

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83061-COA

FILED

NOV 17 2021

ELIZABETH A. BROWN
CLERK OF THE SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brian Kerry O'Keefe appeals from an order of the district court dismissing a petition to establish factual innocence filed on April 27, 2021. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.


O'Keefe appeared to base his claim of factual innocence upon assertions that the State improperly filed an amended information and his retrial should have been barred under the Double Jeopardy Clause. An offender may seek to have his felony conviction vacated and his records sealed through a petition to establish factual innocence filed pursuant to NRS 34.900 through NRS 34.990. *See* NRS 34.970(7). "Factual innocence" means the person did not engage in the conduct for which he was convicted, engage in conduct constituting a lesser included or inchoate offense of the crime for which he was convicted, commit any other crimes reasonably arising from the facts alleged in the charging document upon which he was convicted, and commit the conduct alleged in the charging document under any theory of criminal liability. NRS 34.920.

O'Keefe's contentions concerning an amended information or his double jeopardy rights were insufficient to demonstrate he did not engage in the conduct for which he was convicted or commit any other crime

arising out of or reasonably connected to the facts supporting the charging document upon which he was convicted. Because O'Keefe's allegations concerning the amended information and his double jeopardy rights were insufficient to demonstrate that he was factually innocent, he was not entitled to relief. Therefore, we conclude that the district court did not err by dismissing the petition, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The district court dismissed the petition because it found that O'Keefe was previously declared a vexatious litigant and he should not have been permitted to file the petition. However, the order declaring O'Keefe a vexatious litigant is not contained within the record before this court, and this court is unable to review the scope of any limitations placed upon O'Keefe's ability to file documents in the district court. However, we affirm the district court's order because it properly concluded that O'Keefe was not entitled to relief. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).