the terms of the plea agreement. In an attempt to demonstrate cause to excuse his delay in raising these claims, appellant argued that he did not know about his claims until this court decided Palmer v. State.⁶

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred. In Palmer, this court concluded that lifetime supervision is a direct consequence of a guilty plea of which the defendant

³See NRS 34.726(1).

⁴See id.

⁵Appellant claimed that during the plea canvass the district court equated lifetime supervision with providing a DNA sample.

⁶118 Nev. 823, 59 P.3d 1192 (2002).

must be informed.⁷ However, this court need not reach the threshold issue of whether Palmer would apply retroactively because the facts presented in Palmer are distinguishable from those presented in the instant case, and thus, the holding in Palmer is inapposite and does not excuse appellant's delay. There is no requirement in Palmer that a criminal defendant be informed of the precise conditions of lifetime supervision—only that the criminal defendant be informed of lifetime supervision. The record reveals that appellant was informed of the special sentence of lifetime supervision during the plea canvass.⁸ This court's further review of the record reveals that the district court did not mislead appellant about the meaning of lifetime supervision when it informed appellant of the separate consequence of providing a DNA sample.⁹ Because appellant was informed that he faced a life sentence and because appellant did in fact receive a life sentence, any alleged failure to adequately inform appellant about the special sentence of lifetime supervision was harmless.¹⁰ Appellant could have raised his claim that the State breached the plea agreement and that he was misinformed about the conditions of lifetime supervision within the time frame for filing a timely petition.¹¹

⁷Id.

⁸We note that the imposition of lifetime supervision was mandatory. See NRS 176.0931(1). Because a special sentence of lifetime supervision was mandatory and because appellant was informed about the special sentence of lifetime supervision, the State did not breach the plea agreement.

⁹NRS 176.0913(1).

¹⁰See Palmer, 118 Nev. at 829 n.17, 59 P.3d at 1195 n.17.


¹¹See Hathaway v. State, 119 Nev. ___, 71 P.3d 503 (2003).

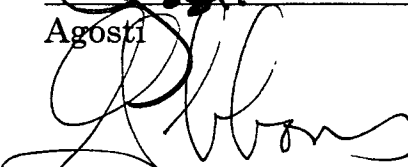
Therefore, we affirm the order of the district court denying appellant's petition as procedurally barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹³


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. David A. Huff, District Judge
Luis Marquez Perez
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk

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

¹³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.