

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JON BLASEY, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50587

FILED

FEB 21 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 set aside a guilty plea and strike the conviction. Third Judicial District Court, Churchill County; Leon Aberasturi, Judge.

On February 13, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of driving under the influence, third offense (a felony). The district court sentenced appellant to serve a term of eighteen to sixty months in the Nevada State Prison.

On April 20, 2007, appellant filed a proper person motion to set aside the guilty plea and strike the conviction in the district court.¹ The State opposed the motion, and appellant filed a response. On October 17, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his guilty plea agreement was breached in the instant case in January 2007 when the Washoe County District Attorney's Office charged him with a felony-level

¹In light of the relief sought, we conclude that the district court did not err in construing appellant's motion as a post-conviction motion to withdraw a guilty plea. See NRS 176.165.

driving under the influence offense based upon his 1997 conviction despite the fact that the new offense occurred more than seven years after his 1997 conviction. Appellant claimed that application of NRS 484.3792(2), which provides that a defendant with a prior felony driving under the influence conviction would have any subsequent driving under the influence offense treated as a felony offense regardless of the timing of the subsequent offense, was an ex post facto violation because it was enacted years after his 1997 conviction was final.² Appellant further claimed that he was told by his trial counsel and the district attorney that the 1997 conviction would not be used in any future prosecutions occurring more than seven years from the date of the 1997 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 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

²See 2005 Nev. Stat. (Special Session), ch. 6, § 15, at 102-03. This subsection became effective June 17, 2005. See 2005 Nev. Stat. (Special Session), ch. 6, § 26, at 96, 110.

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

⁴Id. at 563-64, 1 P.3d at 972.

⁵Id. at 564, 1 P.3d at 972.

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 ten years after the judgment of conviction was entered, and appellant failed to provide an adequate explanation for the delay in challenging his guilty plea in the instant case. The fact that the Washoe County District Attorney's Office is prosecuting appellant for a new felony driving under the influence offense has no bearing upon the validity of appellant's guilty plea in this case. Appellant's guilty plea was not breached in the instant case as there is nothing in the record supporting appellant's assertion that a term of the plea agreement was a promise that the 1997 conviction would not be used to enhance a future driving under the influence offense occurring more than seven years after the 1997 conviction.⁶ Even assuming that appellant was informed by trial counsel that the 1997 conviction would not be used to enhance a subsequent driving under the influence offense after seven years had passed, this information would not render the plea invalid in the instant case. This court has held that a defendant must be informed of the direct consequences of a guilty plea, but this court has not required that a defendant be informed of a collateral consequence of the guilty plea.⁷ The fact that a criminal conviction could later be used against appellant in a subsequent prosecution in a manner unforeseen by the parties at the time is a collateral consequence of the guilty plea.⁸

⁶See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

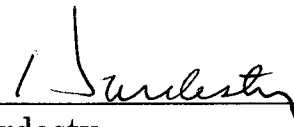
⁷See Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002).

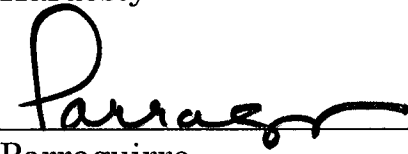
⁸See Dixon v. State, 103 Nev. 272, 274, 737 P.2d 1162, 1164 (1987).

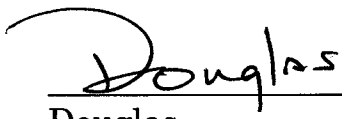
Further, at the time the advice was allegedly given, the information was a correct statement of NRS 484.3792.⁹ Appellant's ex post facto claim was improperly raised in the instant motion as any such claim should be litigated in the Second Judicial District Court. Finally, it appears that the State would 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.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁹See 1995 Nev. Stat., ch. 637, § 43, at 2471-73.

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Leon Aberasturi, District Judge
Richard Jon Blasey II
Attorney General Catherine Cortez Masto/Carson City
Churchill County District Attorney
Churchill County Clerk