

IN THE SUPREME COURT OF THE STATE OF NEVADA

GABRIEL JURADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60428

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to withdraw guilty plea and a motion to modify and/or correct an illegal sentence.¹ Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

In his motion to withdraw guilty plea, filed on May 26, 2011, appellant claimed that his plea was invalid as the district court judge should have recused himself and trial counsel coerced his guilty plea because counsel improperly informed him that he faced the possibility that the State would seek adjudication as a habitual criminal. We conclude that the equitable doctrine of laches precluded consideration of the motion because there was a more-than-six-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

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).

conditions, and the State may suffer prejudice from the delay.² Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000). Appellant's assertion that he waited to file this motion until the federal court challenge to his sentence was complete failed to excuse the delay. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989); see also Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000). Further, appellant's claim that he was only allowed two hours per week to conduct legal research failed to explain the entire six-year delay in filing his motion as appellant previously filed a proper person petition in state court and asserted he had actively litigated his case in federal court. See Lewis v. Casey, 518 U.S. 343, 351-353 (1996).

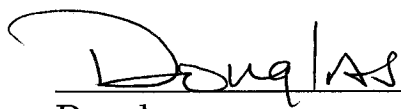
In addition, appellant's claim that counsel coerced his guilty plea by informing him that he faced habitual criminal adjudication has already been considered and rejected by this court. Jurado v. State, Docket No. 50154 (Order of Affirmance, April 10, 2008). The doctrine of law of the case prevents further litigation of this claim and "cannot be avoided by a more detailed and precisely focused argument." Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying appellant's motion to withdraw guilty plea.


In appellant's motion to modify and/or correct an illegal sentence filed on November 10, 2011, appellant again claimed trial counsel coerced his guilty plea by informing him that he faced habitual criminal adjudication. Appellant failed to demonstrate that the district court relied

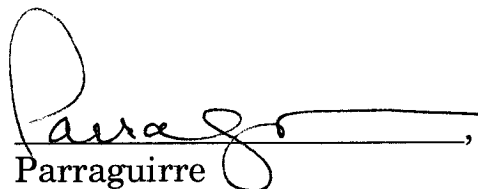
²Appellant previously litigated a timely post-conviction petition for a writ of habeas corpus. Jurado v. State, Docket No. 50154 (Order of Affirmance, April 10, 2008).

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 and that the district court lacked jurisdiction. See id. Moreover, as discussed above, appellant's claim that his trial counsel coerced his plea by informing him that he faced habitual criminal adjudication has already been rejected by this court and the doctrine of law of the case prevents further litigation of this claim. Hall, 91 Nev. at 316, 535 P.2d at 799. We therefore conclude that the district court did not err in denying appellant's motion to modify and/or correct an illegal sentence.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.³


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

³We 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. Michael Montero, District Judge
Gabriel Jurado
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk