

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81814-COA

**FILED**

**MAR 30 2021**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Brian Kerry O'Keefe appeals from an order of the district court denying a petition for a writ of coram nobis filed on June 12, 2020. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

In his petition, O'Keefe argued there is a jurisdictional defect in his case because a police incident report contains an inaccurate description of the location of the offense. O'Keefe claimed this supports the conclusion that the municipal court was vested with sole jurisdiction over his case.

A petition for a writ of coram nobis is limited "to address errors of fact *outside the record* that affect the validity and regularity of the decision itself." *Trujillo v. State*, 129 Nev. 706, 717, 310 P.3d 594, 601 (2013) (emphasis added). And "it is the petitioner's burden on the face of his petition to demonstrate that he could not have reasonably raised his claims

during the time he was in custody.” *Id.* at 717-18, 310 P.3d at 601-02. A writ of coram nobis is limited to factual, not legal errors. *Id.* at 717, 310 P.3d at 601.

The police report that O’Keefe relied on was made part of the record at his sentencing hearing. Thus, the information contained therein did not constitute facts outside the record, and O’Keefe did not meet his burden to demonstrate the claim could not have been raised while he was in custody. Further, O’Keefe’s claim involved legal and not factual errors. Therefore, we conclude O’Keefe’s claim was outside the scope of a petition for a writ of coram nobis.


As a separate and independent ground to deny relief, the Nevada Supreme Court previously held that the district court had jurisdiction over O’Keefe’s case. *See O’Keefe v. State*, Docket No. 48867, \*9-10 (Order of Affirmance, October 31, 2007). This holding is the law of the case, *see Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and O’Keefe did not demonstrate any exceptions to overcome its application, *see Hsu v. Cty. of Clark*, 123 Nev. 625, 630-31, 173 P.3d 724, 729 (2007).

Finally, O’Keefe argues the district court erred by denying his motion to appoint counsel. O’Keefe has not demonstrated he was entitled to the appointment of counsel or that the district court erred by denying his request.

For the foregoing reasons, we conclude the district court did not err by denying O'Keefe's petition, and we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Jerry A. Wiese, District Judge  
Brian Kerry O'Keefe  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>To the extent O'Keefe attempts to present claims or facts on appeal that were not previously presented in the proceedings below, we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).