

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL JAVIER DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52700

FILED

SEP 25 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.” Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On December 14, 2000, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon and battery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life with the possibility of parole in the Nevada State Prison for second-degree murder and a concurrent term of 24 to 96 months in the Nevada State Prison for battery. No direct appeal was taken.

On July 14, 2003, appellant, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. On November 5, 2003, the district court denied the petition. This court affirmed the district court’s decision on appeal. Diaz v. State, Docket No. 42598 (Order of Affirmance, November 15, 2004).

On October 17, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 11, 2008, the district court denied appellant's petition. This court affirmed the district court's decision on appeal. Diaz v. State, Docket No. 50826 (Order of Affirmance, April 25, 2008).

On March 10, 2008, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On April 4, 2008, the district court denied appellant's motion. This court affirmed the denial of appellant's motion on appeal. Diaz v. State, Docket No. 51476 (Order of Affirmance, August 29, 2008).

On September 17, 2008, appellant filed a proper person "motion for specific performance of plea agreement" in the district court. The State opposed the motion. On October 17, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he was induced or coerced into pleading guilty. Specifically, he claimed that the State improperly threatened him with the death penalty when he was ineligible for the death penalty because he was minor. Further, appellant claimed that his counsel informed him that he would be receiving a sentence of 10 to 25 years and not life and that counsel did not explain the deadly weapon enhancement to him.

Because of the nature of the relief sought, appellant's motion is properly construed as a motion to withdraw guilty plea.¹ NRS 176.165. 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.

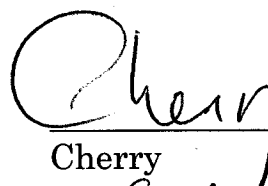
Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches. Appellant filed his motion more than 8 years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay. Appellant previously pursued two post-conviction petitions for writs of habeas corpus and a motion to withdraw guilty plea. Appellant failed to indicate why he was not able to present his claims prior to the filing of 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.

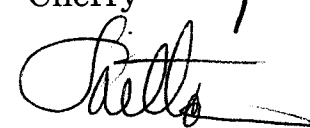
¹Further, we note no Nevada case law or statute that provides for a "motion for specific performance" as a vehicle to challenge the validity of a guilty plea.

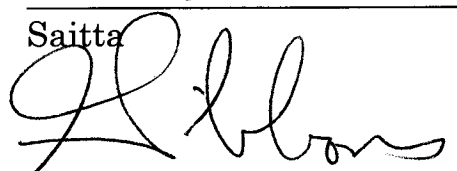
Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

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.

 _____, J.
Cherry

 _____, J.
Saitta

 _____, J.
Gibbons

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