

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK LAMAR BISHOP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50105

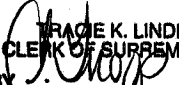
DERRICK LAMAR BISHOP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. ~~50360~~

FILED

JAN 10 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

Docket No. 50105 is a proper person appeal from an order of the district court denying a motion to withdraw the guilty plea. Docket No. 50360 is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. We elect to consolidate these appeals for disposition.¹ Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On February 14, 1994, the district court convicted appellant, pursuant to a guilty 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.

¹See NRAP 3(b).

Docket No. 50105

On July 3, 2007, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion, and appellant filed a response. On August 8, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his guilty plea was not valid because a second competency evaluation was not submitted and a full competency hearing was not conducted in the district court contrary to the requirements of NRS 178.415.² Appellant asserted that he was fourteen years old at the time of the trial proceedings and a special education student. Appellant further asserted that trial counsel had requested a competency evaluation because trial counsel felt that appellant may be mentally disabled. However, prior to the completion of the competency proceedings, trial counsel advised appellant to enter a guilty plea to second-degree murder. Appellant claimed that there was no time limit on raising this claim in the district court. Finally, appellant claimed that he did not understand the complete consequences of his guilty plea, including, that he would be supervised on parole for the rest of his life, he would have to pay supervision fees, he would have his wages garnished to pay fees and restitution, and he would be ineligible for at least 52 jobs because of his prior felony conviction.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.³ Application of the doctrine

²See 1991 Nev. Stat., ch. 389, § 5, at 1003 (NRS 178.415).

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

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."⁴ 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.⁵

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 more than thirteen years after the judgment of conviction was entered.⁶ Appellant failed to provide any explanation for the delay, 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 trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

Moreover, as a separate and independent ground to deny relief, appellant failed to demonstrate that his guilty plea was not valid.⁷ The record on appeal does not support appellant's claim that he was

⁴Id. at 563-64, 1 P.3d at 972.

⁵Id. at 564, 1 P.3d at 972.

⁶Notably, the motion to withdraw a guilty plea was filed after appellant's parole was revoked and he returned to prison.

⁷See State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

incompetent at the time he entered his plea. This court has held that the test for determining competency is "whether [the defendant] has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him."⁸ It appears that trial counsel expressed some doubt about appellant's competence based upon his youth and special education status, and trial counsel requested the competency proceedings. The State attached a copy of one of the evaluations conducted in the proceedings, and the evaluator concluded that appellant was competent. It is not clear if a second evaluation was conducted, but regardless, appellant failed to demonstrate that he was incompetent at the time he entered his plea. Appellant's youth and special education status do not conclusively demonstrate incompetence. Notably, appellant's motion contains a blatant falsehood regarding his age at the time he committed his crime—appellant was not fourteen years of age as he claimed, but rather, appellant was sixteen years of age at the time he committed his crime and seventeen years of age when he entered his guilty plea.⁹ Appellant failed to provide any documentation that he was in fact incompetent at the time he entered his guilty plea. Finally, the record on appeal indicates that appellant was informed of the direct consequences of his guilty plea; appellant was not required to be informed

⁸Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (quoting Dusky v. United States, 362 U.S. 402 (1960)).

⁹Appellant is cautioned against making such false statements in documents filed in the court.

of the collateral consequences of his guilty plea.¹⁰ Therefore, we affirm the order of the district court denying appellant's motion.

Docket No. 50360

On August 27, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On September 26, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that pursuant to NRS 194.010 he should not have been convicted due to his age, 14 years, and his lack of knowledge of the wrongfulness of his act of murder.¹¹ Appellant further claimed that the district court lacked jurisdiction because he was not properly certified to adult court in violation of former NRS 62.080(2).¹²

¹⁰See Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002).

¹¹NRS 194.010 provides, in pertinent part, that:

All persons are liable to punishment except those belonging to the following classes:

....

(2) Children between the ages of 8 years and 14 years, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness.

1981 Nev. Stat., ch. 687, § 11, at 1660.

¹²See 1991 Nev. Stat., ch. 160, § 11, at 304-05 (former NRS 62.080). Former NRS 62.080 was replaced in 2003 by NRS 62B.390. See 2003 Nev. Stat., ch. 206, § 53, at 1030-31.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.¹³ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"¹⁴

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the motion. Appellant's sentence was facially legal.¹⁵ Appellant failed to demonstrate that the district court was not a competent court of jurisdiction in the instant case; the crime of murder did not fall within the jurisdiction of the juvenile court.¹⁶ The record on appeal unequivocally demonstrates that appellant was sixteen years at the time he committed his crime; thus, appellant's reliance upon NRS 194.010 was misplaced. Therefore, we affirm the order of the district court.

¹³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

¹⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

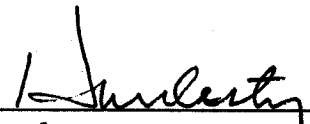
¹⁵1989 Nev. Stat., ch. 631, § 1, at 1451 (NRS 200.030).

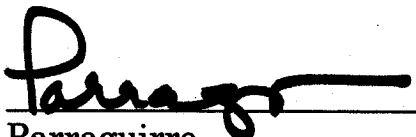
¹⁶See 1989 Nev. Stat., ch. 796, § 24, at 1909 (former NRS 62.040(1)(b)(1)); Kell v. State, 96 Nev. 791, 618 P.2d 350 (1980).

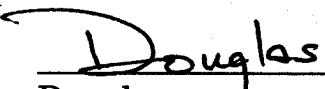
Conclusion

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.¹⁷ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁸


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Derrick Lamar Bishop
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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.