

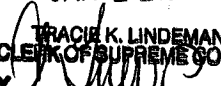
IN THE SUPREME COURT OF THE STATE OF NEVADA

HUGO APARICIO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52120

**FILED**

JAN 22 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On February 19, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. For each count, the district court sentenced appellant to serve a term of 48 to 180 months in the Nevada State Prison, with a consecutive term of 48 to 180 months for the deadly weapon enhancement. The sentences for the two counts were imposed to run concurrently. This court affirmed appellant's judgment of conviction and sentence on appeal. Aparicio v. State, Docket No. 43014 (Order of Affirmance, September 15, 2004). The remittitur issued October 12, 2004.

On August 9, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition, and this court affirmed the district court's order on appeal. Aparicio v. State, Docket No. 46316 (Order of Affirmance, February 24, 2006).

On January 25, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

district court denied the petition, and this court affirmed the district court's order on appeal. Aparicio v. State, Docket No. 49296 (Order of Affirmance, September 6, 2007).

On June 24, 2008, appellant filed a proper person motion to withdraw guilty plea in the district court. The State opposed the motion. On July 18, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that his plea was invalid for the following reasons: he was actually innocent, his plea was coerced, his plea was unknowing and unintelligent, his due process rights were violated by the State's withholding of exculpatory evidence, key witnesses were not interviewed by the police or called to testify, the witnesses did not identify him in a photo line-up and their description was poor, his trial counsel was ineffective, his counsel in juvenile court was ineffective, and the district court relied on false statements at the sentencing hearing.

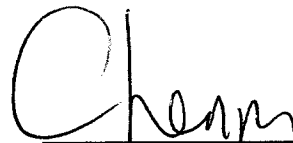
This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches. Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000). Application of the doctrine requires consideration of various factors, including: "(1) whether there was an inexcusable delay in seeking 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.

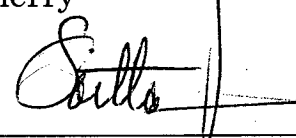
Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches. Appellant filed his motion more than three years after his direct appeal

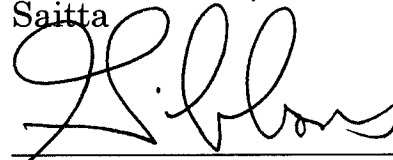
was resolved. Appellant failed to provide any explanation for the delay. The majority of appellant's claims have already been litigated in appellant's prior filings. Appellant failed to indicate why he was not able to present the new and different claims prior to filing the instant motion. Finally, it 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.

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.<sup>1</sup>

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

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<sup>1</sup>We 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.

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