

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEE SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47305

FILED

AUG 22 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 July 27, 1989, the district court convicted appellant, pursuant to a guilty plea, of two counts of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of life in the Nevada State Prison without the possibility of parole. No direct appeal was taken. Appellant unsuccessfully sought relief from his conviction by way of a petition for post-conviction relief.¹

On March 22, 2006, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On April 26, 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 and that he received ineffective assistance of counsel.

¹Smith v. State, 106 Nev. 781, 802 P.2d 628 (1990).

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.² 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."³ 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.⁴

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 seventeen years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant previously pursued a petition for post-conviction relief, and he 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 such an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.


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


³Id. at 563-64, 1 P.3d at 972.


⁴Id. at 564, 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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶

 J.
Maupin

 J.
Gibbons

 J.
Hardesty

cc: Hon. Michelle Leavitt, District Judge
Michael Lee Smith
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).

⁶We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.