

IN THE SUPREME COURT OF THE STATE OF NEVADA

EZEQUIEL CASTRO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 60800

**FILED**

JUN 13 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. 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.<sup>1</sup> Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Appellant argues that the district court erred by concluding that *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473 (2010), does not apply retroactively and that appellant's motion was barred by the doctrine of laches. His motion contends that counsel was ineffective pursuant to *Padilla* for not advising him of any immigration consequences stemming from his guilty plea.

A court may, after sentencing, set aside a judgment of conviction and permit the defendant to withdraw his plea to "correct manifest injustice." NRS 176.165; *see also Hill v. Lockhart*, 474 U.S. 52, 59-60 (1985); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Rubio v. State*, 124 Nev. 1032, 1039-40, 194 P.3d 1224, 1228-29 (2008). Even

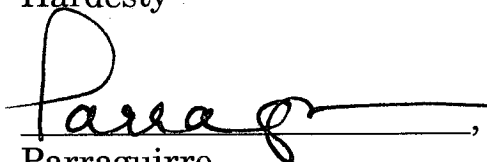
---

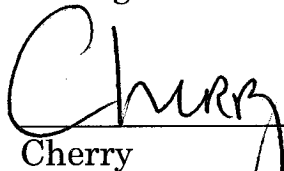
<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

assuming that laches does not preclude consideration of appellant's motion on the merits, *see Hart v. State*, 116 Nev. 558, 563-65, 1 P.3d 969, 972 (2000) (“[C]onsideration of the equitable doctrine of laches is necessary in determining whether a defendant has shown ‘manifest injustice’ that would permit withdrawal of a plea after sentencing.”), we conclude that he is not entitled to relief because his conviction became final prior to *Padilla* and he cannot benefit from its holding as *Padilla* does not apply retroactively. *Chaidez v. United States*, 568 U.S. \_\_\_, \_\_\_, 133 S. Ct. 1103, 1113 (2013). Accordingly, we conclude that the district court did not err by denying appellant's motion, and we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Hardesty

 \_\_\_\_\_, J.  
Parraguirre

 \_\_\_\_\_, J.  
Cherry

cc: Chief Judge, The Eighth Judicial District Court  
Hon. J. Charles Thompson, Senior Judge  
Don P. Chairez  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk