

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84485-COA

FILED

JUL 20 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Joseph Maki appeals from an order of the district court dismissing a petition for factual innocence filed on August 17, 2021. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

In his petition, Maki claimed that he was factually innocent based on medical records that show he was in a full body cast at the time of the alleged incidents and he was impotent. “[A] person who has been convicted of a felony may petition the district court . . . for a hearing to establish the factual innocence of the person based on newly discovered evidence.” NRS 34.960(1). The newly discovered evidence must be “specifically identified and, if credible, establish[] a bona fide issue of factual innocence.” NRS 34.960(2)(a). 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). Further, the petition must also assert that

[n]either the petitioner nor the petitioner’s counsel knew of the newly discovered evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction petition, and the evidence could not have been discovered by the petitioner or the petitioner’s counsel through the exercise of reasonable diligence.

NRS 34.960(3)(a).

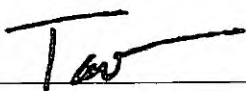
First, Maki failed to demonstrate that the alleged new evidence established a bona fide issue of factual innocence. Maki provided some of his medical records in support of his petition, and they indicate that in December 1992, he may have suffered from sexual dysfunction and had a cast on his left arm. This evidence falls far short of demonstrating he was in a full body cast and suffered from sexual dysfunction from November 1993 through January 1994, when the crimes were alleged to have occurred.

Second, as a separate and independent ground to deny relief, Maki failed to demonstrate that the medical records constituted new evidence for this claim. He failed to attest that the medical records were not known to him or counsel prior to trial or sentencing or that he did not know of the evidence prior to filing his previous postconviction petitions. Further, Maki stated in his petition and in previous filings that he requested counsel to present the records at his preliminary hearing and at trial but counsel refused. Finally, Maki raised his impotency claim in a prior petition filed in 2019, and he had the records when he filed that petition.

Because Maki failed to demonstrate the alleged new evidence demonstrated he was actually innocent and because he failed to demonstrate the evidence was new pursuant to NRS 34.960, we conclude the district court did not err by dismissing the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk