

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL JAVIER DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51476

FILED

AUG 29 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 a motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On December 14, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of second-degree murder with the use of a deadly weapon and one count of battery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after 10 years for the murder count and a concurrent term of 24 to 96 months for the battery count. No direct appeal was taken.

On July 14, 2003, appellant, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district

court. On November 5, 2003, the district court denied the petition. This court affirmed the district court's decision on appeal.¹

On October 17, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 11, 2008, the district court denied appellant's petition. This court affirmed the denial of appellant's petition on appeal.²

On March 10, 2008, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On April 4, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed: (1) the district court failed to ask appellant during the plea canvass if he was coerced or given a promise of leniency; (2) trial counsel was ineffective for coercing his plea by threatening him with the death penalty and failing to inform him he was ineligible for the death penalty; (3) trial counsel was ineffective for failing to investigate and misrepresenting facts relating to appellant's actions; (4) the prosecutor committed misconduct; (5) the district court incorrectly informed appellant he faced a maximum of 22 or 20 years in prison; (6) trial counsel was ineffective for informing appellant he would

¹Diaz v. State, Docket No. 42598 (Order of Affirmance, November 15, 2004).

²Diaz v. State, Docket No. 50826 (Order of Affirmance, April 25, 2008).

only serve 16 years in prison; and (7) trial counsel was ineffective for failing to advise appellant about his options and right to a jury trial.

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 seven years after the judgment of conviction was entered. 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

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

⁴Id. at 563-64, 1 P.3d at 972.

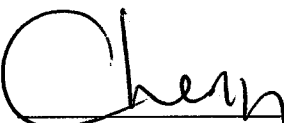
⁵Id. at 564, 1 P.3d at 972.


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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

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

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