

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK ORTIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40137

FILED

JUN 25 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's post-conviction motion to withdraw a guilty plea.

On April 10, 1997, the district court convicted appellant, pursuant to an Alford plea¹ of one count of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years had been served. This court dismissed appellant's untimely appeal from the judgment of conviction for lack of jurisdiction.²

On February 20, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On May 31, 2001, the district court denied appellant's petition. This court affirmed the district court's order.³

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Ortiz v. State, Docket Nos. 32612, 32613 (Order Dismissing Appeals, August 10, 1998).

³Ortiz v. State, Docket No. 37986 (Order of Affirmance, March 25, 2002).

On August 6, 2002, appellant filed a post-conviction motion to withdraw a guilty plea. The State opposed the motion. On August 27, 2002, the district court entered a written order summarily denying appellant's motion. Appellant then filed a motion for reconsideration. On September 25, 2002, the district court entered specific findings of fact and conclusions of law denying appellant's motion to withdraw his plea. On October 16, 2002, the district court denied appellant's motion for reconsideration. This appeal followed.⁴

In his motion, appellant contended: (1) he was innocent of the crime; (2) he was improperly charged; (3) his mental capacity was significantly reduced when he entered his guilty plea; (4) his attorney failed to inform him of the consequences of his plea and misled him about the potential sentence he faced; (5) his attorney conspired with the district attorney to withhold exculpatory evidence; and (6) his attorney failed to adequately investigate and explore several defense theories.

Appellant's motion is subject to the equitable doctrine of laches.⁵ Appellant filed his motion more than five years after he entered his guilty plea and provided no reasonable explanation for the delay. The question of appellant's innocence is not at issue in a motion to withdraw a guilty plea and is "essentially academic" when the conviction is based

⁴To the extent that appellant appeals from the denial of his motion for reconsideration, this court lacks jurisdiction to consider the appeal. See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995).

⁵See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000) (holding that the equitable doctrine of laches applies to a post-conviction motion to withdraw a guilty plea).

upon an Alford plea.⁶ Appellant raised many of his claims in his earlier untimely habeas corpus petition. Finally, it appears that the State would suffer prejudice if it is forced to proceed to trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Valorie Vega, District Judge
Frank Ortiz
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.