

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
JULIO C. VIGIL,
Respondent.

No. 49988

FILED

DEC 10 2007

JANET L. M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting respondent's post-conviction motion to withdraw the guilty plea. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On June 9, 1998, appellant Julio C. Vigil was convicted, pursuant to a guilty plea, of one count of robbery. The district court sentenced Vigil to serve a prison term of 12 to 30 months. On April 19, 1999, the Nevada Department of Prisons notified the deputy district attorney that the sentence was illegal because the statutory minimum sentence for robbery was 24 months. Subsequently, the State filed a motion to correct the illegal sentence, and on August 23, 1999, the district court entered an amended judgment of conviction imposing a prison term of 24 to 60 months. Vigil did not appeal from the amended judgment of conviction.

On May 22, 2007, Vigil, with the assistance of counsel, filed a post-conviction motion to withdraw the guilty plea. The State opposed the petition. After entertaining arguments on the motion, the district court granted Vigil's motion. The State filed this timely appeal.

The State contends that the district court abused its discretion in finding that a manifest injustice occurred. The district court found that

a manifest injustice occurred because "the [sentencing] judge was under the [mistaken] impression that the [the robbery charge] was a non-probationable offense." The State argues that the record indicates that the sentencing judge was aware that Vigil was eligible for probation. We agree.

The record in this case belies Vigil's claim that the sentencing judge believed the offense was non-probationable. The written plea agreement expressly stated that Vigil was eligible for probation. Prior to sentencing, the written plea agreement was filed in open court, and the district court accepted the guilty plea. At the original sentencing hearing, defense counsel requested probation, and the court rejected counsel's request explaining that it was not imposing probation based on the fact that Vigil aided and abetted in the robbery. In particular, the district court stated, "[w]ell, I can't overlook the fact that he did aid and abet in the commission of a robbery. As he stated . . . I knew I could be sent to prison so I helped him escape, quote-unquote. So I can't buy the probation argument." Notably, robbery is a probationable offense and, at the sentencing hearing, the district court made no statements indicating that it believed Vigil was ineligible for probation because a weapon was used in the course of the robbery.

At the hearing on the motion to correct the illegal sentence, defense counsel again requested probation, and the district court rejected Vigil's second request for probation again explaining that it refused Vigil's request because of his role in the crime:

Court: And I read the facts [of the case] again. And I note for the record, sir, that your own statements [were] the reason I sentenced you to prison rather than consider probation, is that you

aided and abetted in the commission of this crime that.

You came to the store with the co-defendant. Albeit, you weren't as involved as your co-defendant. But you expressly said you helped him escape. . . .

And because of that, you're considered to aid and abet in the commission of the felony. In this case, a gun was used. That's why there is a minimum of 24 months. . . . Do you have any questions sir?

[Defendant]: So you're not giving me probation then?

Court: No, I can't.

In the proceedings below and on appeal, Vigil argues that the district court's comment about the use of a gun coupled with its response to Vigil that it could not give him probation indicate that the sentencing court was under the mistaken belief that Vigil was ineligible for probation because he aided and abetted in a robbery where a gun was used, and robbery with the use of a deadly weapon is a non-probationable offense.¹ We note, however, that the sentencing court did not enhance the robbery sentence for the use of a deadly weapon, and it is clear from the plea agreement and transcripts of the sentencing hearing, that the court knew that Vigil was eligible for probation.

"Following sentencing, a guilty plea may be set aside only to correct a manifest injustice."² A guilty plea is presumptively valid, and the defendant has the burden of establishing that the plea was not entered

¹See NRS 193.165(5).

²Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990); see also NRS 176.165.

knowingly and intelligently.³ To determine if a plea is valid, the court must consider the totality of the circumstances.⁴ This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁵ Under the unique circumstances of this case, we conclude that the district court abused its discretion in finding a manifest injustice. As previously discussed, the sentencing court was aware that Vigil was eligible for probation, but refused to grant probation because of the nature of the offense.

Although the State failed to raise the issue below, we note that the doctrine of laches would also preclude consideration of Vigil's motion on the merits. A motion to withdraw a guilty plea is subject to the equitable doctrine of laches.⁶ 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."⁷

³See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁴See State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); see also Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993) (the district court "has a duty to review the entire record to determine whether the plea was valid. . . [and] may not simply review the plea canvass in a vacuum").

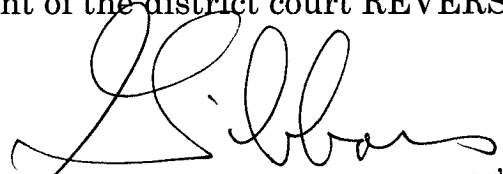
⁵See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995); Hubbard, 110 Nev. at 675, 877 P.2d at 521.

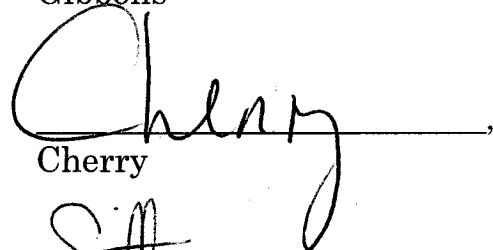
⁶See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

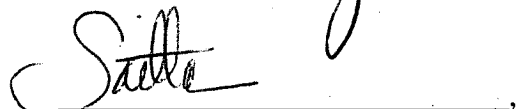
⁷Id. at 563-64, 1 P.3d at 972.

Here, Vigil filed his motion approximately nine years after the entry of the judgment of conviction. His allegation of ineffective assistance of counsel is an insufficient justification for the nine-year delay. And because of the extensive delay, it is probable that the State would suffer prejudice if it were forced to proceed to trial on the original charges.

Having concluded that the district court abused its discretion in granting the post-conviction motion to withdraw the guilty plea, we ORDER the judgment of the district court REVERSED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Kenneth C. Cory, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Law Offices of Al Lasso, LLC
Eighth District Court Clerk