

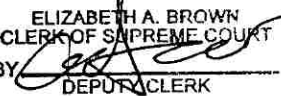
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY POSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88608-COA

FILED

FEB 24 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Posey appeals from the district court order denying his motion to establish factual innocence filed on March 21, 2024. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Posey argues the district court erred in denying his motion to establish factual innocence without holding an evidentiary hearing. Posey argues the State searched his cell phone and websites he accessed without a warrant and then withheld the phone, which prevented Posey from discovering exculpatory evidence contained therein. He also asserts that the investigators coerced one of the victims into making allegations against him and withheld transcripts that would have proven police misconduct. Posey further contends that his counsel should have discovered the terms of service of the websites and applications which he used to contact the victims and a Washington statute purportedly providing a defense to defendants who respond to adult service advertisements that used images of minors.

In support of this motion, he included, as allegedly newly discovered evidence, the terms of service from the websites used to interact with the victims. He also included the following documents, which he

asserts show government misconduct: district court minutes, portions of a district court order, several pages of district court pleadings, several pages from police reports, and portions of police interviews of Posey and one of the victims.

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 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). 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).

The district court denied the motion finding it “substantially similar, if not identical” to the motion to establish factual innocence Posey filed on May 10, 2023. Posey fails to demonstrate that the district court’s findings were erroneous or unsupported by the record. Posey’s motion was based upon evidence that was available when he filed the prior motion to establish factual innocence and prior postconviction petitions for writs of habeas corpus. *See Posey v. State*, No. 87119-COA, 2024 WL 2237902, at *1-*2 (Nev. Ct. App. May 16, 2024) (Order Affirming in Part and Dismissing in Part); *see also Posey v. State*, No. 85903-COA, 2023 WL 4247498 (Nev.

Ct. App. June 28, 2023) (Order of Affirmance). Moreover, this court previously concluded that this evidence was not newly discovered, nor did it implicate factual innocence. *Posey*, 2024 WL 2237902, at *1-*2. Therefore, we conclude that the district court did not err in finding that Posey was not entitled to relief. See NRS 34.960(2)(b)(3); see also NRS 34.960(5) (“Any second or subsequent petition filed by a person must be dismissed if the court determines that the petition fails to identify new or different evidence in support of the factual innocence claim.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Anthony Posey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk