

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY WAYNE HARPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42785

FILED

AUG 25 2004

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. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On February 23, 1999, the district court convicted appellant, pursuant to a guilty plea, of principal to first degree murder with the use of a deadly weapon. The district court sentenced appellant to two consecutive life terms in the Nevada State Prison without the possibility of parole. This court dismissed appellant's direct appeal.¹

On January 23, 2004, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State did not oppose the motion. On January 28, 2004, the district court denied appellant's motion. This appeal followed.

¹Harper v. State, Docket No. 33931 (Order Dismissing Appeal, July 24, 2000).

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 almost four years after his direct appeal was resolved. Appellant failed to provide any explanation for the delay. 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 an extensive delay. Accordingly, we conclude that the doctrine of laches precludes consideration of appellant's motion on the merits.


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


³Id. at 563-64, 1 P.3d at 972.

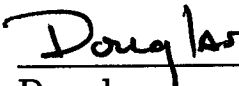
⁴Id. at 564, 1 P.3d at 972.

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


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Michael R. Griffin, District Judge
Danny Wayne Harper
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk

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

⁶We 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.