

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMARR ROWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43059

FILED

AUG 27 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 motion to set aside the judgment of conviction and withdraw guilty plea. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On September 16, 1999, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court sentenced appellant to serve a maximum term of one hundred twenty months in the Nevada State Prison with a minimum parole eligibility of forty-eight months. The district court ordered the sentence to run consecutively to appellant's sentences in district court case numbers C152233 and C149775. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.<sup>1</sup> Appellant unsuccessfully sought post-conviction relief.<sup>2</sup>

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<sup>1</sup>Rowell v. State, Docket No. 37635 (Order Dismissing Appeal, May 8, 2001).

<sup>2</sup>Rowell v. State, Docket Nos. 36601, 36658, 37023 (Order of Affirmance and Dismissing Appeal, April 10, 2001); Docket No. 37749 (Order of Affirmance, December 12, 2001).

On March 5, 2004, appellant filed a proper person motion to set aside the judgment of conviction and withdraw guilty plea in the district court. On March 26, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his guilty plea was not entered knowingly and voluntarily because he did not receive effective assistance of counsel. Appellant further contended that the judgment of conviction should be set aside because he is actually innocent of the charge.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches. Appellant filed his motion more than four years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant previously pursued several post-conviction habeas

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<sup>3</sup>See Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000).


<sup>4</sup>Id. at 563-64, 1 P.3d at 972.

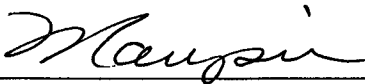
<sup>5</sup>Id. at 564, 1 P.3d at 972.


corpus petitions. Appellant failed to indicate why he was not able to present his claims prior to the filing of the instant motion. Additionally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay. Finally, we note that appellant has failed to demonstrate that he is actually innocent of the charge. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Lee A. Gates, District Judge  
Lamarr Rowell  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).