

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD THOMAS HUNT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47255

FILED

SEP 06 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction motion to withdraw a guilty plea and vacate judgment. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On June 12, 2003, the district court convicted appellant, pursuant to an Alford¹ plea, of one count of burglary in possession of a firearm and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve one term of 35 to 156 months in the Nevada State Prison for the burglary, two terms of 35 to 156 months for the robberies, plus two equal and consecutive terms for the deadly weapon enhancements. The district court imposed the terms between counts to run concurrently. Appellant did not file a direct appeal.

On October 27, 2003, the district court amended appellant's judgment of conviction to reflect that appellant pleaded guilty pursuant to Alford. On May 17, 2005, the district court filed a second amended

¹North Carolina v. Alford, 400 U.S. 25 (1970).

judgment of conviction correcting a clerical error to conform with the district court's verbal sentence of 36 to 156 months for the burglary count.

On March 16, 2006, appellant filed a proper person post-conviction motion to withdraw a guilty plea and vacate judgment in the district court. The State opposed the motion. On April 4, 2006, the district court denied appellant's motion. This appeal followed.

After the imposition of a sentence, the district court will allow the withdrawal of a guilty plea only to correct a manifest injustice.² A guilty plea is presumptively valid, and appellant carries the burden of establishing that his plea was not entered knowingly and intelligently.³ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁴ This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁵

In his motion, appellant contended that failure to allow him to withdraw his guilty plea would result in manifest injustice. Specifically, appellant claimed that (1) the district court incorrectly relied on information in his Presentence Investigation Report; (2) the erroneous information in his Presentence Investigation Report prohibited appellant

²NRS 176.165.

³Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁴State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

⁵Hubbard, 110 Nev. 671, 877 P.2d 519.

from being assigned to an institution or facility of minimum security; (3) the second amended judgment of conviction resulted in appellant serving additional time because appellant's initial parole date was set according to the original judgment of conviction; and (4) the State failed to provide exculpatory evidence. Appellant did not contend that his guilty plea was unknowingly or unintelligently entered.


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


Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion as it was subject to the equitable doctrine of laches. Appellant filed his motion more than two and one half 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 in a timely petition for a writ of habeas corpus. Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after this delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

⁶See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

⁷Id. 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.⁸ Accordingly, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Michael A. Cherry, District Judge
Leonard Thomas Hunt
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).