

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CHARLES JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51295

ROBERT CHARLES JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51296

FILED

SEP 25 2008

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

ORDER OF AFFIRMANCE

Docket No. 51295 is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Docket No. 51296 is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. We elect to consolidate these appeals for disposition.

On July 9, 1980, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree murder. Appellant was sentenced to death. This court affirmed the judgment of conviction on

appeal, but vacated the death sentence and remanded the matter for a new penalty hearing.¹ Upon remand, appellant waived his penalty hearing and stipulated to a sentence of life without the possibility of parole, and on April 10, 1987, the district court entered a judgment of conviction reflecting the imposition of a sentence of life without the possibility of parole. No appeal was taken.

On April 14, 1988, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315 in the district court. On May 25, 1988, the district court denied the petition. No appeal was taken.

On November 28, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 11, 2001, the district court denied the petition. On January 29, 2001, and on January 30, 2001, appellant filed a proper person motion to withdraw the guilty plea in the district court. On February 20, 2001, the district court denied the motions. This court affirmed the orders of the district court on appeal.²

On February 6, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Jones v. State, 105 Nev. 573, 707 P.2d 1128 (1985).

²Jones v. State, Docket Nos. 37388, 37448 (Order of Affirmance, November 21, 2001).

motion. On March 17, 2008, the district court denied appellant's motion. Appellant's appeal was docketed in this court in Docket No. 51295.

On February 6, 2008, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On April 8, 2008, the district court denied the motion. Appellant's appeal was docketed in this court in Docket No. 51296.

Motion to Correct an Illegal Sentence

In his motion, appellant contended that the district court was without jurisdiction to impose a sentence of life without the possibility of parole because the charging information failed to set forth the elements of premeditation and deliberation.

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.³ "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.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying this motion. Appellant's sentence was facially

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

legal.⁵ Appellant failed to demonstrate that the district court was not a competent court of jurisdiction. Appellant's claim relating to the alleged charging error did not implicate the jurisdiction of the district court. Further, as a separate and independent ground to deny relief, we conclude that appellant's claim was patently without merit. Appellant was charged with open murder, and the charging information provided sufficient notice of the charge of open murder.⁶ Therefore, we affirm the order of the district court denying this motion.

Motion to Withdraw a Guilty Plea

In his motion, appellant appeared to claim that he entered a guilty plea to the charge for first-degree murder. Appellant further claimed that he was unaware of the true consequences of a sentence of life without the possibility of parole because he believed that he would appear before the Pardons Board within a year of the 1987 judgment of conviction and would only serve 15 to 18 years before being released on parole. Appellant claimed that his guilty plea was invalid because of his diminished education level and lack of understanding of the proceedings. Finally, appellant claimed that his guilty plea was coerced because his trial counsel told him that he could receive a second death sentence when this court's opinion vacating the original death sentence called into question whether the death penalty was appropriate.

⁵1977 Nev. Stat., ch. 598, § 5, at 1627-28.

⁶NRS 200.010.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.⁷ 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.”⁸ 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.⁹

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 21 years after the 1987 judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant previously pursued post-conviction relief from his judgment of conviction. 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

⁷Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000).

⁸Id. at 563-64, 1 P.3d at 972.

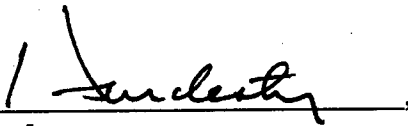
⁹Id. at 564, 1 P.3d at 972.

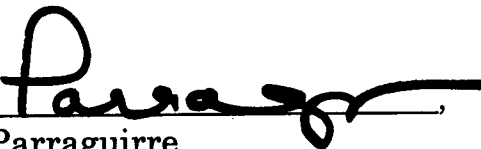
doctrine of laches precludes consideration of appellant's motion on the merits.¹⁰

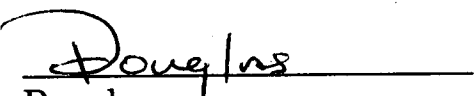
Conclusion

Having reviewed the records 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.¹¹ Accordingly, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

¹⁰Any application for a pardon should be sought in compliance with the procedures set forth in NRS chapter 213.

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).