

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ORVILLE VON ALST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50557

FILED

MAR 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction motion to withdraw the guilty plea. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On August 10, 2005, appellant David Orville Von Alst was convicted, pursuant to a guilty plea, of one count each of unlawful use of a controlled substance and possession of a controlled substance. The district court sentenced Von Alst to serve two concurrent prison terms of 19 to 48 months. Von Alst did not file a direct appeal.

On August 28, 2007, Von Alst, with the assistance of counsel, filed a post-conviction motion to withdraw the guilty plea. The State opposed the motion. After hearing arguments from counsel, the district court denied the motion.

Von Alst contends that he should be permitted to withdraw his guilty plea because allowing his conviction to stand would result in manifest injustice. Specifically, Von Alst alleges that his guilty plea is unknowing because he was misadvised that he would receive probation.

Von Alst also argues that his guilty plea is invalid because defense counsel was ineffective in allowing him to plead to a redundant conviction and in failing to advise him of his right to appeal or seek post-conviction relief.

The application of the doctrine of laches requires “consideration of several 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.”¹

The district court denied the motion to withdraw the guilty plea on the ground that it was barred by the doctrine of laches. The district court did not err in its determination. Von Alst filed his motion more than two years after entry of the judgment of conviction. The district court advised Von Alst of his right to challenge the conviction at the entry of plea proceedings, and by failing to challenge the conviction earlier, Von Alst knowingly acquiesced to existing conditions.² And the State may suffer prejudice from the delay in challenging the conviction. Accordingly,

¹Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000).

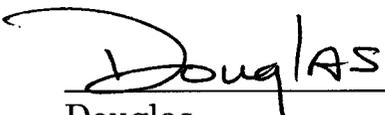
²We note that the burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error. See Greene v. State, 96 Nev. 555, 612 P.2d 686 (1980); Lee v. Sheriff, 85 Nev. 379, 455 P.2d 623 (1969). Von Alst has failed to include a copy of the plea agreement in support his claim that he was not advised of his right to a direct appeal.

we conclude that the doctrine of laches precludes considerations of Von Alst's motion on the merits. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. John P. Davis, District Judge
Gibson & Kuehn
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County Clerk