

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY EMILLIO GODETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51705

FILED

FEB 19 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 a “motion for specific performance of plea agreement.” Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On January 5, 2007, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010 and sentenced appellant to serve a term of 8 to 20 years in the Nevada State Prison. No direct appeal was taken.

On April 4, 2008, appellant filed a “motion for specific performance of plea agreement.” The State opposed the motion. On May 8, 2008, the district denied appellant’s motion. This appeal followed.

In his motion, appellant claimed that he was entitled to specific performance of the plea agreement. In the guilty plea agreement, appellant and the State agreed that appellant would be adjudicated a habitual criminal. The parties further agreed that the State would recommend appellant be sentenced to serve a term of 5 to 20 years. The district court instead sentenced appellant to serve a term of 8 to 20 years. Appellant claimed that he is entitled to the lesser sentence because it was

his understanding that the district court would follow the recommendation of the State. As there is no “motion for specific performance of plea agreement,” appellant’s motion is properly construed as a motion to withdraw a guilty plea.

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.

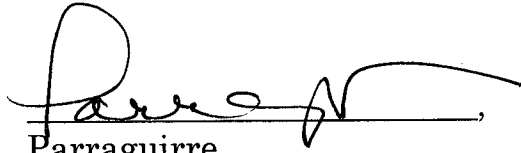
Based upon our review of the record on appeal, we conclude that appellant’s motion is subject to the equitable doctrine of laches. Appellant filed his motion more than one year after his judgment of conviction. It appears that the State would suffer prejudice if it were forced to proceed to trial after the delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant’s motion on the merits. Therefore, the district court did not err in denying this motion.

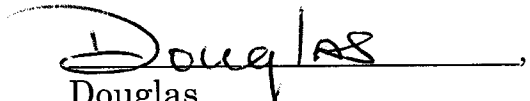
Moreover, as a separate and independent ground for denying this motion, appellant failed to demonstrate that his guilty plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). A

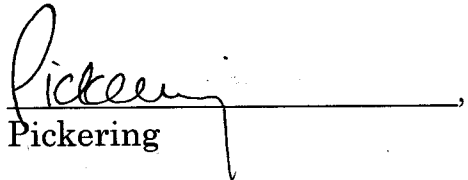
defendant's mere subjective belief as to a potential sentence is insufficient to invalidate the guilty plea as involuntary and unknowing. Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975). Appellant signed a written guilty plea agreement which informed appellant that the sentence he was to receive was within the discretion of the district court and that he had not been promised a particular sentence. Thus, appellant failed to demonstrate that his plea was not knowingly and intelligently entered. Therefore, the district court did not err in denying this motion.

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

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Jackie Glass, District Judge
Roy Emillio Godett
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk