

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL BENNET NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52696

FILED

MAR 11 2010

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Snop
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Michael Bennet Nelson first argues that the district court erred in failing to conduct an evidentiary hearing, which he asserts was mandated by a prior order entered by this court because the district court determined that the initial denial of the motion was on the merits. Nelson v. State, Docket No. 47285 (Order of Reversal and Remand, August 1, 2006). Contrary to Nelson's assertions, our prior order specifically instructed the district court "to consider whether the equitable doctrine of laches would preclude consideration of the motion on the merits" and explained that an evidentiary hearing would be necessary only "[i]n the event the district court determines that the equitable doctrine of laches does not preclude consideration of the motion on the merits." Id. at 4. The district court complied with this court's directive by considering whether the equitable doctrine of laches precluded consideration of the motion on the merits. Once the district court determined that the equitable doctrine of laches precluded consideration of the motion on the merits, no evidentiary hearing was required by this court's prior order.

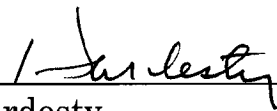


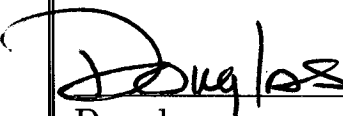
Nelson next argues that the district court erred in applying the equitable doctrine of laches to preclude consideration of the motion on the merits. We disagree because: (1) there was an inexcusable delay in seeking relief—Nelson waited more than two years from the entry of his plea to file the motion to withdraw; (2) Nelson knowingly acquiesced in existing conditions; and (3) the delay before Nelson filed the motion is prejudicial to the State particularly given the length of time since the charged incidents occurred. See Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000).

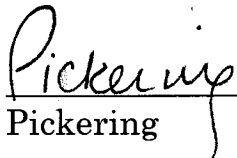
Nelson finally argues that this court should strike the district court's order because some of the findings/conclusions are not supported by the record. The instances identified by Nelson relate to the merits of the motion—the validity of the guilty plea. Even assuming that the challenged findings/conclusions are inconsistent with the record, we conclude that Nelson is not entitled to relief because the district court properly determined that the equitable doctrine of laches precluded consideration of the motion on the merits and therefore any findings related to the merits of the motion are superfluous.

Having determined that Nelson's arguments lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Keith C. Brower
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk