

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD WESLEY JANUARY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44354

FILED

FEB 10 2005

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's motion to withdraw a guilty plea. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

On November 26, 2002, the district court convicted appellant, pursuant to an Alford¹ plea, of one count of battery causing substantial bodily harm. The district court sentenced appellant to serve a term of two to five years in the Nevada State Prison. No direct appeal was taken.

On February 27, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and counsel elected not to file a supplement. The State opposed the petition. On June 13, 2003, the district court dismissed appellant's petition. This court affirmed the order of the district court on appeal.²

On June 23, 2004, appellant filed a proper person motion to modify a sentence in the district court. The State opposed the motion.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²January v. State, Docket No. 41641 (Order of Affirmance, February 25, 2004).

Appellant filed a response. On July 14, 2004, the district court denied the motion. No appeal was taken.

On July 22, 2004, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On November 1, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that there was a clerical error in the plea agreement. Specifically, he noted that the plea agreement set the potential penalty at one to four years. However, the potential penalty was one to five years.³ Appellant received a sentence of two to five years. Appellant claimed that he did not agree to a penalty of two to five years.

The district court concluded that the motion was barred by the equitable doctrine of laches. This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.⁴ 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."⁵ 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.⁶

³See NRS 200.481(2)(b); NRS 193.130(1)(c).

⁴See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

⁵Id. at 563-64, 1 P.3d at 972.

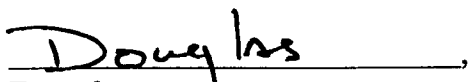
⁶Id. at 564, 1 P.3d at 972.

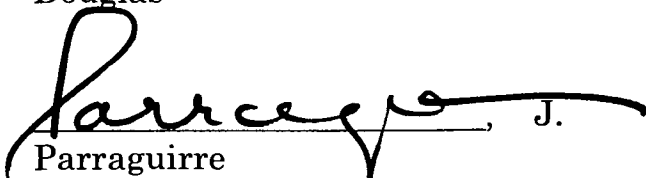
Based upon our review of the record on appeal, we conclude that the district court did not err in concluding that appellant's motion was subject to the equitable doctrine of laches. Appellant filed his motion more than nineteen months after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant previously pursued post-conviction relief. Appellant failed to indicate why he was not able to present his claim in a timely petition for a writ of habeas corpus. Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after this 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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Robert E. Estes, District Judge
Donald Wesley January
Attorney General Brian Sandoval/Carson City
Lyon County District Attorney
Lyon County Clerk