

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ELMORE LEWIS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59656

**FILED**

NOV 15 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malone*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction motion to withdraw an Alford<sup>1</sup> plea. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

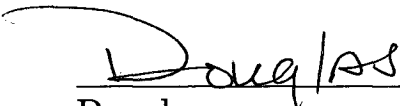
Appellant Charles Lewis argues that the district court violated his right to due process when it denied his motion to withdraw his Alford plea without ordering an evidentiary hearing. We disagree. The district court determined that Lewis' motion was barred by the equitable doctrine of laches when it was brought 25 years after the judgment of conviction had been entered in this case, noting that the State would suffer prejudice if it were forced to proceed to trial after such an extensive delay. See Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000) ("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."). Upon a review of the record, we conclude that the district court did not


<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

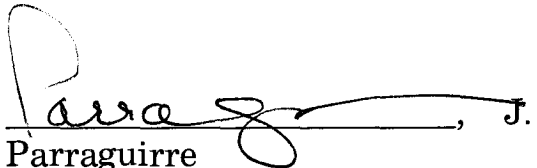
abuse its discretion in finding that laches barred consideration of Lewis' motion. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969) (reviewing a district court's ruling regarding a motion to withdraw a guilty plea for an abuse of discretion).

Lewis also urges us to consider his actual innocence as a gateway to avoid the procedural bar in his case and reach the merits of his petition. Even assuming Schlup v. Delo, 513 U.S. 298 (1995), is applicable, Lewis fails to demonstrate that he is actually innocent of the crime. Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Chief Judge, Second Judicial District Court  
Benjamin D. Cornell  
Richard F. Cornell  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk