

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN G.W. BURHUS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73361

FILED

JUL 17 2018

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

ORDER OF AFFIRMANCE

Shawn G.W. Burhus appeals from a judgment of conviction, pursuant to a guilty plea, for driving under the influence of alcohol, third offense. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Burhus contends the district court erred by failing to hold a hearing on and grant his pro se "motion to request time applied" in which he sought to have time he was "being supervised by Lyon County Justice Court [apply to his] supervision in Carson City." The district court set Burhus' motion for a hearing. However, before the hearing date Burhus was terminated from DUI court for initially refusing to take and then failing a urine test for alcohol. In light of this, the district court vacated the hearing date on the motion. We note Burhus did not raise the issue of his unresolved motion at his sentencing hearing. Under these circumstances, we cannot conclude the district court abused its discretion by not resetting the motion for a hearing or granting the motion.

Burhus next contends he did not enter his guilty plea knowingly, voluntarily, and intelligently because the district court did not tell him how long a diversion program could last. Burhus did not challenge

the validity of his plea below, and we decline to consider this claim because it is not properly raised in the first instance on direct appeal. *See Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (“[A] post-conviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing for persons in custody on the conviction being challenged.”).

Having concluded Burhus’ claims lack merit, we
ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. John Schlegelmilch, District Judge
Mouritsen Law
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk

¹The Honorable Jerome T. Tao did not participate in the decision in this matter.