

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE ANTHONY LINDER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50175

**FILED**

MAR 24 2008

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion to withdraw an Alford plea.<sup>1</sup> Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On November 14, 2005, the district court convicted appellant, pursuant to an Alford plea, of one count of second degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On August 11, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On October 31, 2006, the district court denied the petition. This court affirmed the order of the district court on appeal.<sup>2</sup>

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<sup>1</sup>See North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup>Linder v. State, Docket No. 48369 (Order of Affirmance, April 24, 2007).

On August 7, 2007, appellant filed a proper person motion to withdraw an Alford plea in the district court. The State opposed the motion. On September 5, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his plea was entered without an understanding of the consequences of an Alford plea and that he only learned the true consequences while studying in prison. Appellant further claimed that there was a conflict between the written guilty plea agreement and the plea canvass because the written guilty plea agreement did not reference or explain an Alford plea.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.<sup>3</sup> 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."<sup>4</sup> Failure to identify all grounds for relief in a prior proceeding seeking relief

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

<sup>4</sup>Id. at 563-64, 1 P.3d at 972.

from a judgment of conviction should weigh against consideration of a successive motion.<sup>5</sup>

The district court entered a summary written order denying the motion. 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 two years after the judgment of conviction was entered. Further, appellant previously pursued a post-conviction petition for a writ of habeas corpus wherein he challenged the validity of his guilty plea and the effective assistance of counsel. In the habeas corpus petition, appellant specifically claimed that his guilty plea was not valid because he was not fully informed of the consequences of an Alford plea. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument.<sup>6</sup> Appellant failed to demonstrate that he was not able to present the arguments in support of 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 trial after the delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.


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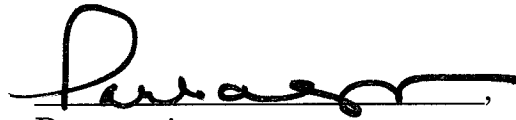
<sup>5</sup>Id. at 564, 1 P.3d at 972.

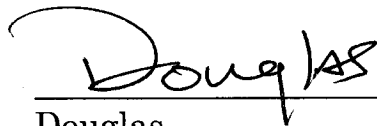
<sup>6</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

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

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Sally L. Loehrer, District Judge  
Eugene Anthony Linder  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk