

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS CALVIN JAMES FERGUSON
A/K/A THOMAS JAMES FERGUSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60052

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from orders of the district court denying a motion to modify and/or correct an illegal sentence, or in the alternative, a post-conviction petition for a writ of habeas corpus, and a motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

In his motion to modify and/or correct an illegal sentence, or in the alternative, post-conviction petition for a writ of habeas corpus, filed on November 16, 2011, appellant claimed that there was insufficient evidence for a conviction, he received ineffective assistance of counsel, and NRS 200.020 is unconstitutional. Appellant failed to demonstrate that the

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).

Appellant also appeals from the denials of his motions to proceed in forma pauperis and for transcripts at state expense. Appellant failed to demonstrate that the district court abused its discretion in denying these motions.

district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant failed to demonstrate that his sentence was facially illegal or that the district court lacked jurisdiction. See id.


Further, to the extent that appellant sought a post-conviction petition for a writ of habeas corpus, appellant filed his petition nearly seven years after entry of the judgment of conviction on January 25, 2005. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Appellant failed to demonstrate good cause for filing a late and successive petition. Therefore, we conclude that the district court did not err in denying appellant's motion.³

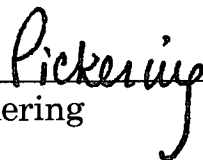
²Ferguson v. State, Docket No. 47093 (Order of Affirmance, September 7, 2006)

³We note that the district court erroneously denied the motion as procedurally barred pursuant to laches. To the extent that the motion was a motion to modify or correct an illegal sentence, laches does not apply. To the extent that the motion was a post-conviction petition for a writ of habeas corpus, the State did not affirmatively plead laches pursuant to NRS 34.800; therefore, laches does not apply. Nevertheless, we affirm the district court's decision to deny the motion for the reasons discussed in this order. Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

Next, in his motion to withdraw a guilty plea filed on November 16, 2011, appellant claimed there was insufficient evidence to convict him, he did not understand the elements of second-degree murder, and he received ineffective assistance of counsel. We conclude that the equitable doctrine of laches precluded consideration of the motion because there was a near seven-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. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000). Therefore, the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

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.

cc: Hon. Jerome T. Tao, District Judge
Thomas Calvin James Ferguson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk