

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40802

FILED

NOV 05 2003

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND DISMISSING APPEAL IN PART

This is a proper person appeal from an order of the district court denying appellant's motion to set aside the judgment or grant a new trial and an order finding appellant in contempt of court.

On April 18, 1996, the district court convicted appellant, pursuant to an Alford¹ plea, of attempted murder. The district court sentenced appellant to serve a term of six years in the Nevada State Prison. No direct appeal was taken.

On August 17, 2001, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On October 9, 2001, the district court denied appellant's motion. No appeal was taken.

On October 30, 2001, appellant filed a second proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On November 16, 2001, the district court denied appellant's motion. No appeal was taken.

On April 3, 2002, appellant filed a proper person document labeled, "motion to have counsel dismissed and request calendar date set

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

for motion to withdraw plea of guilty and invoke right to jury trial." On May 10, 2002, the district court denied appellant's motion. This court dismissed appellant's subsequent appeal for lack of jurisdiction.²

On June 25, 2002, appellant filed a proper person motion to seal or expunge his conviction. On July 24, 2002, the district court denied appellant's motion. No appeal was taken.

On November 7, 2002, appellant filed a proper person motion to set aside the judgment or grant a new trial. The State opposed the motion. At the conclusion of a hearing on the motion, the district court denied the motion and found appellant in contempt for an outburst during the proceedings. On February 13, 2003, the district court entered a written order denying appellant's motion and finding appellant in contempt.³ This appeal followed.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion to set aside the judgment or grant a new trial. To the extent that appellant's motion can be construed to be a motion for a new trial, appellant's motion was improper because appellant was convicted pursuant to a guilty plea. Further, the motion was untimely filed.⁴ To the extent that appellant's motion can be construed to be a motion to withdraw a guilty plea,

²Mack v. State, Docket No. 39756 (Order Dismissing Appeal, July 30, 2002).

³For the contempt, the district court ordered appellant to serve thirty days consecutive to the sentence he was currently serving.

⁴See NRS 176.515.


appellant's motion was barred by the doctrine of equitable laches.⁵ Therefore, we conclude that the district court did not err in denying appellant's motion.

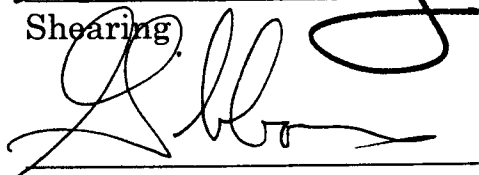
Finally, appellant stated in his notice of appeal that he was appealing from the contempt order. A contempt order is not appealable and must instead be challenged by an original petition in this court pursuant to NRS chapter 34.⁶ Thus, this court lacks jurisdiction to consider this portion of the appeal.

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 and DISMISS this appeal in part.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

⁵See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

⁶See Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).

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

cc: Hon. Joseph T. Bonaventure, District Judge
Leroy Roosevelt Mack
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk