

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 43728

**FILED**

**DEC 13 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 Lamarr Rowell's motion to set aside his judgment of conviction and withdraw his guilty plea. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 9, 1999, the district court convicted Rowell, pursuant to a guilty plea, of one count of burglary in district court case number C149775. The district court sentenced Rowell to serve a term of 18 to 96 months in the Nevada State Prison. This court dismissed Rowell's untimely appeal for lack of jurisdiction.<sup>1</sup> Thereafter, Rowell unsuccessfully sought post-conviction relief.<sup>2</sup>

On March 5, 2004, Rowell filed a proper person motion to set aside his judgment of conviction and withdraw his guilty plea in the

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<sup>1</sup>Rowell v. State, Docket No. 35959 (Order Dismissing Appeal, May 8, 2000).

<sup>2</sup>Rowell v. State, Docket No. 37283 (Order of Affirmance, July 9, 2001); Rowell v. State, Docket Nos. 37836, 37838, 37839 (Order of Affirmance, December 14, 2001); Rowell v. Warden, Docket No. 43019 (Order of Affirmance, September 22, 2004).

district court. The State opposed the motion. On March 31, 2004, the district court denied Rowell's motion. This appeal followed.

In Rowell's motion, he contended that his guilty plea was unknowingly entered because his trial counsel gave him erroneous advice. Rowell further claimed that he was deprived of a direct appeal and 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 Rowell's motion is subject to the equitable doctrine of laches. Rowell filed his motion more than four years after the judgment of conviction was entered. Rowell failed to provide any explanation for this delay. Further, Rowell previously filed several post-conviction petitions for a writ of habeas corpus in which he raised substantially the same claims. 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 Rowell failed to

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

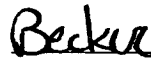
<sup>4</sup>Id. at 563-64, 1 P.3d at 972.


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

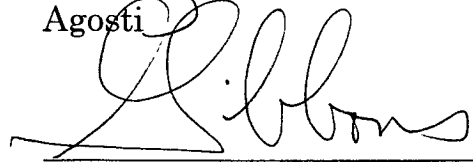
demonstrate that he is actually innocent of the charge. Consequently, we conclude that the doctrine of laches precludes consideration of Rowell's motion on the merits.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Rowell 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.<sup>7</sup>

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Agosti

 \_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, 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).

<sup>7</sup>We have received Rowell's proper person motion to clarify/amend this court's August 17, 2004 order and motion to dismiss appeal. We deny these motions as moot.