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### Summary of Harris v. State, 130 Nev. Adv. Op. 47

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CRIMINAL LAW AND PROCEDURE

**Summary**

The Court determined whether a motion to withdraw a guilty plea filed after the judgment of conviction is a remedy that is “incident to the proceedings in the trial court.”

**Disposition**

A motion to withdraw a guilty plea is not “incident to the proceedings in the trial court” when it is filed after sentencing, and is therefore not available as a separate post-conviction remedy.

**Factual and Procedural History**

Appellant Harris pleaded guilty to several felony offenses and was convicted on November 16, 2011. No direct appeal was taken. Instead, on the date the judgment of conviction was entered, Harris filed a proper person post-conviction petition for a writ of habeas corpus in the district court alleging ineffective assistance of counsel. The district court denied the petition and the Nevada Supreme Court affirmed the decision of the district court on appeal. Harris then filed a second post-conviction petition for a writ of habeas corpus on February 29, 2012, raising similar claims to those raised in the first petition.

While the second petition was pending, on June 21, 2012, Harris filed the motion in question here to withdraw a guilty plea. In this third motion, Harris claimed: (1) the information, as to the forgery count, failed to set forth elements of ownership and lack of authority, making his plea unknowing and involuntary; (2) the prosecutor failed to disclose that it was without an accuser; (3) he received ineffective assistance of counsel; and (4) his plea was involuntary and unknowing. Even though this was Harris’ third post-conviction challenge to his conviction, the district court denied the motion on the merits.

**Discussion**

NRS 176.165 allows a court to set aside a judgment of conviction and permit the defendant to withdraw the plea to correct manifest injustice.<sup>2</sup> In *Hart v. State*, the Nevada Supreme Court construed that statute to allow for a post-conviction motion to withdraw a guilty plea.<sup>3</sup> Because the validity of a guilty plea may be challenged in a post-conviction petition for a writ of habeas corpus,<sup>4</sup> allowing the same challenge to be raised after sentencing in a separate motion to withdraw a guilty plea goes against NRS 34.724(2)(b). That statute provides that a post-conviction petition for a writ of habeas corpus “[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the

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<sup>1</sup> By Danielle Barraza.

<sup>2</sup> NEV. REV. STAT. § 176.165.

<sup>3</sup> *Hart v. State*, 116 Nev. 558, 1 P.3d 969 (2000).

<sup>4</sup> *See* NEV. REV. STAT. § 34.810(1)(a).

validity of the conviction or sentence, and must be used exclusively in place of them.”<sup>5</sup> Two exceptions apply to the exclusive-remedy provision: 1) an appeal from the judgment of conviction; and 2) “any remedies which are incident to the proceedings in the trial court.”<sup>6</sup> Thus, a post-sentence motion to withdraw a guilty plea would be permitted if it were “incident to the proceedings in the trial court.”

The *Hart* court addressed the question of whether a post-sentence motion to withdraw a guilty plea is a remedy “incident to the proceedings in the trial court.” More than six years after his conviction, Hart filed a motion to withdraw his guilty plea.<sup>7</sup> Although the lower court treated the motion as a time-barred post-conviction petition for a writ of habeas corpus, the Nevada Supreme Court summarily determined that the motion was “incident to the proceedings in the trial court.”<sup>8</sup> To correct the problem of only post-conviction habeas petitions being subject to time restrictions, the *Hart* court placed a limitation on the filing of a motion to withdraw a guilty plea, relying on the “manifest injustice” language in NRS 176.165.<sup>9</sup> The court explained that a manifest injustice occurrence depends in part on “whether the State would suffer prejudice if the defendant is permitted to withdraw his or her plea” and therefore consideration of laches is necessary.<sup>10</sup> The *Hart* court placed the burden of demonstrating that laches should not apply on the defendant, and further indicated that laches may be applied even when the delay was less than one year from entry of judgment of conviction.<sup>11</sup>

Here, the district court overlooked the doctrine of laches in denying the motion on the merits, even though Harris’ motion provided no explanation as to why he should be allowed to litigate a third post-conviction challenge to his conviction. Additionally, *Hart’s* analysis of laches is confusing as usually laches is an affirmative defense against applications for post-conviction relief, and *Hart* moved it from a defense to a filing requirement that the criminal defendant must satisfy. This has led to an inconsistent application of *Hart’s* doctrine of laches, which culminates in the need to reexamine the *Hart* holding that a post-sentence motion to withdraw a guilty plea is “incident to the proceedings in the trial court” and not subject to the exclusive remedy language of NRS 34.724(2)(b).

Nevada first adopted the “incident to the trial court proceedings” language and exclusive-remedy language in 1967 in the Uniform Post-Conviction Procedure Act (UPCPA) and created a post-conviction petition for relief as part of NRS Chapter 177.<sup>12</sup> The Legislature maintained this language when it adopted the singular remedy of a post-conviction petition for a writ of habeas corpus in 1991,<sup>13</sup> making it useful to examine the UPCA and Nevada’s post-conviction history to determine whether a post-sentence motion to withdraw a guilty plea is an available remedy to challenge the validity of a guilty plea.

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<sup>5</sup> NEV. REV. STAT. § 34.724(2)(b).

<sup>6</sup> NEV. REV. STAT. § 34.724(2)(a).

<sup>7</sup> *Hart*, 116 Nev. At 560, 1 P.3d at 970.

<sup>8</sup> *Id.* at 561-62, 1 P.3d at 971.

<sup>9</sup> *Id.* at 563, 1 P.3d at 972.

<sup>10</sup> *Id.* at 563, 1 P.3d at 972.

<sup>11</sup> *Id.* at 563-64, 1 P.3d at 972.

<sup>12</sup> See 1967 Nev. Stat., ch. 523, § 317, at 1447; Legislative Comm’n of the Legislative Counsel Bureau, *Report of the Subcomm. For Revision of the Criminal Law to the Legislative Comm’n, in Revision of Nevada’s Substantive Criminal Law and Procedure in Criminal Cases*, Bulletin No. 66, at 3 (Nev., Nov. 18, 1966).

<sup>13</sup> See 1991 Nev. Stat., ch. 44, §§ 4, 32, at 75, 92.

### *Nevada post-conviction history*

The Court prefaced its analysis of the issue here with a detailed discussion of Nevada’s history of post-conviction remedies. Prior to 1967, Nevada recognized the petition for a writ of habeas corpus and allowed various motions to fill in the gaps when habeas corpus was inadequate. In 1967, the Legislature enacted two post-conviction remedies relevant here. First, NRS 176.165 allowed a motion to withdraw a guilty plea only if filed before sentencing, while also giving the district court power to set aside a judgment after sentencing and permit withdrawal of a guilty plea to correct manifest injustice.<sup>14</sup> Second, the Legislature enacted the post-conviction procedure act.<sup>15</sup> Lawmakers intended to “offer but one remedy” in post-conviction—the writ of habeas corpus.

However, problems became apparent after the enactment. In response, the Nevada Supreme Court declared that individuals had a choice of remedies after conviction:<sup>16</sup> a post-conviction relief petition pursuant to former NRS 117.315, a petition for a writ of habeas corpus under NRS Chapter 34, and a post-sentence motion to withdraw a guilty plea.

Then in 1991, the Legislature enacted a single post-conviction remedy was created—the current post-conviction petition for a writ of habeas corpus filed pursuant to NRS 34.724.<sup>17</sup> This new statute included exclusivity language setting the writ of habeas corpus as the sole post-conviction remedy while providing, aside from direct appeal, and also allowed remedies that are “incident to the proceedings in the trial court.”<sup>18</sup>

### *Flaws in the Hart decision*

The Court then reviewed its decision in *Hart*, finding fault with the analysis and outcome. The Court noted that the *Hart* decision provided no explanation for how allowing a separate post-sentence motion to withdraw a guilty plea served the Legislature’s intent to create a single post-conviction remedy or why a separate remedy was necessary when a post-conviction petition for a writ of habeas corpus was available.<sup>19</sup> The Court observed that a single post-conviction remedy was imposed for the benefit of defendants themselves to reduce confusion and ensure that constitutional claims would be heard in a timely manner. The *Hart* decision failed to evaluate concerns of confusing defendants when it concluded, without analysis, that the post-sentence motion to withdraw a guilty plea was “incident to the proceedings in the trial court.”

### *Defining “incident to the proceedings in the trial court”*

The Court next looked to resolve problems with how it had previously defined “incident to the proceedings in the trial court.” Earlier courts had understood the term to include challenges that directly attack the decision of the district court itself.<sup>20</sup> However, that definition included claims that are more appropriately raised on direct appeal and could also implicate claims that could be raised in a post-conviction petition for a writ of habeas corpus—an outcome which is contrary to our Legislature’s intention to adopt a single post-conviction remedy. Thus, the Court deemed this definition inadequate and overruled that portion of *Passanisi*.

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<sup>14</sup> 1967 Nev. Stat., ch. 523, § 245, at 1434.

<sup>15</sup> *Id.* § 317, at 1447.

<sup>16</sup> *Marshall v. Warden*, 83 Nev. 442, 444-45, 434 P.2d 437, 439 (1967), *superseded by statute as stated in Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001).

<sup>17</sup> 1991 Nev. Stat., ch. 44 §§ 4, 32, at 75, 92.

<sup>18</sup> NEV. REV. STAT. § 34.724(2)(a).

<sup>19</sup> *See* NEV. REV. STAT. § 34.810(1)(a).

<sup>20</sup> *Passanisi v. State*, 108 Nev. 318, 831 P.2d 1371 (1992).

As re-defined by the Court here, a motion is “incident to the proceedings in the trial court” when it is filed prior to sentencing. This temporal definition is consistent with the prefatory note in the UPCPA that the post-conviction remedy provides a “single, unitary, post-conviction remedy to be used in place of all other state remedies (except direct review).”<sup>21</sup> It also keeps with the intent to create a single post-conviction remedy in Nevada. Under this definition, a motion to withdraw a guilty plea filed *after* sentencing is not “incident to the proceedings in the trial court.”

*Habeas corpus is the exclusive remedy to challenge the validity of the guilty plea after sentencing*

The Court overruled *Hart*, holding the exclusive post-conviction remedy is a writ of habeas corpus. Because a post-sentence motion to withdraw a guilty plea is not a remedy that is “incident to the proceedings in the trial court,” the motion is subject to the exclusive-remedy language in NRS 34.724(2)(b). That language provides that a post-conviction petition for a writ of habeas corpus takes the place of statutory remedies previously available to challenge the validity of a judgment of conviction. Thus, the Court overruled *Hart* holding a post-conviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing. The “manifest injustice” language in NRS 176.165 sets forth the standard for reviewing a post-conviction claim challenging the validity of a guilty plea. For future filings and currently pending post-sentence motions to withdraw a guilty plea, the Court instructed district court judges to construe the motion to be a post-conviction petition for a writ of habeas corpus and require the defendant to cure any defects within a reasonable time-period.

## **Conclusion**

After examining the Uniform Post-Conviction Procedure Act, Nevada’s post-conviction history, and the temporal definition of “incident to the proceedings in the trial court,” it is clear that after sentence has been imposed, the statutory post-conviction habeas petition takes the place of a motion to withdraw a guilty plea. Thus, *Hart v. State* is overruled and the district court’s order denying the motion on the merits is reversed and remanded to treat the motion as a post-conviction petition for a writ of habeas corpus.

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<sup>21</sup> UPCPA prefatory notes, 11 U.L.A. 663 (1996).