

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDRICK DEON WORDLAW A/K/A
FREDERICK DEON WORDLAW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48526

FILED

SEP 24 2007

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

ORDER OF AFFIRMANCE

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

On March 24, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count each of robbery and battery with the use of a deadly weapon. The district court sentenced appellant to serve a term of 24 to 72 months in the Nevada State Prison for robbery, and a consecutive term of 26 to 120 months for battery with the use of a deadly weapon. This court affirmed appellant's judgment of conviction and sentence on direct appeal.¹ The remittitur issued on October 5, 2004. Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.²

On November 1, 2006, appellant filed a proper person motion to withdraw his guilty plea in the district court. The State opposed the

¹Wordlaw v. State, Docket No. 43106 (Order of Affirmance, September 7, 2004).

²Wordlaw v. State, Docket No. 43747 (Order of Affirmance, November 29, 2004).

07-20964

petition. On December 1, 2006, the district court denied appellant's motion. Appellant moved for reconsideration of the order denying his motion. On December 18, 2006, the district court denied appellant's motion for reconsideration. This appeal followed.³

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 conditions; and (3) whether circumstances exist that prejudice the State."⁵ Failure to identify all grounds for relief in a prior proceeding seeking relief from a judgment of conviction "should weigh against consideration of the successive motion."⁶

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 two years after his direct appeal was resolved. Appellant previously pursued a post-conviction petition for a writ of habeas corpus. Although appellant argued that he did not receive his case file from his counsel until May of 2005, appellant failed to

³No statute or court rule provides for an appeal from an order of the district court denying a motion for reconsideration. See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995). Therefore, we dismiss this appeal to the extent that appellant attempted to appeal from the denial of his motion for reconsideration.

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

⁵Id. at 563-64, 1 P.3d at 972.

⁶Id. at 564, 1 P.3d at 972.

demonstrate that he could not have raised his claims earlier. 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 precluded consideration of appellant's motion on the merits. Although it appears the district court denied appellant's motion on the merits, we affirm the denial of appellant's motion.⁷

As a separate and independent ground for affirming the denial of appellant's motion, appellant's claims lacked merit. In his motion to withdraw his guilty plea, appellant claimed that his guilty plea was not knowingly, intelligently and voluntarily entered due to ineffective assistance of counsel and errors committed by the district court.

First, appellant claimed that his guilty plea was not knowingly, voluntarily or intelligently entered because the district court failed to adequately canvass him. Appellant failed to demonstrate that, under the totality of the circumstances, his guilty plea was not knowingly, voluntarily and intelligently entered.⁸ The signed guilty plea agreement set forth the charges to which appellant was pleading guilty and advised appellant of the possible sentences he could receive for each charge. At the plea canvass, appellant affirmatively stated that he had an opportunity to read the plea agreement before signing it, he understood

⁷See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong decision). Although the order denying appellant's motion was a summary order, the State opposed the motion on the merits and did not argue that the doctrine of equitable laches applied to appellant's motion.

⁸See State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

the plea agreement, he had no questions regarding the plea agreement, he understood that the imposition of sentence was up to the district court, and he was entering the guilty plea voluntarily. When providing a factual basis for his plea, appellant admitted that he hit the victim with a brick, took the victim's duffle bag, and entered into a second fight with the victim when the victim tried to reclaim his property. In exchange for his plea, appellant avoided a deadly weapon enhancement on the charge of robbery.⁹ The record on appeal indicates that appellant was aware of the nature of the offenses and the consequences of his plea.

Second, appellant claimed that his guilty plea to battery with the use of a deadly weapon was not knowingly, voluntarily and intelligently entered because the district court accepted a plea to an illegal charge. Specifically, appellant alleged that the charge was illegal because a cement block cannot constitute a deadly weapon. Appellant asserted that his counsel's failure to inform him that a cement block cannot constitute a deadly weapon, and the district court's failure to so advise him rendered his guilty plea invalid. Appellant claimed that withdrawal of his plea under these circumstances was necessary to correct a manifest injustice.

Appellant failed to demonstrate that his guilty plea was not knowingly, voluntarily and intelligently entered.¹⁰ Further, appellant

⁹Appellant was initially charged with one count each of robbery with the use of a deadly weapon and battery with the use of a deadly weapon.

¹⁰See id.

failed to demonstrate that a manifest injustice occurred.¹¹ At the plea canvass, appellant admitted to hitting the victim over the head with a brick. Pursuant to NRS 193.165(5)(b), a deadly weapon is defined as "[a]ny weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death." Under this definition, appellant's use of the brick/cement block to subdue the victim qualified as the use of a deadly weapon.¹²

Third, appellant claimed that his guilty plea was not knowingly, voluntarily or intelligently entered because his counsel was ineffective for failing investigate a witness. Appellant failed to demonstrate that his plea was not entered knowingly, voluntarily and intelligently.¹³ Appellant previously raised a claim that he received ineffective assistance of counsel due to counsel's failure to investigate witnesses in his post-conviction petition for a writ of habeas corpus. The doctrine of the law of the case prevented further litigation of this issue and could not be avoided by a more detailed and precisely focused argument made upon reflection of the prior proceedings.¹⁴

¹¹See NRS 176.165 (providing that, after the imposition of a sentence, the district court may allow the withdrawal of a guilty plea to correct a manifest injustice).

¹²1995 Nev. Stat., ch. 455, § 1, at 1431.

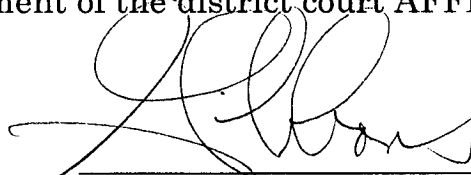
¹³See Freese, 116 Nev. 1097, 13 P.3d 442; Bryant, 102 Nev. 268, 721 P.2d 364.


¹⁴See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).


Fourth, appellant claimed that his guilty plea was not knowingly, voluntarily or intelligently entered because his counsel failed to file a pretrial motion challenging the count of robbery with the use of a deadly weapon under the merger doctrine. Appellant failed to demonstrate how counsel's failure to file the pretrial motion rendered his plea invalid.¹⁵

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.¹⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁷


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

¹⁵See Freese, 116 Nev. 1097, 13 P.3d 442; Bryant, 102 Nev. 268, 721 P.2d 364.

¹⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁷We 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.

cc: Hon. Donald M. Mosley, District Judge
Fredrick Deon Wordlaw
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk