

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES EVESTER BECOAT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70682

FILED

DEC 28 2016

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

ORDER OF AFFIRMANCE

Appellant Charles Becoat appeals the denial of his postconviction petition for a writ of habeas corpus filed on December 29, 2015.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Becoat filed his petition on December 29, 2015, more than one year after entry of the judgment of conviction on April 1, 2014. Thus, Becoat's petition was untimely filed. *See* NRS 34.726(1). Becoat's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*


Becoat claims the district court erred by denying his petition as procedurally barred because his petition was timely filed within one year of his second amended judgment of conviction, which was filed on May 20, 2015.² Entry of an amended judgment of conviction can only

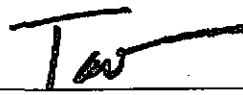
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

²To the extent Becoat alleges he was not personally served with a response to his petition, the record reveals the State filed and served a response to the petition on counsel of record in this case.

provide good cause to file an untimely postconviction petition for a writ of habeas corpus if the claim raised relates to the amendment. *See Sullivan v. State*, 120 Nev. 537, 540-42, 96 P.3d 761, 763-65 (2004). None of the claims raised in his petition challenged the second amended judgment of conviction. Therefore, the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³To the extent Becoat has attempted to present claims or facts in his brief which were not previously presented in the proceedings below, we decline to consider them in the first instance. *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.3d 25, 33 (2004).

We conclude the district court did not err in declining to appoint counsel, *see* NRS 34.750(1), or by determining an evidentiary hearing was unnecessary, *see Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (to warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations not belied by the record and, if true, would entitle him to relief).

cc: Hon. Elissa F. Cadish, District Judge
Charles Evester Becoat
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk