

IN THE SUPREME COURT OF THE STATE OF NEVADA


DONALD LINAMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49433

FILED

JAN 18 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

This is an appeal from a district court order denying appellant Donald Linaman's post-conviction motion to withdraw his guilty plea. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On May 16, 2003, Linaman was convicted, pursuant to a guilty plea, of one count of lewdness with a child under fourteen years of age. The district court sentenced Linaman to serve a prison term of life with the possibility of parole after ten years. Linaman did not file a direct appeal.

On April 10, 2006, we affirmed the district court's order denying Linaman's post-conviction petition for a writ of habeas.¹ "Linaman's sole issue on appeal [was] that the district court erred in dismissing his petition without conducting an evidentiary hearing on his claims that counsel was ineffective for not presenting an alcohol evaluation and thirty years of military records."²

¹Linaman v. State, Docket No. 45459 (Order of Affirmance, April 10, 2006).

²Id.

On May 18, 2007, Linaman filed a proper person motion to withdraw his guilty plea. The district court appointed counsel to represent Linaman and counsel filed a supplemental motion to withdraw the guilty plea. The State filed an opposition, Linaman filed a reply, and the district court denied the motion. This appeal follows.

Linaman contends that the district court erred in finding that he entered his guilty plea knowingly, intelligently, and voluntarily. Linaman claims that "he had continually waffled back and forth concerning his guilt." And Linaman argues that because he denied having any sexual arousal when he put ointment on the ten-year-old victim's vagina, he did not have the requisite "sexual arousal mental intent" to commit the crime and the district court should not have accepted his guilty plea.

We have held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.³ 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."⁴ Additionally, a defendant's failure to identify all grounds for relief in a prior proceeding seeking relief from a judgment of conviction weighs against consideration of a successive motion.⁵

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

⁴Id. at 563-64, 1 P.3d at 972.

⁵Id. at 564, 1 P.3d at 972.

Based on our review of the record on appeal, we conclude that Linaman's motion is subject to the equitable doctrine of laches. Linaman filed his motion four years after the judgment of conviction was entered. Linaman has failed to explain why the motion could not have been brought earlier or why the validity of the guilty plea could not have been challenged in the prior litigation. Linaman was informed about the consequences of his plea during the plea canvass and did not challenge the validity of his plea for four years, thereby acquiescing to the existing conditions. 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 Linaman's motion on the merits.

Moreover, as a separate and independent ground for denying relief, we conclude that Linaman failed to demonstrate that his guilty plea was invalid and that manifest injustice had occurred. After sentencing, the district court will allow the withdrawal of a guilty plea only to correct "manifest injustice."⁶ In determining whether manifest injustice has occurred, the court will consider whether the defendant acted voluntarily, understood the nature of the charges against him, and understood the consequences of his plea.⁷ We will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁸

⁶NRS 176.165.

⁷Wilson v. State, 99 Nev. 362, 372-73, 664 P.2d 328, 334-35 (1983).


⁸Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994); see also State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000) ("This court will not invalidate a plea as long as the totality of the circumstances, *continued on next page . . .*

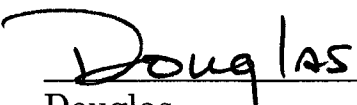
The district court found that Linaman knowingly, intelligently, and voluntarily entered his plea of guilty to one count of lewdness with a minor under the age of fourteen years. Linaman was canvassed regarding the elements of the charge as well as the possible punishment. And, "Linaman specifically admitted that he touched the child with an intent of sexually arousing the minor, despite arguing that he was not sexually aroused" during sentencing and has made other statements indicating his culpability. The district court's findings are supported by the record on appeal and we conclude that the district court did not abuse its discretion by denying Linaman's motion.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Linaman is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

... continued

as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea.").

cc: Hon. Connie J. Steinheimer, District Judge
Mary Lou Wilson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk