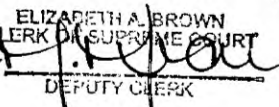


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO W. WOOD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86341-COA

**FILED**  
JUL 26 2023  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Antonio W. Wood appeals from an order of the district court denying a petition to establish factual innocence filed on December 2, 2022. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

First, Wood argues the district court erred by denying his petition. In his petition, Wood claimed that the victim's death was caused by the negligent conduct of medical staff at the hospital. Wood contended that his actions therefore did not cause the victim's death. Wood also asserted that he recently discovered that the victim's medical records had been altered.

"Newly discovered evidence means evidence that was not available to a petitioner at trial . . ." NRS 34.930. A petition to establish factual innocence must contain assertions of factual innocence that are "not merely cumulative of evidence that was known" and are "distinguishable from any claims made in any previous petitions." NRS 34.960(2)(b)(2), (3). Further, the petitioner must also assert in the petition that the newly discovered evidence was not known to the petitioner or to petitioner's counsel "in time to include the evidence in any previously filed post-trial motion or postconviction petition . . ." NRS 34.960(3)(a). If a petition does

not meet the pleading requirements of NRS 34.960(2) or (3), the petition may be dismissed by the district court. *See* NRS 34.960(4)(a), (b).

The district court reviewed Wood's petition and found that the underlying issue had been presented during Wood's trial and that Wood raised the underlying claim in previously filed postconviction petitions for a writ of habeas corpus. Wood fails to demonstrate that the district court's findings were erroneous. *See Wood v. State*, No. 68978-COA, 2016 WL 4070205 (Nev. Ct. App. July 27, 2016) (Order of Affirmance); *Wood v. State*, Docket No. 28625 (Order Dismissing Appeal, August 4, 1998). Because Wood's petition was based upon evidence that was available to Wood at trial and he raised his underlying claim in previously filed petitions, we conclude that the district court did not err by finding that Wood was not entitled to relief.

Second, Wood argues that the district court erred by denying the petition without first conducting an evidentiary hearing or appointing an expert witness to testify at the hearing. "If the court determines that the petition meets the requirements of NRS 34.960 and that there is a bona fide issue of factual innocence regarding the charges of which the petitioner was convicted, the court shall order a hearing on the petition." NRS 34.970(3). Wood's petition did not meet the requirements of NRS 34.960 because he raised the underlying claim in his previously filed postconviction petitions for a writ of habeas corpus. Because Wood's petition did not meet the requirements of NRS 34.960, the district court did not err by declining to conduct an evidentiary hearing or appoint an expert witness to testify at an evidentiary hearing. Therefore, we conclude that Wood is not entitled to relief based on this claim.

Third, Wood argues that the district court erred by denying the petition without first appointing counsel to represent him. If the court determines that an evidentiary hearing concerning a petition to establish factual innocence is warranted, the court may appoint counsel to represent the petitioner. NRS 34.980. In this matter, the district court determined that an evidentiary hearing was not warranted. Because the district court did not conduct an evidentiary hearing, we conclude that Wood was not entitled to the appointment of counsel. Therefore, Wood is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Egan K. Walker, District Judge  
Antonio W. Wood  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk