

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERDINANDO L. ROBINSON, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57693

**FILED**

SEP 14 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *A. Inge*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's "motion for specific performance of the guilty plea agreement."<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion, filed on December 23, 2010, appellant claimed that his guilty plea was invalid because he received a sentence in excess of the 10 year "cap" stipulated to in the guilty plea agreement.<sup>2</sup> The equitable doctrine of laches precluded consideration of the motion because

---

<sup>1</sup>This 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).

<sup>2</sup>As a "motion for specific performance of the guilty plea agreement" does not exist, we construe appellant's motion as a motion to withdraw the guilty plea.

there was more than a two-year delay from entry of the judgment of conviction on August 13, 2008; an implied waiver exists from appellant's knowing acquiescence to existing conditions and appellant's failure to raise this claim in his earlier post-conviction petition for a writ of habeas corpus; and the State may suffer prejudice from the delay.<sup>3</sup> Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000).

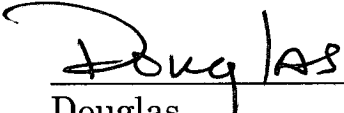
Moreover, as a separate and independent basis to deny relief, appellant failed to demonstrate that his plea was not knowingly and intelligently entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). The guilty plea agreement, which appellant acknowledged that he had read and signed, clearly notified appellant that the district court was not obligated to accept the sentencing recommendation negotiated in the plea agreement. At the plea canvass, appellant indicated on two separate occasions that he understood that sentencing was within the complete discretion of the district court and that no one could make any promises regarding the actions of the court at sentencing. Further, as the State retained the right to argue at sentencing, any arguments made by the State regarding the facts of the case were not inappropriate, as the State ultimately recommended the agreed upon

---

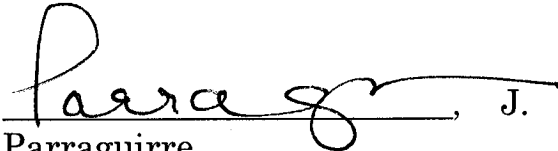
<sup>3</sup>See Robinson, Jr. v. State, Docket No. 53806 (Order of Affirmance, December 11, 2009).

sentence. Therefore, we conclude that the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Douglas

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

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

cc: Hon. Michelle Leavitt, District Judge  
Ferdinando L. Robinson, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>4</sup>We 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.