IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH WAYNE DORSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41665

FILED

MAR 18 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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, 1994, the district court convicted appellant, pursuant to an Alford[1] plea, of one count of burglary. The district court sentenced appellant to serve a term of eight years in the Nevada State Prison. No direct appeal was taken.

On May 1, 2003, appellant filed a proper person motion to withdraw a guilty plea in the district court. On May 28, 2003, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his guilty plea was not entered knowingly and voluntarily. Appellant claimed that he did not understand the nature of the charges because he did not unlawfully enter the building in question, a building open to the public, with the intention of stealing. Appellant also noted that there was no breaking and entering.

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

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

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

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]

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 approximately nine years after the judgment of conviction was entered. Appellant failed to provide any explanation for the delay or indicate why he was not able to present his claim prior to the filing of the instant motion. Further, 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 would preclude consideration of appellant's motion on the merits.[4]

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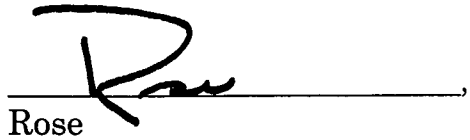
[3]Id. at 563-64, 1 P.3d at 972.

[4]Moreover, as a separate and independent ground to deny relief, appellant's claim lacks merit. NRS 205.060 as applied to appellant is not unconstitutional and did not violate his civil rights. NRS 205.060 provides that a "person who, by day or night, enters any . . . other building . . . with the intent to commit grand or petit larceny, assault or battery on any person or any felony, is guilty of burglary." This court has held that a charge of burglary was sustainable against a person who entered a public building with the intent to commit a larceny because the authority to enter the building extends only to those who enter with a purpose consistent with the reason that the building is open to the public. State v. Adams, 94 Nev. 503, 581 P.2d 868 (1978). Further, the record reveals that appellant's guilty plea was knowingly and voluntarily entered. See State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

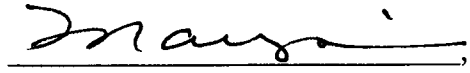
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

_____, C.J.
Shearing



_____, J.
Rose



_____, J.
Maupin

cc: Hon. Peter I. Breen, District Judge
Kenneth Wayne Dorsey
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

[6]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.