

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 82025-COA

FILED

MAY 14 2021

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

ORDER OF AFFIRMANCE

Brian Kerry O'Keefe appeals from a district court order denying a petition to establish factual innocence filed on July 1, 2020, and a motion for reconsideration filed on September 2, 2020. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

O'Keefe argues the district court erred by denying his petition because newly discovered evidence demonstrates his factual innocence. O'Keefe claims that a motion in limine filed by the prosecution in a separate case demonstrates that incidents of battery constituting domestic violence occurring on April 2, 2004, and April 3, 2004, were both adjudicated by the Las Vegas Municipal Court and, therefore, his conviction in this case constitutes double jeopardy.

An offender may seek to have his felony conviction vacated and his records sealed through a petition to establish factual innocence filed pursuant to NRS 34.900 through NRS 34.990. *See* NRS 34.970(7). "Factual innocence" means the person did not engage in the conduct for which he was convicted, engage in conduct constituting a lesser included or inchoate offense of the crime for which he was convicted, commit any other crimes reasonably arising from the facts alleged in the charging document upon


which he was convicted, and commit the conduct alleged in the charging document under any theory of criminal liability. NRS 34.920.

O'Keefe does not allege or otherwise demonstrate he did not engage in the conduct for which he was convicted or commit any other crime arising out of or reasonably connected to the facts supporting the information upon which he was convicted. Because he failed to allege facts that demonstrated he was factually innocent, he is not entitled to relief.

O'Keefe next argues the district court erred by denying his motion to alter or amend the judgment. The district court construed O'Keefe's motion as one for reconsideration, and O'Keefe does not challenge this construction on appeal. A decision denying a motion for reconsideration is not an appealable decision. *See Phelps v. State*, 111 Nev. 1021, 1022-23, 900 P.2d 344, 344-45 (1995). Therefore, we decline to consider O'Keefe's appeal from the district court's order denying his motion.

For the forgoing reasons, we conclude O'Keefe is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, 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