

IN THE SUPREME COURT OF THE STATE OF NEVADA


MICHAEL SHAWN HOLLIDAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46718

**FILED**

JUN 12 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On February 27, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery, one count of burglary while in possession of a deadly weapon, one count of robbery with the use of a deadly weapon, one count of battery with a deadly weapon,<sup>1</sup> and one count of possession of a firearm by an ex-felon. The district court sentenced appellant to serve terms totaling twelve to thirty years in the Nevada State Prison. No direct appeal was taken.

On December 21, 2005, appellant filed a proper person motion to withdraw the guilty plea in the district court. The State opposed the

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<sup>1</sup>The deadly weapon in the battery count was set forth as an element of the crime pursuant to NRS 200.481(2)(e) and not as a sentencing enhancement pursuant to NRS 193.165.

motion. On January 19, 2006, the district court summarily denied the motion. This appeal followed.

In his motion, appellant claimed that his guilty plea was not entered knowingly and voluntarily and that he received ineffective assistance of counsel.

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

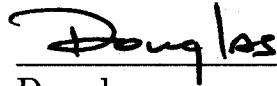
Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches. Appellant filed his motion almost two years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant failed to indicate 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 appellant's approximately two-year delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.


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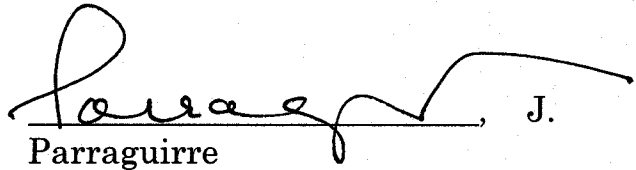
<sup>2</sup>See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

<sup>3</sup>Id. at 563-64, 1 P.3d at 972.

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.<sup>4</sup> Accordingly, we ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Parraguirre

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

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<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).