

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMY LEWIS JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40577

FILED

JAN 02 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 May 18, 1995, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon and one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling seventy years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued July 8, 1997.

On July 8, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Johnson v. State, Docket No. 27255 (Order Dismissing Appeal, June 17, 1997).

district court denied the petition. This court dismissed appellant's subsequent appeal.²

On June 20, 2001, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition. This court affirmed the order of the district court on appeal.³

On October 22, 2002, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On November 15, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his trial counsel was ineffective for advising him to enter into a guilty plea agreement that differed from the oral agreement set forth during the canvass for the waiver of the preliminary hearing. Appellant further claimed that the State breached the plea agreement.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.⁴ Application of the doctrine requires consideration of various factors, including: "(1) whether there

²Johnson v. State, Docket No. 31133 (Order Dismissing Appeal, June 16, 2000).

³Johnson v. State, Docket No. 38541 (Order of Affirmance, May 23, 2002).

⁴See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

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."⁵ 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.⁶

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 five years after the direct appeal was resolved. Appellant failed to provide any explanation for the delay. Appellant previously raised substantially similar claims on direct appeal and in both post-conviction habeas corpus petitions. The doctrine of the law of the case prevents further litigation of this issue.⁷ Finally, it appears that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay. Accordingly, we conclude that the doctrine of laches precluded consideration of appellant's motion on the merits.


⁵Id. at 563-64, 1 P.3d at 972.

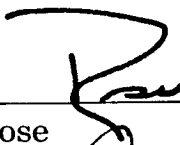
⁶Id. at 564, 1 P.3d at 972.

⁷Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Sammy Lewis Johnson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).