

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ANDREW NEWTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58233

FILED

SEP 15 2011

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

ORDER OF AFFIRMANCE

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

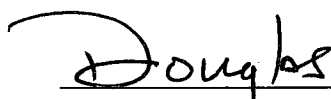
In his motion filed on February 15, 2011, appellant claimed that he was innocent of the burglary charges and that his plea was invalid due to ineffective assistance of counsel. Appellant's motion was filed almost four years after entry of the judgment of conviction and more than three years after the resolution of his direct appeal. Newton v. State, Docket No. 49338 (Order of Affirmance, October 18, 2007).

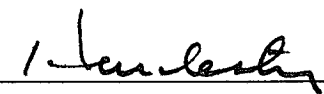
The equitable doctrine of laches precluded consideration of the motion because there was an almost four-year delay from entry of the judgment of conviction, there was inexcusable delay in seeking relief, an implied waiver exists from appellant's knowing acquiescence in existing conditions, and the State may suffer prejudice from the delay. Hart v.

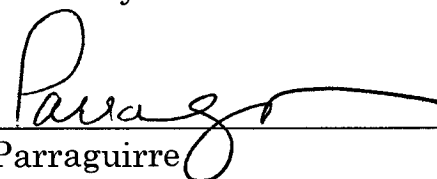
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000). Appellant previously raised his claim of innocence in a prior post-conviction petition for a writ of habeas corpus and provided no explanation for why he should be permitted to relitigate the claim.² Furthermore, we note that “[t]he question of an accused’s guilt or innocence is generally not at issue in a motion to withdraw a guilty plea.” Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). Appellant’s claim of innocence fell far short of the mark as it lacked sufficient facts and failed to account for the charges dismissed as part of his plea negotiations. See id.; see also Bousley v. United States, 523 U.S. 614, 623-24 (1998) (providing in habeas proceedings that when the conviction is based upon a guilty plea, a petitioner must demonstrate that he is innocent of charges foregone in the plea bargaining process). Therefore, the district court did not err in denying appellant’s motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

²Appellant did not appeal from the denial of the petition.

cc: Hon. Jackie Glass, District Judge
Thomas Andrew Newton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk