

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD PROCTOR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52744

FILED

NOV 03 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *J. Sharp*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On January 19, 1977, the district court convicted appellant, by way of a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), of second-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison. This court dismissed appellant's direct appeal as untimely. Proctor v. State, Docket No. 11343 (Order Dismissing Appeal, December 27, 1978). Appellant unsuccessfully sought post-conviction relief by way of three proper person post-conviction petitions for a writ of habeas corpus, a motion to correct an illegal sentence, and a motion to set aside judgment. Proctor v. State, Docket No. 48393 (Order of Affirmance, May 16, 2007); Proctor v. State, Docket No. 37278 (Order of Affirmance, July 3, 2001); Proctor v. State, Docket No. 33318 (Order of Affirmance, May 16, 2001); Proctor v. State, Docket Nos. 31509, 31717 (Order Dismissing Appeals, April 10, 1995).

On September 18, 2008, appellant filed a proper person "motion to withdraw plea to reflect manifest injustice" in the district court.

The State opposed the motion. On November 12, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that (1) the indictment for murder was insufficient, (2) he erroneously pleaded guilty pursuant to Alford, (3) the district court's plea canvass was insufficient, (4) no facts existed to support his conviction, (5) his plea was not knowingly and intelligently entered, (6) he was not competent to enter an Alford plea, (7) his plea was coerced, (7) the trial court failed to inform him of his right to appeal, and (8) his plea was invalid pursuant to this court's decisions in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002) and Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006).

A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Hubbard, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

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;

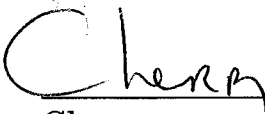
and (3) whether circumstances exist that prejudice the State.” Id. at 563-64, 1 P.3d at 972. Failure to identify all grounds for relief in a prior proceeding seeking relief from a judgment of conviction should weigh against consideration of a successive motion. Id. at 564, 1 P.3d at 972.


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 thirty years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay in seeking relief on claims (1) through (7). Appellant previously pursued three separate post-conviction petitions for a writ of habeas corpus and a motion to set aside judgment. Appellant failed to indicate why he was not able to present claims (1) through (7) 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. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant’s motion on the merits with respect to claims (1) to (7).


To the extent appellant asserted in claim (8) that this court’s more recent decisions in Sharma and Mitchell indicate that his guilty plea was invalid, this claim is without merit. Sharma and Mitchell both address the validity of jury instructions related to vicarious liability. Sharma, 118 Nev. at 656, 56 P.3d at 873; Mitchell, 122 Nev. at 1276, 149 P.3d at 38. As appellant pleaded guilty to the charge of second-degree murder, appellant did not receive any jury instructions and he was not convicted pursuant to any vicarious liability theory. Accordingly, Sharma and Mitchell are inapplicable. Therefore, the district court did not err in denying this claim.

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

cc: Hon. Valorie Vega, District Judge  
James Edward Proctor  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

---

<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.