

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD EUGENE GARNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65426

FILED

JAN 21 2015

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

ORDER OF AFFIRMANCE

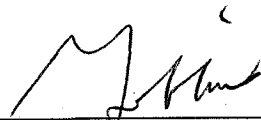
This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.


On appeal from the denial of his July 9, 2012, petition, appellant first argues that the trial court abused its discretion by failing to grant appellant's request for substitute counsel made prior to trial. This claim could have been raised on direct appeal and appellant did not demonstrate cause for the failure to do so and actual prejudice.¹ See NRS 34.810(1)(b). To the extent appellant asserts that he had good cause to overcome the procedural bar because his appellate counsel acted under a conflict of interest, and because the district court should have appointed post-conviction counsel to help him raise claims in the initial post-conviction proceedings, he did not allege these issues as good cause below,


¹Appellant argues in his reply brief that the State did not sufficiently respond to this claim and therefore confessed error. However, we conclude that this assertion lacks merit as the State sufficiently responded to this claim.

and these assertions are not properly raised for the first time on appeal. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.2d 25, 33 (2004). We conclude that the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Karen A. Connolly, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk