

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE LAMONT CLAYTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74363

FILED

OCT 12 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jesse Lamont Clayton appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 28, 2017. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Clayton filed his petition more than two years after entry of the judgment of conviction on June 15, 2015, and nearly two years after entry of the amended judgment of conviction on September 21, 2015. No direct appeal was taken. Clayton's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).


Clayton claimed his petition was timely from his August 30, 2016, probation revocation. A second amended judgment of conviction, styled as an "order for revocation of probation," was filed on September 1, 2016. However, Clayton's claims did not implicate the change therein. Thus the entry of the amended judgment of conviction did not demonstrate good cause. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). To the extent Clayton raises new good-cause arguments in his opening brief before this court, we decline to consider them on appeal in the


first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Silver

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Kenneth G. Frizzell, III  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Nova v. State*, 133 Nev. \_\_\_, \_\_\_, 391 P.3d 760, 760-61 (2017).