

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLEN CAPRI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45925

FILED

DEC 21 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On March 7, 2000, the district court convicted appellant, pursuant to a guilty plea, of sexual assault of a minor under fourteen years of age and sexual assault. The district court sentenced appellant to serve two consecutive terms of life with the possibility of parole in the Nevada State Prison. The district court also imposed a special sentence of lifetime supervision. No direct appeal was taken.

On June 21, 2005, appellant filed a motion to withdraw guilty plea in the district court. The State opposed the motion. On August 11, 2005, the district court denied the motion. This appeal followed.

In his motion, appellant claimed the State promised him as part of the plea agreement that it would not oppose the district court's re-sentencing appellant to concurrent rather than consecutive terms, if appellant underwent surgical castration. Appellant argued that the State breached this agreement by failing to arrange and pay for the procedure, including transportation and guard salaries, and that appellant should therefore be permitted to withdraw his guilty plea.

A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently.¹ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.² In determining the validity of a guilty plea, this court looks to the totality of the circumstances.³ After sentencing, the district court will allow the withdrawal of a guilty plea only to correct a "manifest injustice."⁴ In determining whether a manifest injustice has occurred, the court should consider whether the defendant acted voluntarily, understood the nature of the charges against him, and understood the consequences of his plea.⁵

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.⁶ 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."⁷

¹Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

²Hubbard, 110 Nev. at 675, 877 P.2d at 521.

³State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

⁴NRS 176.165.

⁵Wilson v. State, 99 Nev. 362, 372-73, 664 P.2d 328, 334-35 (1983).

⁶See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

⁷Id. at 563-64, 1 P.3d at 972.

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.⁸

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 more than five years after the judgment of conviction was entered, and appellant failed to provide any explanation for the delay. Appellant previously pursued a post-conviction petition for a writ of habeas corpus. Appellant failed to indicate why he was not able to present his claims prior to the filing of the instant motion. Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay.

Moreover, as a separate and independent ground for denying relief, appellant's claims lacked merit. Appellant has failed to demonstrate manifest injustice. Our review of the record on appeal reveals that the State agreed not to oppose the district court's modification of appellant's sentence so the terms ran concurrently rather than consecutively if the surgical castration took place. However, the record is devoid of any indication that the State agreed to bear the costs of the procedure or induced appellant to plead guilty by promising to do so. Appellant, in fact, did not contend the State so agreed; appellant stated in his motion that he simply assumed the State would pay for it because the State made the offer not to oppose the sentence modification if appellant agreed to the procedure. The record does not support this assertion. Appellant's counsel, in a January 2000 affidavit, indicated appellant made

⁸Id. at 564, 1 P.3d at 972.

the offer to undergo surgery, not the State, and that appellant would bear the costs of the surgery. Although appellant argued his counsel's affidavit was "a fraud" and that his counsel conspired with the State to get him to plead guilty, he failed to demonstrate any facts to support this claim. In denying the instant motion, the district court specifically found that appellant's plea was not conditioned upon the State paying the costs of surgical castration and that the costs, including payment of guards' salaries, were to be borne by appellant.

Appellant signed a guilty plea agreement that indicated he understood he was waiving important constitutional rights and that set out the charges he was pleading guilty to and the possible sentences for those charges. Before accepting appellant's guilty plea, the district court properly canvassed appellant as to whether his plea was voluntary, whether he had read the plea agreement and discussed it with his counsel, what actions he had performed to support the charges, and whether he had any questions. Appellant indicated his plea was voluntary, specifically admitted he sexually assaulted the victims, and said he had read and discussed the agreement with counsel and had no questions. His sentence was consistent with the possible sentences set out in the plea agreement. Further, appellant benefited by the plea agreement: by entering his plea, he avoided being prosecuted for up to 28 additional counts. Accordingly, we conclude the district court did not abuse its discretion in denying appellant's motion.

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.⁹ Accordingly, we

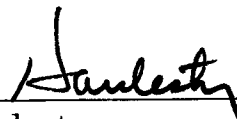
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Sally L. Loehrer, District Judge
Richard Allen Capri
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d.910, 911 (1975).