

EXHIBIT A

ORDER OF AFFIRMANCE NOV 12 2021

No. 83061 - CoA

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 83061-COA

FILED

NOV 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE


Brian Kerry O'Keefe appeals from an order of the district court dismissing a petition to establish factual innocence filed on April 27, 2021. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

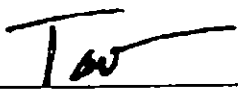
O'Keefe appeared to base his claim of factual innocence upon assertions that the State improperly filed an amended information and his retrial should have been barred under the Double Jeopardy Clause. An offender may seek to have his felony conviction vacated and his records sealed through a petition 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's contentions concerning an amended information or his double jeopardy rights were insufficient to 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 charging document upon which he was convicted. Because O'Keefe's allegations concerning the amended information and his double jeopardy rights were insufficient to demonstrate that he was factually innocent, he was not entitled to relief. Therefore, we conclude that the district court did not err by dismissing the petition, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The district court dismissed the petition because it found that O'Keefe was previously declared a vexatious litigant and he should not have been permitted to file the petition. However, the order declaring O'Keefe a vexatious litigant is not contained within the record before this court, and this court is unable to review the scope of any limitations placed upon O'Keefe's ability to file documents in the district court. However, we affirm the district court's order because it properly concluded that O'Keefe was not entitled to relief. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

EXHIBIT

B

ORDER DENYING REHEARING JAN 24 2022

No. 83061-COA

EXHIBIT

B


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 83061-COA

FILED


JAN 24 2022

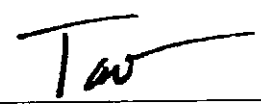
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

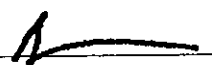
ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

 C.J.
Gibbons

 J.
Tao

 J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

EXHIBIT

C

ORDER DISMISSING THE CASE JUNE 3 2021

NO. A-21-833626

EXHIBIT

C

Alvin B. Smith
CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 Brian O'Keefe,

6 Plaintiff,

7 -vs-

8 The State of Nevada

9 Defendant.

CASE NO: A-21-833626

DEPT NO: XVIII

10
11 **ORDER DISMISSING THE CASE**

12 DATE OF HEARING: June 2, 2021
13 TIME OF HEARING: 10:00 A.M.

14 THIS MATTER came before the above entitled Court on the 2nd day of June, 2021
15 for Plaintiff's Petition To Establish Factual Innocence Pursuant NRS 34.900 To 34.990
16 Where New Evidence As Federal Civil Answer To Related Case 08C250630 Misrepresents
17 Operative Fact By Omission That Another Information On Was Filed Contrary To NRS
18 174.085(3) Leading With A New Second Jeopardy Attaching By Jury Empanelment
19 Without Primary Authority Or Jurisdiction On Where Claim Within Warrants Writ To Issue
20 For Response On Merits. Plaintiff was not present.

21 Previously, on April, 4, 2019, Judge Villani issued a Findings of Fact, Conclusions
22 of Law and Order in Defendant's criminal case, 08C250630, declaring the Plaintiff a
23 vexatious litigant. The Court FINDS and CONCLUDES that Plaintiff should not have been
24 permitted to file the instant Petition pursuant to NRS 155.165(3)(c).

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EXHIBIT

D

ORDER DENYING PETITION FOR REVIEW FEB 14 2022

NO. 83061

EXHIBIT

D

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 83061

FILED

FEB 14 2022

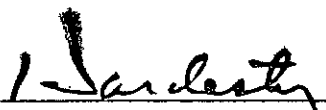
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.¹


, C.J.
Parraguirre

, J.
Hardesty

, J.
Stiglich

, J.
Cadish

, J.
Pickering

, J.
Herndon

cc: Hon. Mary Kay Holthus, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹ The Honorable Abbi Silver, Justice, voluntarily recused himself/herself from participation in the decision of this matter.

EXHIBIT

E

ORDER OF REVERSAL AND REMAND APR 7 2010

NO. 53859

EXHIBIT

E

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 53859

FILED

APR 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Brian Kerry O'Keefe contends that the district court erred by giving the State's proposed instruction on second-degree murder because it set forth an alternative theory of second-degree murder, the charging document did not allege this alternate theory, and no evidence supported this theory. We agree. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error. An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (internal quotation marks and footnote omitted). Here, the district court abused its discretion when it instructed the jury that second-degree murder includes involuntary killings that occur in the commission of an unlawful act because the State's charging document did not allege that O'Keefe killed the victim while he was

SUPREME COURT
OF
NEVADA

(0) LMTA

037 10-0850

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committing an unlawful act and the evidence presented at trial did not support this theory of second-degree murder. Cf. Jennings v. State, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000) (adding an additional theory of murder at the close of the case violates the Sixth Amendment and NRS 173.075(1)). The district court's error in giving this instruction was not harmless because it is not clear beyond a reasonable doubt that a rational juror would have found O'Keefe guilty of second-degree murder absent the error. See Neder v. United States, 527 U.S. 1, 18-19 (1999); Wegner v. State, 116 Nev. 1149, 1155-56, 14 P.3d 25, 30 (2000), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006). Because we conclude that the judgment of conviction must be reversed and the case remanded for a new trial, we need not reach O'Keefe's remaining contentions. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Michael Villani, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**