

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID PEREZ MARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56229

**FILED**

**MAR 17 2011**

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 a post-conviction motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.


Appellant David Perez Martinez claims that the district court erred by denying his motion to withdraw his guilty plea and asserts that his plea is invalid because his counsel affirmatively misadvised him about the immigration and deportation consequences of pleading guilty.

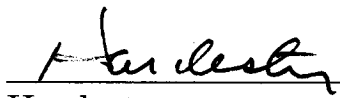
The district court may grant a motion to withdraw a plea after entry of the judgment of conviction in order to "correct manifest injustice." NRS 176.165. "[C]onsideration of the equitable doctrine of laches is necessary in determining whether a defendant has shown 'manifest injustice.'" Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000). Here, respondent argued that the equitable doctrine of laches should apply because Martinez waited five years after completion of his sentence before seeking relief and the State would suffer extreme prejudice because all evidence against Martinez had been destroyed one month before he filed the motion to withdraw. Martinez's explanation for the delay was that he was not aware of any problem until he was arrested by U.S. Immigration

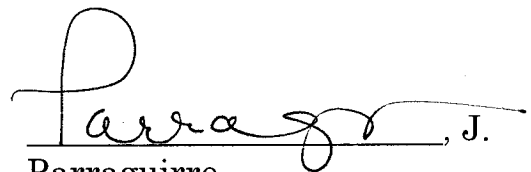
and Customs Enforcement officers and held for deportation and Martinez asserted that he did not knowingly acquiesce in the condition because he filed his motion to withdraw within a few months of being arrested. We conclude that laches precluded consideration of the motion on the merits and we affirm the order denying the motion. Id. at 563-65, 1 P.3d at 972-73.

Moreover, as a separate and independent basis for affirming the order, we conclude that the district court did not abuse its discretion by denying the motion because its determination that Martinez failed to satisfy his burden and demonstrate that his counsel affirmatively misadvised him of the immigration consequences of the plea is supported by substantial evidence and is not clearly erroneous. See Rubio v. State, 124 Nev. 1032, 1039, 1044, 194 P.3d 1224, 1229, 1232 (2008). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Stein & Rojas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk