

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JOHN URRIZAGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49604

FILED

OCT 12 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant Richard John Urrizaga's motion to vacate and set aside the judgment of conviction. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

On July 14, 1988, Urrizaga was convicted, pursuant to a guilty plea, of sale of a controlled substance (count I) and solicitation to commit murder (count II). The district court sentenced Urrizaga to serve a prison term of 15 years for count I and a concurrent prison term of 10 years for count II. According to the district court order denying the instant motion, Urrizaga finished serving his sentence in 1998.

On March 14, 2005, while incarcerated in Idaho, Urrizaga filed in the Fourth Judicial District Court a proper person document titled "Motion to Vacate and Set Aside Judgment and to Expunge the Record in Nature of Coram Nobis." We note, however, that the writ, or in this case, a motion of coram nobis no longer exists in the State of Nevada. In his motion, Urrizaga claimed that his guilty plea was not entered knowingly, intelligently, and voluntarily and was the "product of a drug-induced stupor caused by the ingestion of drugs prescribed to him at the Elko County Jail." The State opposed Urrizaga's motion, and in its response, construed it as either a motion to withdraw his guilty plea or,

alternatively, a post-conviction petition for a writ of habeas corpus.¹ The district court appointed counsel to represent Urrizaga. Appointed counsel did not file a supplement to Urrizaga's motion, but did appear on Urrizaga's behalf at a status hearing, at which, the district court stated that it would take the matter under advisement. On June 11, 2007, the district court entered an amended order denying Urrizaga's motion, finding that the motion was untimely and procedurally barred by the equitable doctrine of laches.² The district court also noted that Urrizaga was canvassed by the court and represented by counsel at the time he entered his plea. This timely appeal followed.

Urrizaga contends that the district court abused its discretion by denying his motion. The extent of Urrizaga's argument is that "the jail records supplied by Urrizaga suggest good cause and that a hearing should have been held." We disagree and conclude that Urrizaga is not entitled to relief.

Urrizaga's motion, construed as a motion to withdraw his guilty plea, is subject to the equitable doctrine of laches.³ Urrizaga filed

¹This court has held that a defendant who has completed his sentence may not thereafter seek habeas corpus relief from that conviction. See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999); see also Nev. Const. art. 6, § 6(1) (stating that district courts may issue a writ of habeas corpus on petition by "any person who is held in actual custody in their respective districts, or who has suffered a criminal conviction in their respective districts and has not completed the sentence imposed pursuant to the judgment of conviction") (emphasis added).

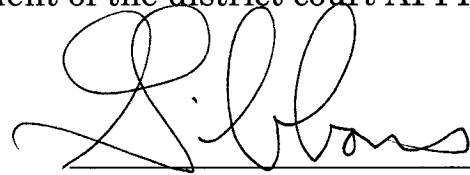
²The amended order corrected a clerical error in the original order denying Urrizaga's motion, which was filed on May 9, 2007.

³See Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000); Little v. Warden, 117 Nev. 845, 853-54, 34 P.3d 540, 545-46 (2001).


his motion more than sixteen years after he entered his guilty plea and provided no explanation for the delay. Throughout the proceedings, the State has specifically asserted that it would suffer prejudice if it were forced to proceed to trial after such a long delay, and Urrizaga has failed to offer an argument sufficient to overcome the presumption of prejudice to the State. Further, the district court found that by waiting more than sixteen years, Urrizaga's motion "can be viewed as a knowing acquiescence to the existing conditions." We agree and conclude that the district court did not err by denying Urrizaga's motion without conducting an evidentiary hearing.

Therefore, having considered Urrizaga's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk