

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY LYNN LEWIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82942-COA

**FILED**

FEB 03 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Gary Lynn Lewis appeals from an order of the district court denying a petition to establish factual innocence filed on January 5, 2021. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Lewis claims the district court erred by denying his petition without conducting an evidentiary hearing or sua sponte appointing counsel. In his petition, Lewis claimed the State possessed exculpatory evidence, his *Alford*<sup>1</sup> plea was invalid, and he received ineffective assistance of counsel. Lewis failed to identify any newly discovered evidence that would establish his factual innocence. Therefore, we conclude the district court did not err by denying Lewis's petition. *See* NRS 34.960(2) (requiring the petition to assert newly discovered evidence that establishes factual innocence); *see also* NRS 34.930 ("Newly discovered evidence" means evidence that was not available to a petitioner at trial or during the resolution by the trial court of any motion to withdraw a guilty plea or motion for new trial . . ."). We further conclude the district court did not err when it failed to order an evidentiary hearing or appoint counsel. *See*

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

NRS 34.970(3) (providing for an evidentiary hearing only after the pleading requirements of NRS 34.960 have been satisfied); NRS 34.980 (allowing the court to appoint counsel only after granting a hearing).

For the foregoing reasons, we conclude Lewis is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Gary Lynn Lewis  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk