

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAZARO SANTANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46978

FILED

JUL 28 2006

ANNETTE BLOOM
CLERK OF SUPREME COURT

DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On September 26, 2001, appellant entered a guilty plea to trafficking in a controlled substance (category A felony). The district court stayed the sentence to allow appellant to participate in a drug treatment program. As part of the plea agreement, the parties agreed that if appellant successfully completed the program, he would be allowed to withdraw his plea of guilty of trafficking in a controlled substance and enter a plea of guilty of possession of a controlled substance. Appellant failed to complete the treatment program. The district court sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison. The judgment was entered on August 28, 2003. No direct appeal was taken.

On February 21, 2006, appellant filed a proper person motion to withdraw guilty plea in the district court. The State opposed the motion. On March 13, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant claimed his plea was invalid because: (a) it was coerced by his counsel, (b) his counsel did not fully communicate with him before he entered the plea, and (c) his counsel failed to file a motion to withdraw guilty plea after appellant was sentenced.

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 entered his plea on September 26, 2001; the judgment of conviction was entered on August 28, 2003, after appellant failed a drug treatment program. Appellant waited two and a half years from the filing of the judgment of conviction to file the instant motion. Appellant failed to provide any explanation for the delay or indicate why he was not able to present his claim prior to the filing of the instant motion.³ Further, it appears that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay.⁴ Accordingly, we conclude that the

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

²Id. at 563-64, 1 P.3d at 972.

³We note that appellant's proper person motion to allow his counsel to withdraw was granted on December 12, 2003.

⁴The charged crimes occurred on July 19, 2001.

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.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Lazaro Santana
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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