

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME SYKES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37194

**FILED**

FEB 13 2002

JANE E M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Jerome Sykes' motion to withdraw his guilty plea.<sup>1</sup>

We have reviewed the record on appeal, and for the reasons set forth in the attached order of the district court, conclude that the district court properly denied Sykes' motion. Therefore, briefing and oral argument are unwarranted in this case.<sup>2</sup> Accordingly, we

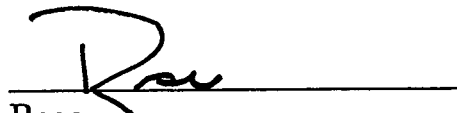
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<sup>1</sup>Sykes filed in the district court a "Motion to Set Aside the Judgment of Conviction, Withdraw the Guilty Plea and Plead Anew, in Order to Correct Manifest Injustice."

<sup>2</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Jerome Sykes  
Clark County Clerk

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<sup>3</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

1 **ORDER**  
2 STEWART L. BELL  
3 DISTRICT ATTORNEY  
4 Nevada Bar #000477  
5 200 S. Third Street  
6 Las Vegas, Nevada 89155  
7 (702) 455-4711  
8 Attorney for Plaintiff

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DEC 14 11 05 AM '00

*Shirley B. Parry*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,  
8 Plaintiff,

9 -vs-

10 JEROME SYKES,  
11 #0905317

12 Defendant.

Case No.. C78593  
Dept. No. XIV  
Docket T

14 FINDINGS OF FACT, CONCLUSIONS OF  
15 LAW AND ORDER

16 DATE OF HEARING: 12-05-00  
17 TIME OF HEARING: 9:00 A.M.

18 THIS CAUSE having come on for hearing before the Honorable DONALD M.  
19 MOSLEY, District Judge, on the 5th day of December, 2000, the Petitioner not being present,  
20 in Proper Person, the Respondent being represented by STEWART L. BELL, District Attorney,  
21 by and through J. TIMOTHY FATTIG, Deputy District Attorney, and the Court having  
22 considered the matter, including briefs, transcripts, arguments of counsel, and documents on file  
23 herein, now therefore, the Court makes the following Findings of Fact and Conclusions of Law:

24 FINDINGS OF FACT

25 1. On May 1, 1987, Defendant was charged by way of Information with one count  
26 of First Degree Kidnapping, one count of Battery with Intent to Commit a Crime, one count of  
27 Attempt Sexual Assault, and three counts of Sexual Assault. On December 27, 1988, at the time  
28 set for trial, Defendant pled guilty to one count of Sexual Assault, purportedly in reliance upon  
29 North Carolina v. Alford, 400 U.S. 25 (1970). In exchange for the guilty plea, the remaining

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1 counts were dismissed and both parties retained the right to argue at sentencing, but the State  
2 agreed to take no position with regard to whether to run his sentence on this charge concurrent  
3 with or consecutive to the sentence of 5 to 25 years he was to serve on a drug charge in Ohio.

4 2. On February 15, 1989, at the time set for sentencing, Defendant moved to  
5 withdraw his plea, claiming that he was coerced into entering it. The Court denied this motion,  
6 then sentenced Defendant to 80 years in prison, with minimum parole eligibility after 5 years,  
7 said sentence to run consecutively to his Ohio prison sentence. The Judgment of Conviction  
8 (Plea) was entered on February 22, 1989. No direct appeal was taken.

9 3. On March 6, 1989, Defendant filed a Petition for Post-Conviction Relief claiming  
10 ineffective assistance of counsel and cruel and unusual punishment. He claimed that he was  
11 misinformed as to the consequences of his plea. However, on page 7 of that petition, it becomes  
12 evident that defendant was under the mistaken impression that he was not eligible for parole for  
13 20 years. In its opposition to that petition filed April 6, 1989, the State pointed out Defendant's  
14 misapprehension; and on April 18, 1989, the Court entered its order denying the Petition for  
15 Post-Conviction Relief. No appeal was taken from this order.

16 4. On March 22, 1996, Defendant filed a Petition for Writ of Habeas Corpus (Post-  
17 Conviction), which raised therein the same issues that Defendant presents in the instant motion  
18 as Arguments I, II, III, IV, and V. On April 22, 1996, the State filed its opposition to this  
19 successive petition, and on June 19, 1996, the Court heard and denied the petition. On January  
20 2, 1997, the Court entered its Findings of Fact, Conclusions of Law and Order denying the  
21 petition on both substantive and procedural grounds. The Court found, among other things, that  
22 Defendant's plea was entered voluntarily, with knowledge of all the consequences that were  
23 forthcoming.

24 5. On August 15, 1996, Defendant filed a Notice of Appeal, appealing from the order  
25 denying his Petition for Writ of Habeas Corpus (Post-Conviction). Following a full briefing  
26 under docket no. 29575, the Nevada Supreme Court issued an order dated August 12, 1999,  
27 dismissing the appeal. Sykcs v. State, No. 29575 at 2-3 (Nev. filed Aug. 12, 1999). The  
28 Supreme Court ruled that: (1) Defendant's petition was procedurally barred because it was

1 untimely and successive; (2) it was barred by laches; (3) this Court had no obligation to inform  
2 Defendant of his right to appeal; and (4) Defendant did not demonstrate that failure to consider  
3 the merits of his petition would result in a fundamental miscarriage of justice. Remittitur issued  
4 on September 8, 1999.

5 6. On October 19, 2000, Defendant filed the instant Motion to Set Aside the  
6 Judgment of Conviction, Withdraw the Guilty Plea and Plead Anew, in Order to Correct  
7 Manifest Injustice, raising the same issues once again.

8 7. All the issues raised in Defendant's motion have either been previously rejected  
9 by this Court, the Nevada Supreme Court, or both; or Defendant has failed to demonstrate good  
10 cause for, and prejudice from, not previously raising these issues.

11 8. In Argument II of his motion, Defendant asserts that this Court abused its  
12 discretion and denied him Due Process when it summarily denied his motion to withdraw his  
13 plea. This issue relates to whether the Court abused its discretion in ruling on a motion, not to  
14 the validity of the plea.

15 9. In Argument IV of his motion, Defendant asserts that he was denied effective  
16 assistance of counsel when his attorneys withdrew without filing a Notice of Appeal or securing  
17 appointed counsel for him. This issue relates to the right to counsel, not to the validity of the  
18 plea.

19 10. In Argument V of his motion, Defendant asserts that this Court erred in not  
20 advising him that he had the right to appeal the denial of his post-conviction petition. Again, this  
21 issue does not in any way relate to the validity of the plea.

22 11. Defendant has not presented any additional facts or circumstances in support of  
23 this motion that were not before this Court when it rejected these claims in his post-conviction  
24 petition for writ of habeas corpus and before the Nevada Supreme Court when it affirmed that  
25 decision of this Court.

26 12. Defendant's delay in bringing this motion is inexcusable.

27 13. The State would suffer prejudice if Defendant were permitted to withdraw his plea.

28 14. Defendant has failed to demonstrate that he has suffered manifest injustice.

1 CONCLUSIONS OF LAW

2 15. Arguments II, IV and V of Defendant's motion, which do not relate to the validity  
3 of the plea, are beyond the permissible scope of a motion to withdraw a plea, and are therefore  
4 not even cognizable here. See Hart v. State, 116 Nev. Adv. Op. No. 66, 1 P.3d 969, 973 (2000).

5 16. With respect for the doctrine of stare decisis, this Court declines to reverse its prior  
6 ruling rejecting Defendant's claims. Cf. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-  
7 99 (1975) (doctrine of the law of the case).

8 17. It is the law of this case that Defendant's claims are barred by laches and that  
9 failure to consider these claims does not result in a fundamental miscarriage of justice. Sykes  
10 v. State, No. 29575 (Nev. filed Aug. 12, 1999); see Hall, 91 Nev. at 315-16, 535 P.2d at 798-99.

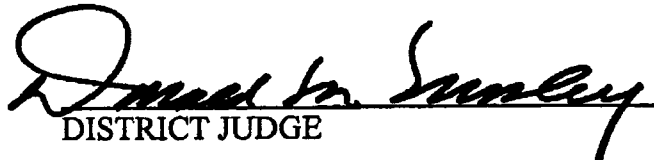
11 18. Defendant has failed to demonstrate that he has suffered manifest injustice. See  
12 Hart, 116 Nev. Adv. Op. No. 66, 1 P.3d at 972.

13 19. Since Defendant has failed to demonstrate that he has suffered manifest injustice  
14 in this case, his motion filed over 11 years following imposition of sentence is not timely and  
15 should be denied. NRS 176.165.

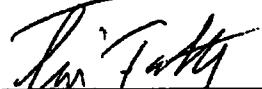
16 ORDER

17 THEREFORE, IT IS HEREBY ORDERED that the Defendant's Motion to Set Aside the  
18 Judgment of Conviction, Withdraw the Guilty Plea and Plead Anew, in Order to Correct  
19 Manifest Injustice shall be, and it is, hereby denied.

20 DATED this 12 day of December, 2000.

21   
22 \_\_\_\_\_  
23 DISTRICT JUDGE *pa*

24 STEWART L. BELL  
25 DISTRICT ATTORNEY  
26 Nevada Bar #000477

26 BY   
27 \_\_\_\_\_  
28 J. TIMOTHY FATTIG  
Deputy District Attorney  
Nevada Bar #006639