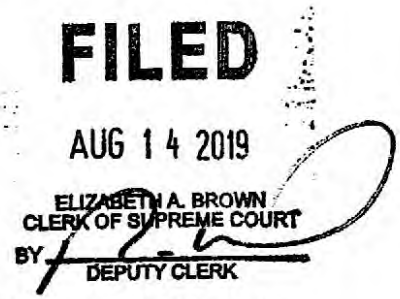
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD LEE SORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76559-COA



ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Richard Lee Sorter appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on January 23, 2017, and a supplemental petition filed on January 31, 2018. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Sorter claims the district court erred by denying his claims that his plea was not knowingly, voluntarily, or intelligently entered. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "[t]o correct manifest injustice." NRS 176.165. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). To warrant an evidentiary hearing, a petitioner must allege specific allegations not belied by the record that, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). We

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review claims of manifest injustice for abuse of discretion. *See id.* at 1039, 194 P.3d at 1229.

First, Sorter claimed his plea was invalid because the district court and the plea agreement did not advise him he was subject to lifetime supervision. *Palmer* requires that the defendant be informed that lifetime supervision will be imposed as part of his punishment. *Palmer v. State*, 118 Nev. 823, 831, 59 P.3d 1192, 1196-97 (2002). However, where a defendant faces a sentence of life in prison, the failure to advise him that he will be subject to lifetime supervision does not render the plea invalid. *See McConnell v. State*, 125 Nev. 243, 251, 212 P.3d 307, 312 (2009). Because Sorter faced a sentence of life in prison, we conclude the district court did not err by denying this claim without first holding an evidentiary hearing.

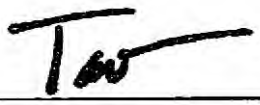
Second, Sorter claimed the charges in the "information superseding indictment" were invalid because the information described conduct that comprised both sexual assault and lewdness with a minor under the age of 14. He claimed that the lewdness statute specifically excludes conduct that comprises sexual assault, *see* NRS 201.230(1); therefore, the information did not describe a crime. However, Sorter bargained for and pleaded guilty to these charges and he waived any errors that occurred before the entry of his guilty plea. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

Finally, Sorter claimed his plea was invalid because the district court and the guilty plea agreement stated he *may* be sentenced to life in prison with the possibility of parole after 10 years. Because of the word may, Sorter believed he could receive less than life in prison. However, lewdness with a minor under the age of 14 has a mandatory sentence of life

in prison with the possibility of parole after 10 years. The State concedes this claim needs an evidentiary hearing. We conclude an evidentiary hearing is necessary to determine whether Sorter was informed that life in prison with the possibility of parole after 10 years was the only sentence he could receive or whether his belief that he could receive less than that was reasonable and caused his plea to be invalid. 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.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Scott N. Freeman, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk