

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
CORYANNE ENGELSON A/K/A
CORYANNE BOARDMAN,
Respondent.

No. 44049

FILED

APR 18 2006

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

ORDER OF REVERSAL

This is an appeal from an order granting defendant's post-conviction habeas petition allowing her to withdraw her guilty plea. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

The parties are familiar with the facts, and we do not recount them except as necessary for our disposition.

We review a district court's decision to grant a motion to withdraw guilty plea for an abuse of discretion.¹ When addressing a motion to withdraw guilty plea, the district court "has the duty to review the entire record and determine whether the plea was valid under the totality of the circumstances."²

Withdrawal of plea

"To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea."³ The district court had inherent jurisdiction⁴ to hear Engelson's

¹Barajas v. State, 115 Nev. 440, 442, 991 P.2d 474, 475 (1999).

²Id.

³NRS 176.165.



motion to withdraw her guilty plea even after Engelson's sentence was discharged.⁵ Unlike a habeas writ petition, there is no bright-line constitutional or statutory time limit on when a district court may hear a motion to withdraw guilty plea,⁶ and such relief is available to a defendant even after she has been discharged from her sentence.⁷ The only time-bar currently recognized in Nevada for a motion to withdraw guilty plea is the doctrine of laches.⁸

... continued

⁴See Galloway v. Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967) (“A judicial function is the exercise of judicial authority to hear and determine questions in controversy. . . . [A]ny power or authority that is inherent or incidental to a judicial function is properly within the realm of judicial power[.]”).

⁵See Hart v. State, 116 Nev. 558, 562, 1 P.3d 969, 971 (2000); see also NRS 176.165.

⁶Id.; See United States v. Lake, 709 F.2d 43, 44-45 (11th Cir. 1983) (there is no time limitation on a motion to withdraw guilty plea where the defendant seeks to correct a manifest injustice); see also State v. Smith, 361 N.E.2d 1324, 1326 (Ohio 1977) (no time limit on when a motion to withdraw guilty plea must be made after a sentence is imposed, although “an undue delay between the occurrence of the alleged cause for withdrawal and the filing of the motion is a factor adversely affecting the credibility of the movant and militating against the granting of the motion”).

⁷See United States v. Darnell, 716 F.2d 479, 480 (7th Cir. 1983) (after being discharged from his sentence, two avenues of post-conviction relief remain for the defendant: a motion to withdraw guilty plea and a writ of error coram nobis).

⁸See Hart, 116 Nev. at 562, 1 P.3d at 971.



Laches

This court must weigh a number of factors when considering the doctrine of laches, including: whether there was an inexcusable delay in seeking relief; whether an implied waiver has arisen from the defendant's knowing acquiescence in existing conditions; and whether circumstances exist that prejudice the state.⁹

Engelson claims that she was unaware that her conviction would adversely affect her ongoing deportation proceedings, and that she sought relief from her plea shortly after she received notice from the immigration tribunal. While Engelson may have had at least some knowledge that her conviction would affect her immigration status, if she had been misinformed by her counsel that her conviction would not affect her status then her delay could not be considered to be an undue delay or a waiver by knowing acquiescence. Engelson sought relief immediately after she received notice from the immigration tribunal. Further, given the nature of the crimes charged and the record before us, we hold that the state failed to show that it would be unduly prejudiced if Engelson is allowed to withdraw her guilty plea. Therefore, the doctrine of laches does not apply.

Manifest injustice

The district court may withdraw a plea that was not entered knowingly and voluntarily in order to correct a manifest injustice.¹⁰ However, “[a] guilty plea is presumptively valid, and the defendant has

⁹Id. at 563, 1 P.3d at 972.

¹⁰Barajas, 115 Nev. at 442, 991 P.2d at 475; see NRS 176.165.

the burden to prove that the plea was not entered knowingly and voluntarily.”¹¹

Manifest injustice in this case turns upon whether Engelson knowingly and voluntarily entered her guilty plea in light of the alleged affirmative misinformation of her defense counsel regarding deportation consequences. Ineffective assistance of counsel during the plea phase may result in manifest injustice if the plea was involuntarily made as a result of the ineffective assistance.¹² To show ineffective assistance of counsel, Engelson must “demonstrate that [her] trial or appellate counsel’s performance was deficient, falling below an objective standard of reasonableness[,]”¹³ and “show prejudice[,]” by showing that she would not have pleaded guilty to larceny had she not been affirmatively misinformed.¹⁴

A mere failure to inform a defendant about deportation consequences during the plea phase does not fall below an objective standard of reasonableness, and it will not affect the voluntariness of a plea.¹⁵ However, where “counsel has not merely failed to inform, but has effectively misled, his client about the immigration consequences of a conviction, counsel’s performance is objectively unreasonable under

¹¹Id.

¹²See U.S. v. Signori, 844 F.2d 635, 638 (9th Cir. 1988); see generally Barajas, 115 Nev. at 442, 991 P.2d at 476.

¹³Lader v. Warden, 121 Nev. ___, ___, 120 P.3d 1164, 1166-67 (2005) (citing Strickland v. Washington, 466 U.S. 668, 687-88 (1984)).

¹⁴Id. at ___, 120 P.3d at 1167.

¹⁵Barajas, 115 Nev. at 443, 991 P.2d at 476.

contemporary standards for attorney competence,” and may render a guilty plea involuntary.¹⁶

The record indicates that Engelson may have been aware of the deportation consequences at the time she entered her guilty plea because Engelson was subject to ongoing deportation proceedings from a previous conviction. However, it is also plausible that Engelson was concerned about the deportation consequences and had asked her public defender for advice on how to minimize any new deportation consequences and was affirmatively misinformed, which might have rendered her guilty plea unknowing and involuntary.

Nonetheless, the decision of the district court was not supported by substantial evidence.¹⁷ The primary evidence of the affirmative misinformation was Engelson’s verified habeas writ petition and her counsel’s representations to the district court at the motion hearing. Mr. Gonzales’ representations as to what Engelson’s public defenders may or may not have told Engelson during the plea phase does not qualify as substantial evidence. Neither Engelson nor her public defenders provided testimony regarding the affirmative misinformation. No evidentiary hearing was held to determine whether Engelson was actually affirmatively misinformed or whether she actually relied on her public defenders’ affirmative misinformation. Insufficient evidence of ineffective assistance of counsel was provided to the court. The evidence

¹⁶United States v. Kwan, 407 F.3d 1005, 1015 (9th Cir. 2005).

¹⁷See Lader, 121 Nev. at ___, 120 P.3d at 1166 (“a district court’s factual findings will be given deference by this court on appeal, so long as they are supported by substantial evidence.”).

presented below was insufficient to support a finding that Engelson's guilty plea was not entered knowingly or voluntarily. Therefore, the district court abused its discretion in granting the motion to withdraw.

We reverse the district court's order and give Engelson leave to re-file her motion to withdraw her guilty plea, should she choose to do so. However, we note that legally sufficient evidence to substantiate her claims of ineffective assistance of counsel and manifest injustice must be presented to the court. This will also allow the district court to conduct an evidentiary hearing to properly determine whether Engelson was affirmatively misinformed and to determine whether she actually relied on the affirmative misinformation. Accordingly, we

ORDER the judgment of the district court REVERSED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Longabaugh Law Offices
Clark County Clerk