

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE BALCAZAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46974

FILED

DEC 07 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
J. Bloom
DEPUTY CLERK

JOSE BALCAZAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46975

JOSE BALCAZAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47254

ORDER OF AFFIRMANCE IN DOCKET NOS. 46974 AND 46975 AND
DISMISSING APPEAL IN 47254

Docket No. 46974 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Docket No. 46975 is a proper person appeal from an order of the district court denying a motion to withdraw the guilty plea. Docket No. 47254 is a proper person appeal from an order of the district court denying a motion for reconsideration. Eighth Judicial District Court, Clark

County; Donald M. Mosley, Judge. We elect to consolidate these appeals for disposition.¹

On October 6, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with a deadly weapon (constituting domestic violence). The district court sentenced appellant to serve a term of three to eight years in the Nevada State Prison. No direct appeal was taken.

Docket No. 46974

On October 18, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 1, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ Appellant did not attempt to demonstrate good cause for the delay. Therefore, we conclude that the district court did not err in determining that appellant's petition was

¹See NRAP 3(b).

²See NRS 34.726(1).

³See id.

procedurally time barred, and we affirm the order of the district court denying the petition.

Docket No. 46975

On February 14, 2006, appellant filed a proper person motion to withdraw the guilty plea in the district court. The State opposed the motion. On March 10, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that his guilty plea was not entered knowingly because he was not informed that he could not receive probation for the offense. Appellant claimed that NRS 200.485(7) prevents the district court from granting probation to a defendant who has been charged with battery constituting domestic violence pursuant to NRS 33.018. He further claimed that his trial counsel failed to inform him of the right to appeal and that he never admitted to using brass knuckles during the plea canvass. Finally, he claimed that he was only raising the claim in 2006 because of his limited access to the prison law library during his incarceration.

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

⁴See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

conditions; and (3) whether circumstances exist that prejudice the State."⁵

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 one year after the judgment of conviction was entered. Appellant failed to demonstrate that 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, and we affirm the order of the district court denying the motion.

Docket No. 47254

On March 21, 2006, appellant filed a proper person motion for reconsideration in the district court. On April 12, 2006, the district court denied the motion. This appeal followed.

Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.⁶ No statute or court rule provides for an appeal from an order of the district court denying a motion for reconsideration.⁷ Therefore, we dismiss this appeal for lack of jurisdiction.

⁵Id. at 563-64, 1 P.3d at 972.

⁶Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

⁷See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995).

Conclusion

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 judgments of the district court AFFIRMED in Docket Nos. 46974 and 46975 and we DISMISS the appeal in Docket No. 47254.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

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

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