IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL CASEY FENIMORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41666

FILED

MAR 25 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Michael Fenimore's motion to withdraw his guilty plea.

On February 9, 2000, the district court convicted Fenimore, pursuant to a guilty plea, of lewdness with a child under fourteen. The district court sentenced Fenimore to serve a term of life in the Nevada State Prison with the possibility of parole after ten years. This court dismissed Fenimore's appeal from his judgment of conviction and sentence.[1] The remittitur issued on March 7, 2001. On April 24, 2001, the district court entered an amended judgment of conviction to reflect that Fenimore was also sentenced to lifetime supervision after any period of imprisonment and release on parole.[2]

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[1]Fenimore v. State, Docket No. 35823 (Order Dismissing Appeal, February 9, 2001).

[2]See NRS 176.0931.

On August 30, 2001, Fenimore filed a proper person post-conviction petition for a writ of habeas corpus in the district court. After conducting an evidentiary hearing, the district court denied Fenimore's petition. This court affirmed the order of the district court.[3]

On April 9, 2003, Fenimore filed a motion to withdraw his guilty plea. The State opposed the motion. The district court declined to appoint counsel to represent Fenimore or to conduct an evidentiary hearing. On June 17, 2003, the district court denied Fenimore's motion. This appeal followed.

A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently.[4] After the imposition of a sentence, the district court will allow the withdrawal of a guilty plea only to correct a manifest injustice.[5] This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[6] Further, in

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[3]Fenimore v. State, Docket No. 39671 (Order of Affirmance, February 5, 2003).

[4]Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

[5]See NRS 176.165.

[6]Hubbard, 110 Nev. at 675, 877 P.2d at 521.

determining the validity of a guilty plea, this court looks to the totality of the circumstances.[7]

In his motion, Fenimore contended that he should be allowed to withdraw his guilty plea because he was not advised of the special sentence of lifetime supervision prior to the entry of his plea. A defendant must be made aware of the direct consequences of a guilty plea prior to its entry.[8] A consequence is direct if it has "a definite, immediate and largely automatic effect on the range of the defendant's punishment."[9] In Palmer v. State,[10] this court concluded that lifetime supervision is a direct consequence of a guilty plea. Consequently, the totality of the circumstances must demonstrate that a defendant was aware of the consequence of lifetime supervision prior to the entry of a guilty plea; otherwise, the defendant must be allowed to withdraw the plea.[11]

In the instant case, we conclude that under the totality of the circumstances, the record does not show that Fenimore was aware of the consequence of lifetime supervision prior to the entry of his guilty plea. The written guilty plea agreement and plea canvass conducted by the

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[7]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

[8]Little v. Warden, 117 Nev. 845, 849, 34 P.3d 540, 542-43 (2001).

[9]Id. (quoting Torrey v. Estelle, 842 F.2d 234, 236 (9th Cir. 1988)).

[10]118 Nev. ___, 59 P.3d 1192 (2002).

[11]Id. at ___, 59 P.3d at 1197.

district court are devoid of any references to lifetime supervision. Further, Fenimore's judgment of conviction did not contain a sentence of lifetime supervision until an amended judgment of conviction was filed more than one year after he was originally convicted.

Despite our conclusion that Fenimore was not aware of the consequence of lifetime supervision prior to the entry of his plea, we further determine that Fenimore failed to establish that he was prejudiced by this omission.[12] The record reveals that Fenimore was informed, both in the written guilty plea agreement and during the plea canvass, that he would receive a mandatory life sentence.[13] Lifetime supervision is no greater than the prison term of which Fenimore was advised he would receive. In this instance, lifetime supervision did not extend the maximum range of Fenimore's sentence at the time he pleaded guilty.[14] Consequently, Fenimore's lack of advisement concerning lifetime supervision was harmless,[15] and the district court did not err in denying

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[12]See id. at ___ fn. 17, 59 P.3d at 1195 fn. 17.

[13]In fact, Fenimore stipulated that he would not argue for probation and would receive a life sentence.

[14]Cf. Palmer, 118 Nev. at ___, 59 P.3d at 1195. Contrary to Fenimore's assertion, to establish that he was prejudiced by the imposition of lifetime supervision, he must demonstrate that it increased his maximum possible sentence at the time he entered his guilty plea—not that lifetime supervision may have the effect of lengthening his actual sentence.

[15]See id. at ___ fn. 29, 59 P.3d at 1197 fn. 29.

this claim. Finally, because the district court was required to impose a term of lifetime supervision, the district court did not err in amending the judgment of conviction.[16]

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Fenimore is not entitled to relief and that briefing and oral argument are unwarranted.[17] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[18]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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[16]See NRS 176.0931(1).

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

[18]We have reviewed all documents that Fenimore 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 Fenimore has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Brent T. Adams, District Judge
Michael Casey Fenimore
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk