

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ZECHARIAH HOFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52659

FILED

JUL 23 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 to set aside judgment to permit withdrawal of plea.” Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On September 11, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of second-degree murder and one count of child abuse and neglect. The district court sentenced appellant to serve in the Nevada State Prison a term of life with the possibility of parole after 10 years for second-degree murder and a consecutive term of 24 to 72 months for child abuse and neglect. No direct appeal was taken.

On September 18, 2006, appellant filed a motion to correct illegal sentence. The State opposed the motion. On October 16, 2006, the district court denied the motion. This court dismissed the untimely appeal for lack of jurisdiction. Hoff v. State, Docket No. 48780 (Order Dismissing Appeal, February 14, 2007).

On September 23, 2008, appellant filed a proper person “motion to set aside judgment to permit withdrawal of plea.” The State opposed the motion. On October 14, 2008, the district court denied the motion. This appeal followed.

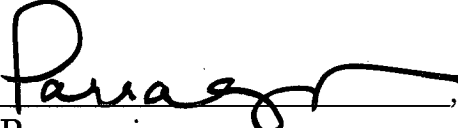
In his motion, appellant claimed that his convictions for second-degree murder and child abuse and neglect violated double jeopardy principles.

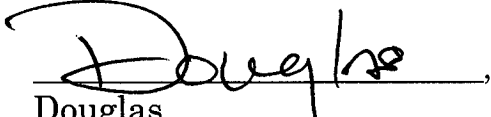
This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches. Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000). Application of the doctrine requires consideration of various factors, including: “(1) whether there was an inexcusable delay in seeking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

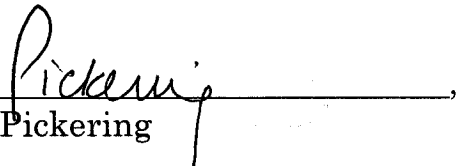
Based upon our review of the record on appeal, we conclude that appellant’s motion is subject to the equitable doctrine of laches. Appellant filed his motion more than 11 years after his judgment of conviction. It appears that the State would suffer prejudice if it were forced to proceed to trial after 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.

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: Eighth Judicial District Court Dept. 15, District Judge
David Zechariah Hoff
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk