

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 42202

FILED

SEP 07 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a second motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

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 court affirmed the district court's order on appeal.⁴

On August 25, 2003, appellant filed a second motion to withdraw a guilty plea in the district court. On March 16, 2004, the district court denied the motion. This appeal followed.

This court has held that a motion to withdraw a guilty plea is subject to the equitable doctrine of laches.⁵ 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."⁶ 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.⁷

⁴Ortiz v. State, Docket No. 40137 (Order of Affirmance, June 25, 2003).

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


⁶Id. at 563-64, 1 P.3d at 972.

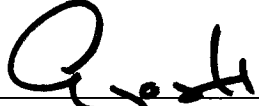
⁷Id. at 564, 1 P.3d at 972.

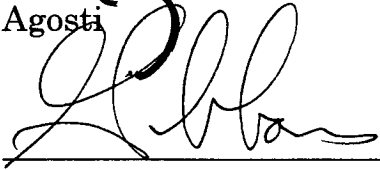
Based upon our review of the record on appeal, we conclude that appellant's motion is subject to the equitable doctrine of laches. Appellant filed his motion more than six years after the judgment of conviction was entered. Appellant failed to demonstrate that he was not able to present his claims in a timely motion. 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 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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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

⁹We 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.

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