

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEROY ROOSEVELT MACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40320

FILED

SEP 04 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 motion to withdraw a guilty plea.

On March 8, 1993, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a controlled substance with the intent to sell. The district court sentenced appellant to serve a term of three years in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period of time not to exceed five years. This court affirmed appellant's conviction on direct appeal.¹ On June 12, 1995, the district court revoked appellant's probation and executed the original sentence.

On August 23, 2001, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On November 6, 2001, the district court denied the motion. No appeal was taken.

On September 13, 2002, appellant filed a second proper person motion to withdraw a guilty plea in the district court. The State opposed

¹Igbinovia v. State, 111 Nev. 699, 895 P.2d 1304 (1995).

the motion. On October 8, 2002, the district court summarily denied the motion. This appeal followed.

In his motion, appellant claimed that his trial counsel was ineffective and that his guilty plea was not entered knowingly or voluntarily.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.² Application of the doctrine requires consideration of various factors, including: “(1) whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has arisen from the defendant’s knowing acquiescence in existing conditions; and (3) whether circumstances exist that prejudice the State.”³ Failure to identify all grounds for relief in a prior proceeding seeking relief from a judgment of conviction should weigh against consideration of a successive motion.⁴

Based upon our review of the record on appeal, we conclude that appellant’s motion is subject to the equitable doctrine of laches. Appellant filed his motion more than nine years after he entered his guilty plea and more than seven years after his direct appeal was resolved. Appellant failed to provide any explanation for the delay. Appellant pursued a direct appeal and previously filed a motion to withdraw a guilty plea. Appellant failed to indicate why he was not able to present his claims prior to the filing of the instant motion. Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such

²See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).


³Id. at 563-64, 1 P.3d at 972.


⁴Id. at 564, 1 P.3d at 972.

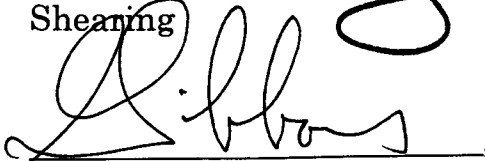
an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Michael L. Douglas, District Judge
Leroy Roosevelt Mack
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).