

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK ORTIZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49145

**FILED**

OCT 31 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 third motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On April 10, 1997, the district court convicted appellant, pursuant to an Alford plea,<sup>1</sup> of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years. This court dismissed appellant's untimely appeal from the judgment of conviction for lack of jurisdiction.<sup>2</sup>

On February 20, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup>Ortiz v. State, Docket Nos. 32612, 32613 (Order Dismissing Appeals, August 10, 1998).

State opposed the petition. On May 31, 2001, the district court denied appellant's petition. This court affirmed the district court's order.<sup>3</sup>

On August 6, 2002, appellant filed a proper person motion to withdraw a guilty plea. The State opposed the motion. On August 27, 2002, the district court entered a written order summarily denying appellant's motion. On September 25, 2002, the district court entered specific findings of fact and conclusions of law denying appellant's motion to withdraw his plea. This court affirmed the district court's order on appeal.<sup>4</sup>

On August 25, 2003, appellant filed a second proper person motion to withdraw a guilty plea. The State opposed the motion. On March 11, 2004, the district court denied the motion. This court affirmed the district court's order on appeal.<sup>5</sup>

On February 8, 2007, appellant filed a third proper person motion to withdraw a guilty plea in the district court. The State opposed

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<sup>3</sup>Ortiz v. State, Docket No. 37986 (Order of Affirmance, March 25, 2002).

<sup>4</sup>Ortiz v. State, Docket No. 40137 (Order of Affirmance, June 25, 2003).

<sup>5</sup>Ortiz v. State, Docket No. 42202 (Order of Affirmance, September 7, 2004).

the motion. On March 2, 2007, the district court denied appellant's motion. This appeal followed.<sup>6</sup>

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.<sup>7</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 has arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State."<sup>8</sup> 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.<sup>9</sup>

Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches.

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<sup>6</sup>To the extent that appellant appeals from the decisions denying his motion for leave to file a subsequent motion for withdrawal of a guilty plea, emergency motion for leave to supplement the motion for leave to file a subsequent motion for withdrawal of a guilty plea and subsequent motion for withdrawal of a guilty plea, supplemental brief to the motion for leave to file a subsequent motion for withdrawal of a guilty plea, and supplemental brief to the subsequent motion for withdrawal of a guilty plea, he did not establish that the district court abused its discretion.

<sup>7</sup>See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

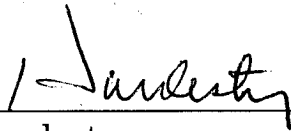
<sup>8</sup>Id. at 563-64, 1 P.3d at 972.

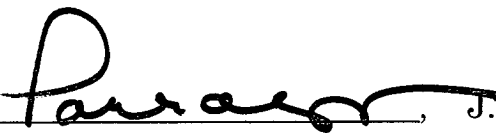
<sup>9</sup>Id. at 564, 1 P.3d at 972.

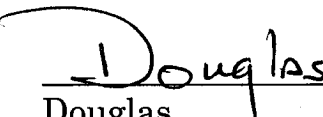
Appellant filed his motion nearly ten years after the judgment of conviction was entered. Appellant failed to demonstrate that he was not able to present his claims in a timely motion. Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

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>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Valorie Vega, District Judge  
Frank Ortiz  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk