

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN EDWARD WADE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55967

FILED

JAN 13 2011

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to withdraw guilty plea.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed a motion to withdraw guilty plea in the district court on March 16, 2010, more than two years after the entry of the judgment of conviction on November 14, 2007. 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

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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.


In an effort to excuse the delay, appellant first claimed that his trial counsel told him he would not file a direct appeal. Appellant failed to demonstrate that this excused the delay as he did not demonstrate that he could not have filed his motion in a more timely fashion. See generally Hathaway v. State, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003).

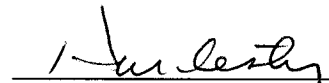
Second, appellant claimed he could not have filed a motion in a timely manner because he was in a prison drug and alcohol treatment program pursuant to NRS 209.425 and did not have access to legal materials. Appellant failed to demonstrate that any alleged restriction to his access to legal materials affected his efforts to pursue his claim in a timely manner. Lewis v. Casey, 518 U.S. 343, 351 (1996).

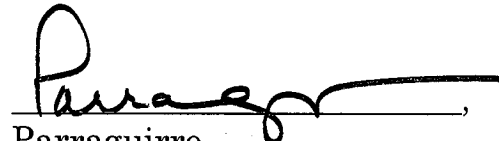
We therefore conclude that the equitable doctrine of laches precluded consideration of the motion because there was a more than two year delay from entry of the judgment of conviction, there was inexcusable delay in seeking relief and an implied waiver exists from appellant's knowing acquiescence in existing conditions. Hart, 116 Nev. at 563, 1

P.3d at 972. Therefore, the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

 _____, J.
Saitta

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Brian Edward Wade
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We 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.