IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP COVARRUBIAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51434

FILED

DEC 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to withdraw guilty plea, or alternatively, post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On December 8, 2004, the district court convicted appellant, pursuant to a plea of nolo contendere,[1] of one count of attempted sexual assault and one count of child abuse and neglect with substantial mental harm. The district court sentenced appellant to serve two consecutive terms of four to ten years in the Nevada State Prison. No direct appeal was taken.

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[1]See North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

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On January 13, 2005, appellant, represented by counsel, filed a post-conviction petition for a writ of habeas corpus and a motion to withdraw guilty plea in the district court. The State opposed the petition and motion. The district court elected to hold an evidentiary hearing, and on July 21, 2005, the district court denied appellant's petition and motion. This court affirmed the decision on appeal.[2]

On February 28, 2008, appellant filed a proper person motion to withdraw guilty plea, or alternatively, post-conviction petition for a writ of habeas corpus in the district court. The State opposed the motion and petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 27, 2008, the district court denied appellant's motion and petition. This appeal followed.

In his motion and petition, appellant contended that (1) he was "never fully explained the true meaning and nature of lifetime supervision," (2) he was misinformed that he was eligible for probation, (3) the plea canvass was insufficient, and (4) his decision to plead guilty was based on the district court's erroneous evidentiary rulings that precluded him from offering exculpatory evidence at trial.

To the extent that appellant's claims constituted a motion to withdraw a guilty plea, this court has held that a motion to withdraw a

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[2]Covarrubias v. State, Docket No. 45320 (Order of Affirmance, March 13, 2006).

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 three years after the judgment of conviction was entered. Appellant previously pursued a motion to withdraw guilty plea and a post-conviction petition for a writ of habeas corpus. In an attempt to excuse the delay, appellant argued that his prior post-conviction counsel failed to raise these issues in the prior motion and petition. A defendant has no statutory or constitutional right to effective post-conviction counsel, and failure to identify all grounds for relief in the prior proceeding weighs against consideration of the instant motion.[6]

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

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

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

[6]See Bejarano v. Warden, 112 Nev. 1466, 1469, 929 P.2d 922, 925 (1996) (quoting McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996)); Hart, 116 Nev. at 564, 1 P.3d at 972.

[7]See NRS 34.726(1).

Appellant failed to demonstrate that 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.

To the extent that appellant's claims constituted a post-conviction petition for a writ of habeas corpus, we note that appellant filed his petition more than three years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.[7] Moreover, appellant's petition was successive because he had previously filed a petition for a writ of habeas corpus.[8] Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.[9] Again, appellant argued that his prior post-conviction counsel failed to raise these claims in the prior motion and petition. As stated above, a defendant has no statutory or constitutional right to effective post-conviction counsel, and thus appellant failed to demonstrate good cause.[10]

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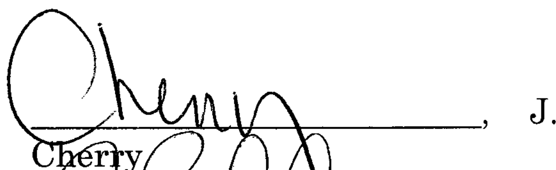
[8]See NRS 34.810(2).

[9]See NRS 34.810(3).

[10]See Bejarano v. Warden, 112 Nev. 1466, 1469, 929 P.2d 922, 925 (1996) (quoting McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996)).

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.[11] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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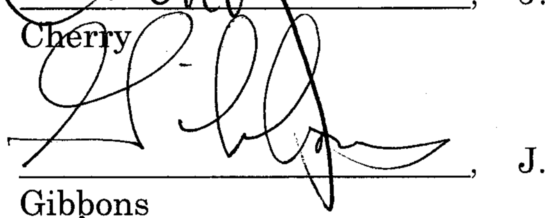
Cherry



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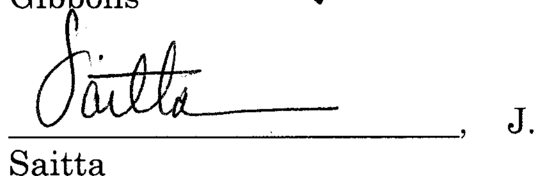
Gibbons



_________________________, J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
Phillip Arthur Covarrubias
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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