

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE ARNOLD TINER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52999

FILED

SEP 21 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 retract defendant’s guilty plea.” Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge.

On July 26, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a child under the age of sixteen and one count of statutory sexual seduction. The district court sentenced appellant to serve a term of life in the Nevada State Prison for sexual assault and a consecutive term of twelve to thirty-six months for statutory sexual seduction. The district court further imposed the special sentence of lifetime supervision. This court affirmed the judgment of conviction on appeal. Tiner v. State, Docket No. 34806 (Order of Affirmance, October 10, 2000). Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus, a motion to vacate judgment, and a “motion for resentencing to withdraw plea.” Tiner v. State, Docket No. 42733 (Order of Affirmance, August 27, 2004); Tiner v. State, Docket No. 41651 (Order of Affirmance, March 23, 2004); Tiner v. State, Docket No. 46754 (Order of Affirmance, April 21, 2006).

On August 14, 2008, appellant filed a “motion to retract defendant’s guilty plea” in the district court. The State opposed the motion. On December 12, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed: (1) the district court did not have subject matter jurisdiction to accept his guilty plea because the information was false and failed to charge an offense; (2) the victim consented to the sexual acts; (3) laches should not apply to the instant motion because the district court did not have jurisdiction to accept the guilty plea; (4) the convictions violated due process; and (5) the charges were false.

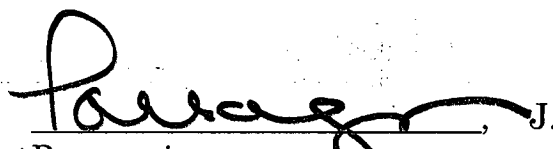
Due to the nature of relief sought, we conclude that appellant’s motion is properly construed as a motion to withdraw a guilty plea. This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches. Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000). Application 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.

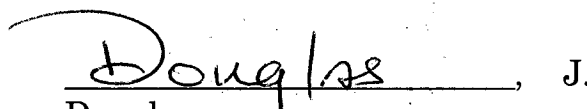
Based upon our review of the record on appeal, we conclude that appellant’s motion is subject to the equitable doctrine of laches. Appellant filed his motion more than 9 years after the judgment of conviction. Appellant provided no explanation for the delay. Appellant

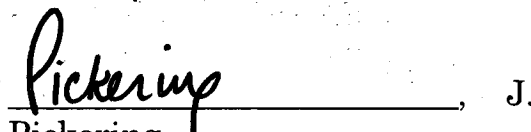
previously pursued post-conviction relief in which he argued that the district court lacked subject matter jurisdiction to accept the guilty plea due to defects in the information and that the victim consented to the sexual acts and this court rejected those challenges. The doctrine of law of the case prevents further litigation of these issues and cannot be avoided by more detailed and precisely focused arguments. See Hall v State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such a lengthy 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Steve L. Dobrescu, District Judge
Bruce Arnold Tiner
Attorney General Catherine Cortez Masto/Carson City
Eureka County District Attorney
Eureka County Clerk