

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN CHRISTOPHER CRAIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83221-COA

FILED

OCT 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Christopher Crain appeals from an order of the district court denying a petition to establish factual innocence. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

First, Crain argues the district court erred by denying his March 24, 2021, petition. In his petition, Crain claimed the State improperly induced the victim and her mother to falsely accuse him by providing payment to the victim's mother and by dismissing the mother's unrelated drug charges. Crain also asserted the victim's mother had previously made false accusations concerning sexual abuse, the State committed prosecutorial misconduct, he entered his *Alford*¹ plea involuntarily, police detectives were biased against him and improperly pressured a doctor to state that the victim was sexually abused, and the State improperly declined to dismiss the charges after he took a polygraph examination.

"[A] person who has been convicted of a felony may petition the district court . . . for a hearing to establish the factual innocence of the

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

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person based on newly discovered evidence.” NRS 34.960(1). The newly discovered evidence upon which a petitioner bases a claim of factual innocence must be evidence that “[i]s distinguishable from any claims made in any previous petition.” NRS 34.960(2)(b)(3). In addition, “[a]ny second or subsequent petition filed by a person must be dismissed if the court determines that the petition fails to identify new or different evidence in support of the factual innocence claim.” NRS 34.960(5).

Crain raised his underlying claims in his July 1, 2019, petition to establish factual innocence. The district court rejected Crain’s underlying claims, and this court affirmed the district court’s decision on appeal. *Crain v. State*, 80205-COA (Order of Affirmance, December 21, 2020). Therefore, the district court did not err by denying the current petition based on NRS 34.960(5). Further, the doctrine of the law of the case prevents further litigation of this issue. *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). And Crain did not demonstrate an exception to the application of the law of the case to this matter. *See Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 630-32, 173 P.3d 724, 728-29 (2007). Therefore, we conclude that the district court did not err by denying the petition.

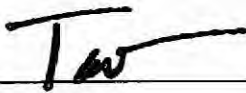
Second, Crain argues a trial-level judge committed misconduct by meeting with the State in secret, refusing to permit Crain to question witnesses, and permitting the State to commit misconduct. Crain also appears to argue that he was improperly prosecuted because of his ethnicity. Crain did not raise these claims in his petition, and we decline to consider them in the first instance on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Finally, Crain appears to assert that he was not served with a copy of the district court’s order denying his petition. To the extent there

was any error in this regard, Crain acknowledges he was able to obtain the order and timely file a notice of appeal from entry of the order. And thus, any failure to serve Crain with the order denying his petition was harmless. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Therefore, Crain is not entitled to relief based upon this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Erika D. Ballou, District Judge
Steven Christopher Crain
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk