

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURY A. SINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88157-COA

FILED

DEC 16 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Maury A. Singer appeals from a district court order denying a petition to establish factual innocence filed on January 10, 2024. Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge.

Singer argues the district court erred by denying his petition without conducting an evidentiary hearing or appointing counsel because he identified newly discovered evidence that established his factual innocence.¹ 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 “[n]ewly discovered evidence exists that is specifically identified and, if credible, establishes 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

¹Singer argues the newly discovered evidence is 1987 police reports related to his criminal case and witnesses L. Cunningham, D. Hicks, C. Goldberg, F. Artega, and K. Terry. He also argues the newly discovered evidence is internal affairs investigation reports related to potential misconduct on the part of Detective Shalhood.

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). NRS 34.970(3) provides that "the [district] court shall order a hearing" on a petition to establish factual innocence if the court determines that the petition satisfies the requirements set forth in NRS 34.960 and "that there is a bona fide issue of factual innocence." If the district court grants a hearing, it may appoint counsel. *See* NRS 34.980.


As to the 1987 police reports related to various witnesses, all of the witnesses except for Cunningham testified during Singer's trial and were thus known to him and/or his counsel. With regard to Cunningham, Goldberg identified him during trial as her live-in boyfriend and Singer identified him as a witness during the litigation of his petition for postconviction relief. Therefore, Singer could have obtained police reports related to all of these witnesses through reasonable diligence at the time of trial or in time to include the reports in his first postconviction petition. *See* NRS 34.960(3)(a).

Singer argues that the police reports of these witnesses were not reasonably available because counsel was ineffective for failing to investigate the evidence and because the State improperly withheld the evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). However, these arguments allege the violation of constitutional or statutory rights and are thus properly raised in a postconviction petition for a writ of habeas corpus. *Compare* NRS 34.724(1) *with* NRS 34.960; *see also* Hearing on A.B. 356 Before the Assembly Judiciary Comm., 80th Leg., at 34-36 (Nev., Mar. 28, 2019) (discussing differences between claims alleged in postconviction

petitions for a writ of habeas corpus and petitions to establish factual innocence and the narrow circumstances in which the latter applies). Thus, Singer is not entitled to relief based on these arguments.²

As to the internal affairs investigation reports related to Shalhood's alleged misconduct, even assuming such evidence existed and was relevant to Singer's criminal case, any such evidence did not clearly establish that Singer was factually innocent. See NRS 34.920 (defining factual innocence); see also NRS 34.960(2)(b)(2) (stating a petition must aver that the newly discovered evidence "is not merely impeachment evidence"). Therefore, we conclude the district court did not err by denying Singer's petition without conducting an evidentiary hearing or appointing counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²We express no opinion as to whether Singer could meet the procedural requirements of NRS Chapter 34.

³Singer also argues the district court erred by not allowing him to conduct discovery and gives notice of federal exhaustion and his intent to appeal to federal court. We conclude no relief is warranted based on these arguments. Insofar as Singer raises arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Jennifer L. Schwartz, District Judge
Maury A. Singer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk