

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRADY ONZO MULLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50849

FILED

SEP 25 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 appellant's motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On May 22, 2002, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted sexual assault (Counts I and II), two counts of battery with the intent to commit a crime (Counts III and IV), two counts of coercion (Counts V and VI), one count of indecent exposure (Count VII), and one count of open or gross lewdness (Count VIII). The district court sentenced appellant to serve in the Nevada State Prison: (1) a term of 96 to 240 months plus lifetime supervision for each of Counts I and II; (2) a term of 72 to 180 months for each of Counts III and IV; (3) a term of 18 to 45 months for each of Counts V and VI; (4) a term of 12 months in the Clark County Detention Center for Count VII; and (5) a term of 12 months in the Clark County Detention Center for Count VIII. The sentences for Counts I through VI were

imposed to run consecutively. The sentences for Counts VII and VIII were imposed to run concurrent with the sentences imposed for Counts I through VI. This court affirmed appellant's judgment of conviction and sentence on appeal.¹

On January 13, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On March 22, 2004, the district court denied appellant's petition. On appeal, this court affirmed the district court's denial of appellant's petition.²

On November 13, 2007, appellant filed a proper person motion to withdraw guilty plea for manifest injustice in the district court. The State opposed the motion. On December 12, 2007, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that his plea was invalid for the following reasons: the amended indictment was illegal because it was not properly presented to a grand jury, he was legally insane at the time of his crimes, and his plea was not entered knowingly, voluntarily, and intelligently because his plea was coerced by the State's threats to charge him as a habitual criminal.

¹Mullins v. State, Docket No. 39632 (Order of Affirmance, December 10, 2002).

²Mullins v. State, Docket No. 43133 (Order of Affirmance, September 28, 2004).

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

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 four years after his direct appeal was resolved. Appellant failed to provide any explanation for the delay. 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.

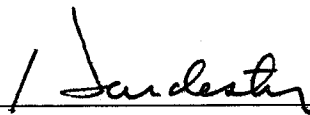
³Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000).

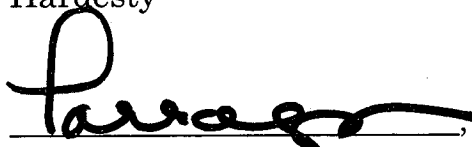
⁴Id. at 563-64, 1 P.3d at 972.

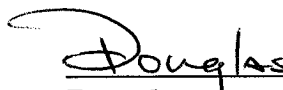
⁵Id. at 564, 1 P.3d at 972.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
Grady Onzo Mullins
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).