

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN F.P. CIOLINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56813

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Angela
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order denying a motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

On August 14, 2009, appellant filed a motion to withdraw his guilty plea raising several grounds including that he was induced into pleading guilty because he believed that he would be moved to Alaska for his incarceration. After an evidentiary hearing on this issue, the district court denied the petition.

On appeal, appellant argues that the district court erred in denying his claim that he was promised that he would be moved to Alaska. After reviewing the record on appeal, we conclude that the equitable doctrine of laches precluded consideration of the motion because there was a four-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, and the State may suffer prejudice from the delay.¹ Hart v. State, 116 Nev. 558, 563-64,

¹Further, appellant acknowledges that he was informed by his counsel in March 2007 that counsel was unable to get him moved to Alaska. Therefore, there was also an inexcusable two-year delay from the

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1 P.3d 969, 972 (2000). Therefore, the district court did not err in denying appellant's motion.²

Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. After holding an evidentiary hearing on appellant's motion, the district court denied the motion and found the testimony of appellant to be incredible. Counsel testified at the evidentiary hearing that he explained to appellant that the district court and the State could recommend that appellant be imprisoned out of state, but that it was up to the prison to make the final decision. Substantial evidence therefore supports the decision of the district court. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

...continued

time that appellant knew that he was not moving to Alaska to when he filed the motion to withdraw.

²While the district court erred in reaching the merits of appellant's claims, we nevertheless affirm the district court's denial of the motion to withdraw based on the reasons above. Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

cc: Hon. Jennifer P. Togliatti, District Judge
Kristina M. Wildeveld
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk