

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON MCKINLEY WARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43253

FILED

OCT 07 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Jason McKinley Ward's post-conviction "motion to fully comply with plea agreement as to petitioner's sentence or to reduce petitioner's sentence." Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On January 13, 1987, the district court convicted Ward, pursuant to a jury verdict, of first-degree murder of a victim sixty-five years or older and burglary. The district court sentenced Ward to serve two life terms in the Nevada State Prison without the possibility of parole for the murder conviction and a concurrent term of ten years for the burglary conviction.¹ This court dismissed Ward's appeal from his

¹After the jury returned its guilty verdict, Ward entered into an agreement with the State to serve two consecutive terms of life without the possibility of parole for the murder conviction, thereby avoiding a possible death sentence. The State agreed to take no position on sentencing with respect to the burglary conviction.

judgment of conviction and sentence.² The remittitur issued on April 19, 1988. Ward unsuccessfully sought post-conviction relief.³

On February 13, 2004, Ward filed a proper person post-conviction "motion to fully comply with plea agreement as to petitioner's sentence or to reduce petitioner's sentence." The State opposed the motion. On April 9, 2004, the district court denied Ward's motion. This appeal followed.

To the extent Ward's motion can be construed as a petition for a writ of habeas corpus, it was untimely filed because Ward filed his motion approximately 16 years after this court issued the remittitur from his direct appeal.⁴ Moreover, Ward's motion was successive because he had previously filed two habeas corpus petitions.⁵ Ward's motion was procedurally barred absent a demonstration of good cause and prejudice.⁶ Ward offers no explanation whatsoever for the delay in filing his motion or

²Ward v. State, Docket No. 18115 (Order Dismissing Appeal, March 30, 1988).

³Ward v. State, Docket No. 20161 (Order Dismissing Appeal, December 29, 1989); Ward v. State, Docket Nos. 27291, 29778 (Order Dismissing Appeals, February 24, 1998); Ward v. State, Docket No. 34268 (Order of Affirmance, April 26, 2001); Ward v. State, Docket No. 38966 (Order Dismissing Appeal, January 22, 2002). This court remanded Ward's appeal from a district court order denying his "motion for sentence expiration date" to correct the amount of credit Ward was to receive for time served prior to sentencing. Ward v. State, Docket No. 30172 (Order of Remand, February 24, 1998). An amended judgment of conviction was entered on March 17, 1998.

⁴See NRS 34.726(1).

⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁶See NRS 34.726(1); NRS 34.810(3).

why he did not assert his claim in a previous habeas corpus petition. Based upon our review of the record on appeal, we conclude that Ward has not demonstrated good cause to excuse his procedural defaults.

To the extent Ward's motion can be construed as a motion to withdraw his guilty plea, we conclude that it is subject to the equitable doctrine of laches.⁷ 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."⁸ 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.⁹

Ward neglected to explain why he waited nearly 16 years after his direct appeal was resolved to file his motion. Moreover, Ward previously pursued post-conviction relief and failed to explain why he was not able to present his claims 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 Ward's motion on the merits.


⁷See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

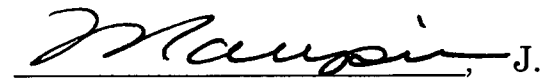
⁸Id. at 563-64, 1 P.3d at 972.

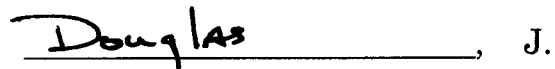
⁹Id. at 564, 1 P.3d at 972.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Ward is not entitled to relief and that briefing and oral argument are unwarranted.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Jason McKinley Ward
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).