

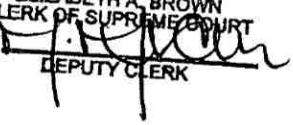
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID BOOKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87150-COA

**FILED**

MAY 28 2024

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

*ORDER OF AFFIRMANCE*

David Booker appeals from a district court order denying a petition for writ of habeas corpus to establish factual innocence. Eighth Judicial District Court, Clark County; Danielle K. Pieper.

In his petition, Booker claimed that he was factually innocent because (1) he was arrested on hearsay of the alleged victim and his side of the story was not considered; (2) he was arrested with “no evidence”; (3) the victim lied about his coming into the store and the victim told people he did not feel threatened; (4) there was no attack on the victim and thus there could be no substantial bodily injury; and (5) no medical records or pictures were ever provided for the substantial bodily injury. Booker also claimed that counsel was ineffective for failing to investigate and/or present this evidence, failing to communicate, and coercing him into pleading guilty.

A person who has been convicted of a felony may petition the district court for a hearing to establish their factual innocence. NRS 34.960(1). The petition must contain supporting affidavits or other credible documents indicating that newly discovered evidence exists and, if credible, would establish a bona fide issue of factual innocence. NRS 34.960(2)(a). 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 . . . , 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).

The district court found that Booker did not present any evidence that complies with the statute on factual innocence, nor did he present new evidence that would prove his innocence. These findings are supported by the record. Booker's petition did not identify any newly discovered evidence or provide any affidavits or supporting evidence with his petition that would establish factual innocence. Further, the petition does not assert that neither he nor his counsel did not know of any newly discovered evidence or that the evidence could not have been discovered by Booker or counsel through due diligence. Accordingly, Booker failed to meet the pleading requirements of NRS 34.960.

In his reply below to the State's response to his petition, Booker attempted to provide one piece of evidence that he alleged was newly discovered: a Las Vegas Metropolitan Police Department reply to a public records request for body camera video. Not only was this evidence improper to include in his reply, *see* NRS 34.960(2), but it did not constitute newly discovered evidence that demonstrated factual innocence. The document provided by Booker shows that the police department previously provided him with the body camera video.

Therefore, Booker failed to identify any newly discovered evidence that, if credible, would establish a bona fide issue of factual

innocence.<sup>1</sup> Accordingly, we conclude the district court did not err by denying Booker's petition, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Danielle K. Pieper, District Judge  
David Booker  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>1</sup>On appeal, Booker raises new substantive claims and attempts to provide further evidence and documentation of his claims. Because Booker did not raise these claims in his petition below or provide this evidence or documentation below, we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

<sup>2</sup>On March 26, 2024, Booker filed a letter. This letter does not appear to request relief that this court can grant. Therefore, this court takes no action on this letter.