

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON KALEIALOHA SIMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58435

FILED

NOV 17 2011

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus and two motions to withdraw guilty plea.¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

In his petition, filed on July 29, 2009, appellant claimed that counsel was ineffective for failing to file an appeal on his behalf when appellant requested him to do so.² At the evidentiary hearing, appellant testified that after the sentence was pronounced, he asked counsel to file an appeal. He also testified that he spoke with counsel on the phone regarding the appeal. Appellant also presented the testimony of close

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).

²The bulk of appellant's claims were dealt with in Simpson v. State, Docket No. 54919 (Order Affirming in Part, Reversing in Part, and Remanding, December 13, 2009). This court reversed so that the district court could hold an evidentiary hearing regarding the appeal-deprivation claim.


friends that they heard appellant ask for an appeal and that one of the friends had called counsel about the appeal. Trial counsel testified that he was never asked by appellant to file an appeal. He also testified that it was his practice to make a note if a defendant requests him to file an appeal or if he receives phone calls from people regarding the case. There were no notes in the file regarding an appeal or other people calling him. Counsel stated that he did receive a call from appellant, but it was to discuss his sentence and appellant did not request an appeal. He also testified that there were no non-frivolous issues to raise on appeal.

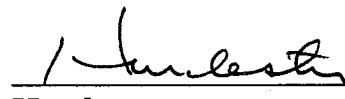
The district court found that counsel was credible, and we conclude that the district court's findings were based upon substantial evidence and were not clearly wrong. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Therefore, the district court did not err in denying this claim. See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999) (holding that counsel is not required to inform a defendant, when he pleads guilty, of the right to pursue a direct appeal unless the defendant inquired about an appeal or there existed "a direct appeal claim that has a reasonable likelihood of success"); see also Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 659-60 (1999); Roe v. Flores-Ortega, 528 U.S. 470, 479-80 (2000).

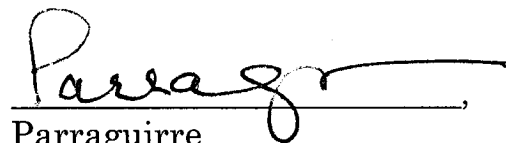
As to appellant's motions to withdraw filed on December 7, 2010, and March 28, 2011, we conclude that the equitable doctrine of laches precluded consideration of the motions because there was a two-year delay from entry of the judgment of conviction, and thus, there was inexcusable delay in seeking relief, an implied waiver exists from

appellant's knowing acquiescence in existing conditions,³ and the State may suffer prejudice from the delay. Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000). Therefore, the district court did not err in denying appellant's motions. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Abbi Silver, District Judge
Jason K. Simpson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Appellant previously filed a motion to withdraw guilty plea on May 26, 2009, and filed a post-conviction petition for a writ of habeas corpus on July 29, 2009. He failed to demonstrate why the claims raised in the current motions could not have been raised in the previous motion or petition.

⁴We 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.