

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK VONSEYDEWITZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64013

FILED

MAR 11 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is a proper person appeal from two separate orders of the district court denying a motion to withdraw a guilty plea and a “motion to vacate judgment; and/or modification of sentence.”¹ Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Motion to withdraw a guilty plea

In his motion filed on February 19, 2013, appellant claimed that he was not adequately advised prior to his plea that good-time credits could not be applied to his minimum sentence, that the victim originally stated that the sexual acts occurred after she turned 14, that his sentence violates ex post facto principles, and that the State breached the plea agreement. We conclude that the equitable doctrine of laches precluded

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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

consideration of the motion because there was a more-than-two-year delay from entry of the judgment of conviction, delay in seeking relief was inexcusable, an implied waiver exists from appellant's knowing acquiescence in existing conditions, and the State may suffer prejudice from the delay. *See Hart v. State*, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000). Appellant did not attempt to explain his delay and did not explain why he did not raise these claims in his previous post-conviction petition for a writ of habeas corpus.² *See id.* at 564, 1 P.3d at 972 (“[W]here a defendant previously has sought relief from the judgment, the defendant’s failure to identify all grounds for relief in the first instance should weigh against consideration of the successive motion.”). Therefore, the district court did not err in denying the motion.

Motion to vacate judgment; and/or modification of sentence

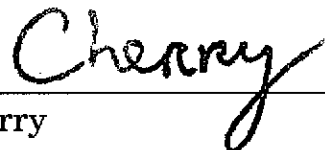
The district court denied appellant’s “motion to vacate judgment; and/or modification of sentence” on July 26, 2013. However, appellant did not file a timely notice of appeal from the denial of that motion because the notice was not filed until September 10, 2013. *See* NRAP 4(b)(1)(A). Because “an untimely notice of appeal fails to vest jurisdiction in this court,” *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we conclude that we lack jurisdiction to consider the appeal of this motion. Accordingly, we

²*Vonseydewitz v. State*, Docket No. 60213 (Order of Affirmance, November 14, 2012).

ORDER the judgment of the district court denying the motion to withdraw a guilty plea AFFIRMED and order appellant's appeal of the denial of the "motion to vacate judgment; and/or modification of sentence" DISMISSED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. James M. Bixler, District Judge
Frederick Vonseydewitz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk