IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD RAY BRATCHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44682

FILED

JUN 1 6 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for resentencing and withdrawal of plea pursuant to NRS 176.165. Seventh Judicial District Court, Lincoln County; Dan L. Papez, Judge.

On July 9, 1999, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a child under fourteen. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after 10 years had been served. No direct appeal was taken.

On June 21, 2004, appellant filed a proper person motion for resentencing and withdrawal of plea in the district court. The State opposed the motion. On January 5, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his plea was unknowing, unintelligent and involuntary because the district court did not advise him

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of the special sentence of lifetime supervision prior to the entry of his plea.[1]

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.[2] Application of laches requires the consideration of multiple 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."[3]

Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches. Appellant filed his motion approximately five years after the judgment of conviction was entered, and failed to provide any explanation for the delay. Appellant impliedly waived such a claim as the sentence was known to him when it was imposed in 1999.[4] Even if appellant did not know of the claim until Palmer was decided in 2002, appellant waited one and a half years to raise the claim. Finally, it appears that the State

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[1]See Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002).

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

[3]Id. at 563-64, 1 P.3d at 972.

[4]Review of the record on appeal confirms that the special sentence of lifetime supervision was included within appellant's judgment of conviction, dated July 9, 1999. Thus this claim was reasonably available to appellant.

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. Finally, as a separate and independent ground to deny relief, we conclude that the district court properly determined any error in failing to advise appellant of lifetime supervision was harmless given the imposition of a life sentence.[5]

To the extent that this motion may be construed to be a motion to modify a sentence, a motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."[6] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[7] Our review of the record on appeal reveals that appellant has failed to demonstrate that the district court relied on any mistaken assumptions about appellant's criminal record which worked to appellant's extreme detriment. Therefore, the district court did not err in denying appellant's motion.

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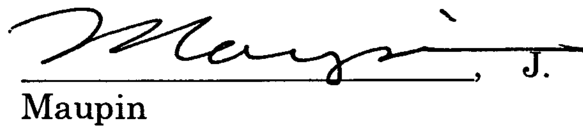
[5]Palmer, 118 Nev. at 829 n.17, 59 P3d at 1195 n.17.

[6]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

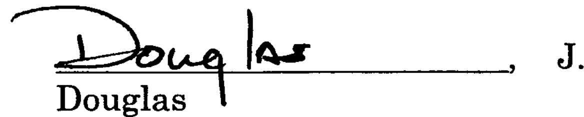
[7]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, J.
Maupin



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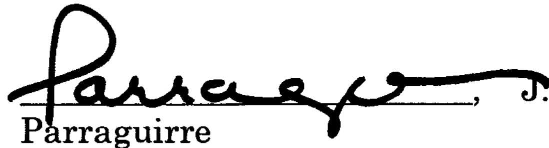
Douglas



_______________, J.
Parraguirre

cc: Hon. Dan L. Papez, District Judge
Harold Ray Bratcher
Attorney General Brian Sandoval/Carson City
Lincoln County District Attorney
Lincoln County Clerk

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[8]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).