

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYNER CANEDO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58992

FILED

APR 11 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant argues that the district court erred by denying his post-conviction motion to withdraw his guilty plea based on the doctrine of equitable laches. As the basis for his motion, appellant contended that counsel was ineffective for not advising him of any immigration consequences stemming from his guilty plea pursuant to Padilla v. Kentucky, 559 U.S. ___, 130 S. Ct. 1473 (2010). We disagree. A motion to withdraw a guilty plea is subject to the equitable doctrine of laches. Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000). The relevant factors in applying that doctrine include: "(1) whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State." Id. at 563-64, 1 P.3d at 972. Here, appellant filed his motion to withdraw his guilty plea nearly 18 years after the judgment of conviction was entered and nearly 13 months after Padilla was decided, and he failed to adequately explain his delay.

The district court concluded that appellant's delay constituted a knowing acquiescence to existing conditions, and we discern no error in that finding. And it appears that the State would be prejudiced if compelled to proceed to trial after nearly 18 years because the narcotics impounded by the police in appellant's case were destroyed before he filed his motion to withdraw his guilty plea. Under the circumstances presented here, we conclude that the district court did not err.

Appellant also argues that the district court erred by concluding that Padilla constituted a new rule that had no retroactive application to his case. Because the district court properly denied appellant's post-conviction motion to withdraw his guilty plea based on equitable laches, we need not address this claim.

Having considered appellant's claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Elissa F. Cadish, District Judge
Benjamin C. Durham
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk