

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE ARNOLD TINER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46754

FILED

APR 21 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 "a motion for resentencing to withdraw plea." Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge.

On July 26, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a child under the age of sixteen and one count of statutory sexual seduction. The district court sentenced appellant to serve a term of life in the Nevada State Prison for sexual assault and a consecutive term of twelve to thirty-six months for statutory sexual seduction. The district court further imposed the special sentence of lifetime supervision. This court affirmed the judgment of conviction on appeal.¹ Appellant unsuccessfully sought

¹Tiner v. State, Docket No. 34806 (Order of Affirmance, October 10, 2000).

post-conviction relief by way of a post-conviction petition for a writ of habeas corpus and a motion to vacate judgment.²

On September 6, 2005, appellant filed a proper person "motion for resentencing to withdraw plea" in the district court.³ The State opposed the motion, and appellant filed a response. On January 17, 2006, 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 it was entered without an understanding of the elements of the crime and appellant did not admit guilt during the plea canvass. Appellant appeared to claim that he did not understand that the victim, fourteen-years old at the time of the crime, could consent to the sex acts. Appellant further claimed that the district court improperly imposed the special sentence of lifetime supervision because the special sentence of lifetime supervision cannot be imposed when the defendant has received a life sentence.

We conclude that the district court improperly reached the merits of appellant's claim because appellant's motion was barred by the equitable doctrine of laches. Nevertheless, we affirm the decision of the

²Tiner v. State, Docket No. 42733 (Order of Affirmance, August 27, 2004); Tiner v. State, Docket No. 41651 (Order of Affirmance, March 23, 2004).

³Appellant indicated that the motion was filed pursuant to NRS 176.165 (motion to withdraw a guilty plea).

district court to deny the motion because the district court reached the correct result in denying the motion.⁴

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.⁵ 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."⁶ 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.⁷

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 six 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 and a motion to vacate the judgment. Appellant failed to indicate why he was not able to present his claims in the prior

⁴See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963).

⁵See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).


⁶Id. at 563-64, 1 P.3d at 972.

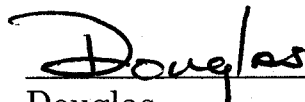
⁷Id. at 564, 1 P.3d at 972.

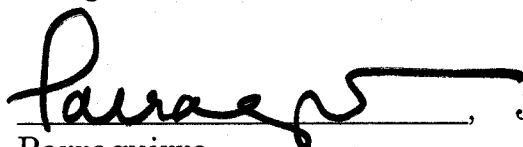
proceedings. Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
Bruce Arnold Tiner
Attorney General George Chanos/Carson City
Eureka County District Attorney
Eureka County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).