

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOANNA GOTERA PEREZ A/K/A
JOANNA CARESSA PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45737

FILED

DEC 06 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 for withdrawal of a guilty plea. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On September 11, 2002, the district court convicted appellant, pursuant to a guilty plea, of conspiracy to commit sexual assault on a child.¹ The district court sentenced appellant to serve a term of twelve to seventy-two months in the Nevada State Prison. Appellant did not file a direct appeal.

On June 7, 2005, approximately three years after his judgment of conviction, appellant filed a proper person post-conviction motion to withdraw his guilty plea in the district court. The State opposed the motion. On June 30, 2005, the district court denied appellant's motion. This appeal followed.

¹The district court filed an amended judgment of conviction on October 29, 2002.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.² 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."³

Based upon our review of the record on appeal, we conclude that appellant's motion was subject to the equitable doctrine of laches. Appellant filed his motion approximately three years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant was informed about the consequences of his plea during the plea canvass and therefore knowingly acquiesced in existing conditions. 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.

Moreover, appellant failed to meet his burden of showing that his guilty plea was not entered knowingly and voluntarily.⁴ Appellant was thoroughly canvassed at the entry of his plea regarding the rights he was waiving by pleading guilty and the consequences of his plea. He informed the court that he was pleading guilty voluntarily, that he understood the

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

³Id. at 563-64, 1 P.3d at 972.

⁴See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (a guilty plea is presumptively valid, and the defendant has the burden to establish that the plea was not entered knowingly and intelligently).

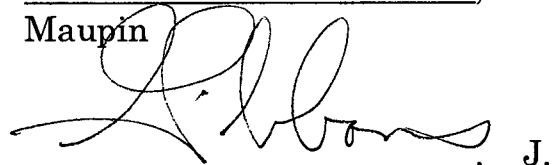
nature of the charges against him, and that he was satisfied with his legal representation. The plea agreement and the district court's canvass specifically addressed probation eligibility, lifetime supervision, and the likelihood of deportation. Accordingly, we conclude that the district court did not abuse its discretion in denying appellant's motion to withdraw his plea.⁵

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.⁶ Accordingly, we

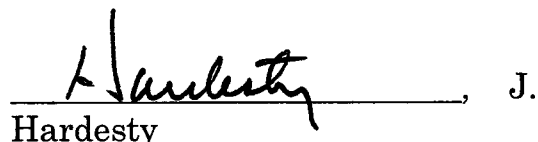
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁵See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) ("On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 'will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'" (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368)).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Steven R. Kosach, District Judge
Joanna Gotera Perez
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk