IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE E. SCHWIGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49907

LAWRENCE E. SCHWIGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51039

FILED

APR 10 2008

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

ORDER OF AFFIRMANCE

Docket No. 49907 is a proper person appeal from an order of the district court denying a motion for sentence modification. Docket No. 51039 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; David B. Barker, Judge. We elect to consolidate these appeals for disposition.[1]

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[1]See NRAP 3(b).

08-08921

On December 11, 2001, the district court convicted appellant, pursuant to an Alford[2] plea, of one count of lewdness with a child under the age of fourteen and two counts of solicitation to commit murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with parole eligibility after serving ten years for the lewdness count, and two concurrent terms of 72 to 180 months for the solicitation counts, to run consecutively to the sentence imposed for the lewdness count. This court affirmed appellant's judgment of conviction on direct appeal.[3]

On August 22, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus. On December 20, 2006, the district court denied appellant's petition. This court affirmed the district court's order on appeal.[4]

Docket No. 49907

On May 14, 2007, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion.

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[2]North Carolina v. Alford, 400 U.S. 25 (1970).

[3]Schwiger v. State, Docket No. 39007 (Order of Affirmance, August 24, 2004).

[4]Schwiger v. State, Docket Nos. 48483 and 48579 (Order of Affirmance, July 18, 2007). This court elected to consolidate appellant's proper person appeal from the district court's denial of his petition for a writ of habeas corpus with appellant's proper person appeal from the district court's denial of appellant's motion for return of personal property.

On June 26, 2007, the district court denied appellant's motion. This appeal followed.[5]

A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."[6] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[7]

In his motion, appellant claimed that his plea was involuntary, the State fabricated evidence against him, and the State illegally obtained the indictment against him. These claims fell outside the very narrow scope of claims permissible in a motion to modify. Therefore, the district court did not err in denying these claims.

Appellant also claimed that materially false information was presented at his sentencing hearing. Specifically, he asserted that the testimony of the molestation victim's grandmother that she had observed a strange man in her backyard and had received calls from the Clark County Detention Center was impalpable and appellant did not have a legitimate motive to harass the victim and potential witness at the time

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[5]Appellant's notice of appeal indicated that he was appealing from the district court's denial of his motion for an independent polygraph test. We conclude that the district court did not abuse its discretion in denying his motion for an independent polygraph test.

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

[7]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

the alleged incident occurred. Appellant failed to demonstrate that the district court relied upon the victim's testimony concerning the disputed events when sentencing him. The record on appeal indicates that the district considered the severity of appellant's crimes and considered the imposition of consecutive sentences warranted by the fact that appellant had molested a five-year-old victim and then solicited another individual to kill the victim, the victim's mother, the victim's grandmother, appellant's ex-wife, and a Child Protective Services worker.[8] Further, the court also based its determination on the results of appellant's psychosexual evaluation and his refusal to cooperate with that evaluation. Therefore, we conclude the district court did not err in denying this motion, and we affirm the district court's order.

Docket No. 51039

On December 28, 2007, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion and specifically pleaded laches. On January 25, 2008, the district court denied appellant's motion. This appeal followed.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.[9] Application of the doctrine

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[8]Although originally charged with five counts of solicitation to commit murder, appellant's Alford plea to the solicitation to commit murder charges related only to the molestation victim's mother and grandmother.

[9]See 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."[10] 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.[11]

Based upon our review of the record on appeal, we conclude that the district court did not err in applying the equitable doctrine of laches to appellant's motion. Appellant filed his motion more than six years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay in bringing his claims, 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 affirm the district's order denying the motion to withdraw a guilty plea.

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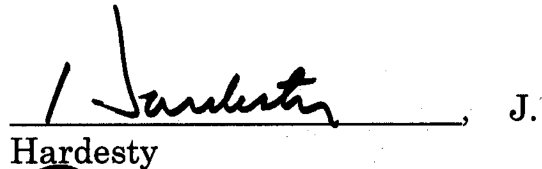
[10]Id. at 563-64, 1 P.3d at 972.

[11]Id. at 564, 1 P.3d at 972.

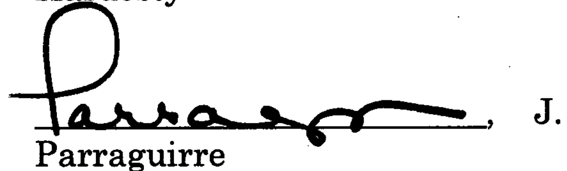
Conclusion

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.[12] Accordingly, we

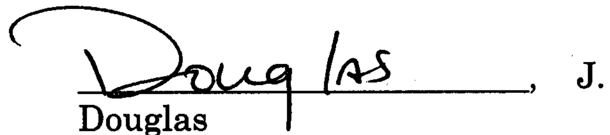
ORDER the judgments of the district court AFFIRMED.[13]



_____, J.
Hardesty



_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. David B. Barker, District Judge
Lawrence E. Schwiger
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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

[13]We 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.