

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD C. GASTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42919 **FILED**

SEP 22 2004

JANETIE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying appellant Richard C. Gaston's motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On June 30, 1994, the district court convicted Gaston, pursuant to a plea of guilty, of first-degree murder with the use of a deadly weapon. The district court sentenced Gaston to serve a term of life in the Nevada State Prison with the possibility of parole and an equal and consecutive term for the deadly weapon enhancement. This court dismissed Gaston's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

¹Gaston v. State, Docket No. 28372 (Order Dismissing Appeal, October 2, 1998).

On November 6, 1995, Gaston filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On April 2, 1996, the district court denied Gaston's petition. On October 2, 1998, this court dismissed Gaston's appeal from the district court's order denying his habeas corpus petition.²

On July 28, 2003, Gaston filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On February 12, 2004, the district court denied Gaston's motion. This appeal followed.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.³ Application of the doctrine requires consideration of various factors, including: "(1) whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State."⁴ Failure to identify all grounds for relief in a prior proceeding seeking relief from a judgment of conviction should weigh against consideration of a successive motion.⁵

²Id.

³See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

⁴Id. at 563-64, 1 P.3d at 972.

⁵Id. at 564, 1 P.3d at 972.

Based upon our review of the record on appeal, we conclude that Gaston's motion is subject to the equitable doctrine of laches. Gaston filed his motion more than nine years after the judgment of conviction was entered. In his motion, Gaston claimed the delay in filing his motion was justified because his motion was "made within the timeframe of the doctrine of laches, the standard five (5) years." However, the equitable doctrine of laches is not measured by a specific period of time, but rather by the factors set forth in Hart.⁶ Gaston also argued that his delay was reasonable because he was awaiting the resolution of his co-defendant's appeal.


In his motion, Gaston claimed that this plea was unknowing because he was not informed of the elements of first-degree murder and the possible range of punishment for the offense. However, Gaston previously filed a habeas corpus petition in which he argued that his guilty plea was unknowing because the district court failed to advise him of the elements of murder. The district court denied Gaston's habeas corpus petition. Gaston failed to indicate why he did not present his claim that he was unaware of the punishment range for murder prior to the filing of the instant motion. Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of Gaston's motion on the merits.

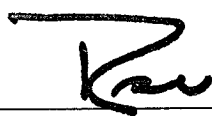
⁶Id. at 563-64, 1 P.3d at 972.

We note that the judgment of conviction does not include Gaston's minimum parole eligibility.⁷ Because the record reveals some confusion regarding this issue, we remand this matter to the district court to amend the judgment of conviction to reflect Gaston's minimum parole eligibility of ten years for the primary offense and ten years for the enhancement.⁸

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Gaston is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court to correct the judgment of conviction consistent with this order.


_____, C.J.
Shearing


_____, J.
Rose


_____, J.
Douglas

⁷See NRS 176.105(1)(c).

⁸1989 Nev. Stat., ch. 631, § 1, at 1451.

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

cc: Hon. Nancy M. Saitta, District Judge
Richard C. Gaston
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk