

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46648

FILED

JUN 07 2006

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 his guilty plea. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On December 15, 1997, the district court convicted appellant, pursuant to a guilty plea, of first-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years had been served. This court affirmed appellant's judgment of conviction on appeal.¹ The remittitur issued on November 9, 1999.

On July 27, 2000, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On November 8, 2000, the district court denied appellant's

¹Martinez v. State, Docket No. 31599 (Order Dismissing Appeal, October 12, 1999).

petition. This court affirmed the district court's denial of appellant's petition.²

On November 30, 2005, appellant filed a post-conviction motion to withdraw a guilty plea in the district court. The State opposed the motion. Appellant replied. On January 3, 2006, the district court denied appellant's motion. This appeal followed.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.³ 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."⁴

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 eight years after the judgment of conviction was entered and six years after the direct appeal was resolved. Appellant failed to demonstrate that he was not able to present his claims in a timely motion or raise the claims in the prior habeas corpus petition. Finally, it appears that the State would suffer prejudice if it were forced to

²Martinez v. State, Docket No. 37051 (Order of Affirmance, April 30, 2002).

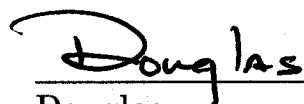
³See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).


⁴Id. at 563-64, 1 P.3d at 972.

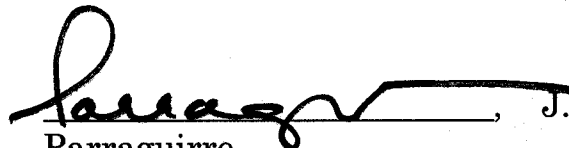
proceed to trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Michelle Leavitt, District Judge
Joseph Martinez
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk