


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88511-COA

FILED

OCT 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Washington appeals from a district court order denying a motion to establish factual innocence filed on March 15, 2024. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion, Washington alleged he was factually innocent of *attempted* lewdness with a child under the age of 14 because the victim made statements describing accomplished sexual acts.

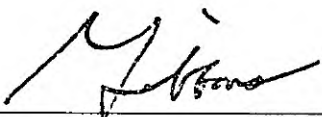
A person who has been convicted of a felony may petition the district court for a hearing to establish their factual innocence. NRS 34.960(1). The petition must contain an assertion of factual innocence along with supporting affidavits or other credible documents indicating that newly discovered evidence exists which 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 [that] 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 Washington failed to meet the pleading requirements for establishing a bona fide issue of factual innocence based on newly discovered evidence. This finding is supported by

the record. Washington's motion did not identify any newly discovered evidence nor did Washington provide any affidavits or supporting evidence with his motion that would establish factual innocence. See NRS 34.920 (defining factual innocence). Further, the motion does not assert that neither Washington nor his counsel knew of any newly discovered evidence or that the evidence could not have been discovered by Washington or counsel through due diligence. Accordingly, Washington failed to meet the pleading requirements of NRS 34.960. Therefore, we conclude the district court did not err by denying Washington's motion.

On appeal, Washington argues that the State failed to address any of the arguments he raised in his motion. Because Washington's motion failed to meet the pleading requirements of NRS 34.960, the State was not required to respond. See NRS 34.970(1). Therefore, Washington fails to demonstrate he is entitled to relief based on this claim, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹To the extent Washington presents claims or facts in his briefing on appeal that were not previously presented in the proceedings below, we decline to consider them in the first instance. See *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

cc: Hon. Michelle Leavitt, District Judge
Joseph Washington
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk