IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTA O. LAVENDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45974

FILED

DEC 06 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature] DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea, or in the alternative, motion to modify sentence. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On July 24, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of discharging a firearm out of a motor vehicle. The district court sentenced appellant to serve a term of twenty-six to one hundred and twenty months in the Nevada State Prison. No direct appeal was taken.

On August 4, 2005, appellant filed a proper person motion to withdraw his guilty plea, or in the alternative, motion to modify sentence in the district court. The State opposed the motion. On August 18, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his guilty plea was not entered knowingly and voluntarily because he was not adequately canvassed. He further claimed that he fired his gun in self-defense.



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This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.[1] 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."[2]

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 three years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay, and 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. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits. Moreover, as a separate and independent ground to deny relief, we conclude that appellant failed to demonstrate that his guilty plea was entered unknowingly and involuntarily.[3]

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

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

[3]See State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

Next, appellant claimed that the district court relied upon materially untrue assertions set forth in the presentence investigation report. Appellant claimed that the presentence investigation report failed to set forth the mitigating facts relating to the crime. He noted that he had completed many programs during his incarceration.

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."[4] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[5]

Based upon our review of the record, we conclude that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court relied on any mistaken assumptions appellant's criminal record that worked to his extreme detriment. The district court was presented with the mitigating factors relating to appellant's self-defense argument during the sentencing hearing. Appellant's programming while incarcerated, although commendable, is not a basis for modification of a sentence.

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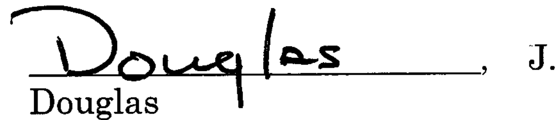
[4]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

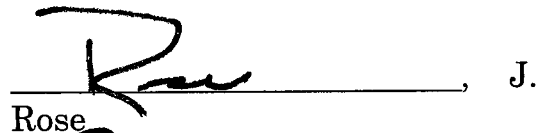
[5]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

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.[6] Accordingly, we

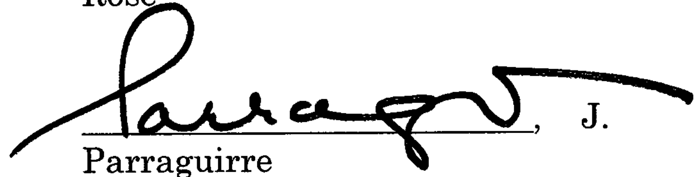
ORDER the judgment of the district court AFFIRMED.



_______________, J.
Douglas



_______________, J.
Rose



_______________, J.
Parraguirre

cc: Hon. Sally L. Loehrer, District Judge
Donta O. Lavender
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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