

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAY TONE DOAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53070

**FILED**

**JUL 07 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Day Tone Doan's post-conviction motion to withdraw her guilty plea. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 1, 1998, Doan was convicted, pursuant to a guilty plea, of one count of attempted grand larceny. The district court sentenced Doan to a prison term of 12-30 months, suspended execution of the sentence, and placed her on probation for an indeterminate period not to exceed three years. Doan did not pursue a direct appeal from the judgment of conviction and sentence and was honorably discharged from probation on October 22, 1999.

On November 12, 2008, Doan, with the assistance of counsel, filed a post-conviction motion to withdraw her guilty plea. The State opposed the motion. The district court conducted a brief hearing and, on February 5, 2009, entered an order denying Doan's motion. This timely appeal followed.

Doan contends that the district court erred by denying her post-conviction motion to withdraw her guilty plea. Specifically, Doan claims that her plea was not entered knowingly or intelligently because neither the court nor counsel provided information about the immigration

consequences of a guilty plea in state court to an offense classified in the federal system as an aggravated felony pursuant to § 101(a)(43)(G) of the Immigration and Nationality Act. We disagree.

NRS 176.165 provides, in part, that a defendant may be permitted to withdraw her guilty plea after sentencing “[t]o correct manifest injustice.” 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 v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986), holding limited on other grounds by Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994). This court presumes “that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court’s determination absent a clear showing of an abuse of discretion.” Bryant, 102 Nev. at 272, 721 P.2d at 368.

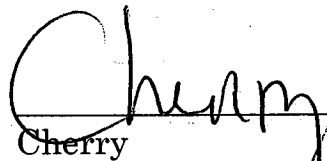
In Barajas v. State, this court held that deportation is a collateral consequence that does not affect the validity of a guilty plea and the failure to advise a defendant of the possible immigration consequences does not render a plea involuntary. 115 Nev. 440, 442, 991 P.2d 474, 475-76 (1999). Further, trial counsel’s failure to provide information regarding the collateral consequence of deportation is not objectively unreasonable and does not amount to ineffective assistance of counsel. Id.; see also Strickland v. Washington, 466 U.S. 668, 688 (1984). Moreover, this court recently reaffirmed the holding of Barajas in Rubio v. State. 124 Nev. \_\_\_, 194 P.3d 1224 (2008). In Rubio, this court also adopted an affirmative misrepresentation exception to the collateral consequence rule and held “that affirmative misadvice [by counsel] regarding immigration consequences may constitute ineffective assistance of counsel and support withdrawal of a guilty plea as involuntarily entered.” Id. at \_\_\_, 194 P.3d at 1232.


In this case, Doan's motion is subject to the equitable doctrine of laches. See Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000) (holding that the equitable doctrine of laches applies to a post-conviction motion to withdraw a guilty plea). Doan filed her motion more than ten years after she entered her guilty plea and failed to offer any explanation for the delay. Moreover, the State specifically asserted that it would suffer prejudice if it were forced to proceed to trial after such a delay. See id. We agree.


We further conclude that the court and counsel's failure to provide Doan with information regarding potential adverse immigration consequences prior to the entry of her plea was not objectively unreasonable pursuant to Barajas. And we refuse to once again revisit Barajas. Additionally, Doan does not allege affirmative misrepresentation by counsel. Therefore, we conclude that the district court did not abuse its discretion by denying Doan's post-conviction motion to withdraw her guilty plea.

Having considered Doan's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

  
Cherry, J.

  
Saitta, J.

  
Gibbons, J.

cc: Hon. Donald M. Mosley, District Judge  
Law Offices of Reza Athari  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk