

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 43218

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  JEF 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 April 26, 1999, the district court convicted appellant, pursuant to a guilty plea, of drawing and passing a check without sufficient funds in drawee bank with the intent to defraud. The district court sentenced appellant to serve a term twelve to thirty-six months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period of time not to exceed three years. The district court awarded appellant 78 days of credit for pre-sentence incarceration. On August 8, 1999, the district court entered an order revoking appellant's probation and executing the sentence previously imposed. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹ Appellant unsuccessfully sought post-conviction relief.²

¹Rowell v. State, Docket No. 35960 (Order Dismissing Appeal, May 2, 2000).

²Rowell v. State, Docket Nos. 36693, 37210, 37242 (Order of Affirmance and Dismissing Appeal and Limited Remand for Correction of *continued on next page . . .*

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. The State opposed the motion. On March 24, 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. Appellant stated that pursuant to the plea agreement his charges were to be dismissed if he paid restitution and attended bad check school. Appellant asserts that he "was suddenly convicted and sent to prison without violating the plea agreement and without being informed prior to the plea at the plea hearing."

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

Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches.

... continued

Judgment of Conviction, April 10, 2001); Docket No. 42770 (Order of Affirmance, August 30, 2004).

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

⁴Id. at 563-64, 1 P.3d at 972.

⁵Id. at 564, 1 P.3d at 972.

Appellant filed his motion almost five years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Further, appellant raised this same issue in at least one of his previous post-conviction habeas corpus petitions and in a prior motion to vacate plea. 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 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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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

⁷On October 20, 2004, appellant submitted a proper person motion to dismiss appeal. We direct the clerk of this court to file the motion. In light of this order, we deny the motion as moot.

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