

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH WAYNE WINSLETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51591

FILED

JAN 08 2009

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 and a motion for entry of a default judgment. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On October 30, 2003, the district court convicted appellant, pursuant to a guilty plea, of attempted sexual assault (Count 1) and battery with the intent to commit sexual assault (Count 2). The district court sentenced appellant to serve a term of 53 to 240 months for Count 1 and a concurrent term of 24 to 84 months for Count 2 in the Nevada State Prison. This court affirmed appellant's convictions and sentences on appeal. Winslett v. State, Docket No. 42429 (Order of Affirmance, March 24, 2004). The remittitur issued on April 20, 2004.

On April 6, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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

April 19, 2007, the district court dismissed appellant's petition. On November 1, 2007, this court affirmed the district court's denial of appellant's petition. Winslett v. State, Docket No. 49432 (Order of Affirmance, November 1, 2007).

On December 27, 2007, appellant filed a motion to withdraw guilty plea. On March 25, 2008, appellant filed a motion for entry of a default judgment. On April 10, 2008, the district court denied both of appellant's motions. This appeal followed.

In his motion to withdraw guilty plea, appellant claimed his trial counsel informed him that he would only receive probation, that his trial counsel would not cross-examine or investigate the victim, that his trial counsel did not inform him of the consequences of his plea, that his plea was not knowing and voluntary, and that the State would be unable to prove he was guilty of the charged crimes.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches. Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000). 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." Id. at 563-64, 1 P.3d at 972. 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. Id. at 564, 1 P.3d at 972.

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 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 precluded consideration of appellant's motion on the merits.

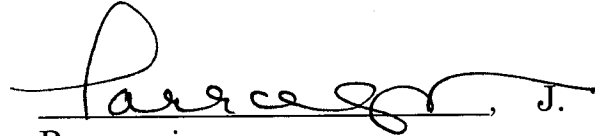
Next, in his motion for entry of a default judgment, appellant claimed that he was entitled to a default judgment because the State had not responded to his motion to withdraw guilty plea. NRAP 31(c) states that "failure of respondent to file a brief may be treated by the court as a confession of error and appropriate disposition of the appeal thereafter made," which appellant claimed entitled him to a default judgment. This rule is a rule of appellate procedure, which is not applicable to motions before the district court. NRAP 1(a).

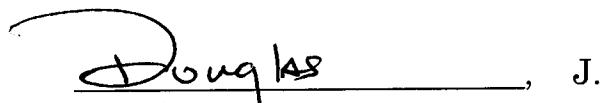
In addition, appellant claimed that Second Judicial District Court Rule 12(2), which states that a "responding party shall file and serve upon all parties, within 10 days after service of a motion, answering points and authorities and counter-affidavits," entitled him to a default judgment. Criminal matters are not subject to the rules in that section of the Second Judicial District Court Rules. WDCR 1(2)(c). Therefore, the district court did not err when denying appellant's motion for entry of a default judgment.

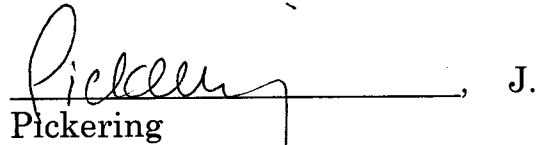
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


Parraguirre


Douglas


Pickering

cc: Hon. Steven P. Elliott, District Judge
Kenneth Wayne Winslett
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

¹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, 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.