

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED DAVID LUDDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50087

FILED

MAR 27 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On June 18, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a child. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after serving 20 years. No direct appeal was taken.

On March 16, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, and post-conviction counsel filed a supplement to the petition. On March 16, 2005, after conducting an evidentiary hearing, the district court denied the petition. This court affirmed the decision of the district court on appeal.¹

On May 10, 2007, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion.

¹Luddy v. State, Docket No. 44973 (Order of Affirmance, March 16, 2006).

On August 13, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant appeared to claim that his guilty plea was invalid because he had confessed to conduct amounting only to statutory sexual seduction. Appellant also appeared to make a claim of mistaken identity. Although the district court summarily denied the motion on the merits, we conclude that this motion was subject to the equitable doctrine of laches.²

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."³ 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.⁴

Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches. Appellant filed his motion almost four years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant previously pursued a post-conviction petition for a writ of habeas corpus, and appellant failed to indicate why he was not able to present his claims prior to the filing of the instant motion. Finally, it appears that the State would suffer prejudice if it were forced to proceed to

²See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

³Id. at 563-64, 1 P.3d at 972.

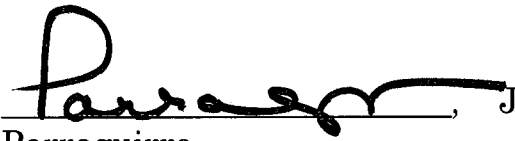
⁴Id. at 564, 1 P.3d at 972.


trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precluded 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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Alfred David Luddy
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶In light of this court's disposition of this appeal, we deny appellant's motion for leave to file a brief in this matter.