

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW SCOTT WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47509

**FILED**

SEP 06 2006

BY *[Signature]*  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On July 30, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon and one count of second degree kidnapping. The district court sentenced appellant to serve three consecutive terms of 72 to 180 months in the Nevada State Prison. No direct appeal was taken.

On February 20, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. That same day, the district court entered an order dismissing the petition as it was untimely filed. This court dismissed appellant's untimely appeal from the district court's order for lack of jurisdiction.<sup>1</sup>

<sup>1</sup>White v. State, Docket No. 41481 (Order Dismissing Appeal, July 30, 2003).

On June 8, 2005, appellant filed a proper person motion to correct an illegal sentence. On June 17, 2005, the district court denied the motion. This court affirmed the order of the district court on appeal.<sup>2</sup>

On March 16, 2006, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On May 22, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his counsel was ineffective for failing to investigate, encouraging appellant to enter a guilty plea when there were doubts about appellant's competence, failing to file a direct appeal, and failing to ensure that appellant received a lesser sentence. Appellant further claimed that there was insufficient evidence to support a conviction for kidnapping, the district court decided the sentence before the sentencing hearing, and the district court violated his due process rights at sentencing.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.<sup>3</sup> 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

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<sup>2</sup>White v. State, Docket No. 45582 (Order of Affirmance, November 16, 2005).

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

has arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State."<sup>4</sup>

Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches.<sup>5</sup> Appellant filed his motion approximately seven and one-half years after the judgment of conviction was entered. Appellant failed to adequately explain why he could not have raised his claims in a timely fashion. Appellant's alleged claim that he believed that his counsel had filed a direct appeal on his behalf and did not learn until 2003 that his counsel had not filed an appeal does not explain why he waited an additional three years to file this motion.<sup>6</sup> 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.

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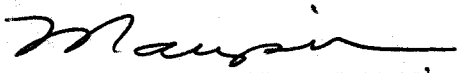
<sup>4</sup>Id. at 563-64, 1 P.3d at 972.


<sup>5</sup>The district court stated in its order that the doctrine of laches was not the primary reason for denying the motion. However, because the consistent application of the doctrine is essential, we conclude that application of the doctrine is warranted in the instant case when the delay is so great.

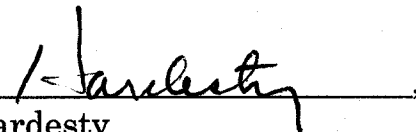
<sup>6</sup>Appellant's unsuccessful pursuit of habeas corpus relief in the State and federal courts does not excuse his delay.

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. John P. Davis, District Judge  
Matthew Scott White  
Attorney General George Chanos/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk

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<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).