

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL B. NELSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49666

**FILED**

AUG 14 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court denying appellant Michael Nelson's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On February 26, 2004, the district court convicted Nelson, pursuant to a guilty plea, of two counts of sexual assault of a minor under 16 years of age. The district court sentenced Nelson to serve two consecutive prison terms of 5 to 20 years. We dismissed Nelson's untimely direct appeal.<sup>1</sup>

On April 5, 2006, Nelson filed a proper person motion to withdraw his guilty plea in the district court. The State opposed the motion. The district court summarily denied the motion. On appeal, we

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<sup>1</sup>Nelson v. State, Docket No. 45321 (Order Dismissing Appeal, July 6, 2005).

reversed and remanded the matter to the district court for further proceedings.<sup>2</sup>

On June 7, 2007, the district court entered an order denying Nelson's motion to withdraw his guilty plea. This appeal follows.

Nelson contends that the district court erred by failing to conduct an evidentiary hearing after determining that his motion to withdraw his guilty plea was denied on the merits and that the district court incorrectly applied the equitable doctrine of laches to his motion. In our initial order of reversal and remand we stated:

Because consistent application of the equitable doctrine of laches is necessary and because the reason for the district court's decision is not entirely clear, this court reverses the order of the district court and remands this matter to the district court to consider whether the equitable doctrine of laches would preclude consideration of the motion on the merits. If the district court determines that the equitable doctrine of laches precludes review of the motion on the merits, the district court shall state this determination in a written order denying the motion. In the event the district court determines that the equitable doctrine of laches does not preclude consideration of the motion on the merits, the district court shall conduct an evidentiary hearing on whether appellant was correctly advised by his counsel, or otherwise, that probation was not available in this case. Any final, written order addressing the merits of appellant's claims shall contain specific

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<sup>2</sup>Nelson v. State, Docket No. 47285 (Order of Reversal and Remand, August 1, 2006).

findings of fact and conclusions of law addressing appellant's claims that his guilty plea was not entered knowingly and voluntarily.<sup>3</sup>

Despite these explicit instructions, the order signed by the district judge did not indicate whether Nelson's motion to withdraw his guilty plea was denied on the merits or precluded by the equitable doctrine of laches.<sup>4</sup> Accordingly, we reverse the district court order and remand this matter to the district court with instructions to enter an order that conforms with our August 1, 2006, order of reversal and remand.

Nelson also contends that the district judge should have recused himself from this case. Nelson claims that the district judge was formerly the head of the district attorney's sexual assault prosecution unit and supervised the prosecutors who originally worked on his case. Nelson concedes that the district judge did not personally appear in the underlying case, but argues that his supervision of the prosecutors who did appear creates the appearance of impropriety. Nelson did not raise this issue in the court below and we decline to consider it here.<sup>5</sup>

Having considered Nelson's contentions and for the reasons discussed above, we

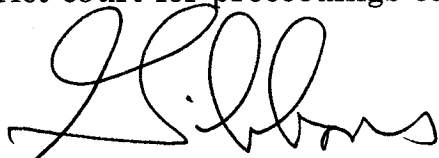
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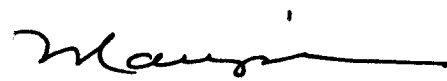
<sup>3</sup>Id. at 4-5 (emphasis added and internal footnote omitted).


<sup>4</sup>See generally Ledbetter v. State, 122 Nev. 252, 265, 129 P.3d 671, 680-81 (2006) (noting that the purpose of the district judge's signature on the judgment of conviction is to ensure accuracy of the information that it contains).

<sup>5</sup>See Walch v. State, 112 Nev. 25, 30, 909 P.2d 1184, 1187 (1996).

ORDER the judgment of the district court REVERSED AND  
REMAND this matter to the district court for proceedings consistent with  
this order.

  
\_\_\_\_\_, CJ.  
Gibbons

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Keith C. Brower  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk