

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES WILLIAM BREWINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52560

FILED

APR 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
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; Joseph T. Bonaventure, Judge.

On February 28, 1996, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On October 22, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition, pleading laches. On May 20, 2008, the district court dismissed appellant's petition. This court affirmed the district court's dismissal on the ground of laches. Brewington v. State, Docket No. 51867 (Order of Affirmance, November 21, 2008).

On August 8, 2008, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion and specifically pleaded laches. On October 27, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his plea should be withdrawn because of this court's decision in Finger v. State, 117 Nev. 548, 578, 27 P.3d 66, 86 (2001), which held that an amendment abolishing a plea of not guilty by reason of insanity was unconstitutional as violative of due process. When appellant pleaded guilty in 1995, not guilty by reason of insanity was not available as a possible defense, and consequently, he pleaded guilty but mentally ill. Appellant requested that he be allowed to withdraw his plea so that he could pursue a defense of not guilty by reason of insanity.

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 twelve years after the judgment of conviction. In addition, Finger was decided over seven years ago. Appellant claimed that his mental illness prevented him from presenting this claim earlier, but failed to explain how. In particular, appellant conceded that he was medicated while in prison and that he sought the help of inmate law clerks to prepare the instant motion. Further,

documents attached to the petition indicated appellant was determined to be competent at the time of his guilty plea. Appellant failed to explain why he did not raise this claim within a reasonable period of time from the decision in Finger. Moreover, appellant previously presented this exact claim in a proper person post-conviction petition for a writ of habeas corpus which was denied by the district court and affirmed by this court because it was untimely filed. Appellant has failed to explain why we should reconsider our decision here. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). 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.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Charles William Brewington
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk