

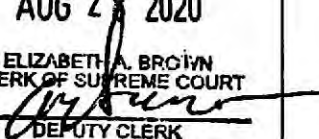
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COURTNEY MOTLEY,  
Appellant,  
vs.  
NDOC; AND JAMES DZURENDA,  
DIRECTOR,  
Respondents.

No. 80031-COA

**FILED**

AUG 28 2020

ELIZABETH A. BROIVN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Courtney Motley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Motley filed his July 2, 2019, petition more than two years after entry of the judgment of conviction on February 3, 2017. Thus, Motley's petition was untimely filed.<sup>1</sup> *See* NRS 34.726(1). Motley's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Motley did not argue he had cause for his delay. Therefore, the district court did not err by denying the petition as procedurally barred.

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<sup>1</sup>The district court filed an amended judgment of conviction on January 18, 2019, but entry of the amended judgment of conviction did not provide cause for Motley's delay because the claim he raised in the instant petition arose out of the proceedings involving his initial judgment of conviction and could have been raised before his judgment of conviction was amended. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

Motley argues on appeal that the district court erred by denying the petition without allowing him to conduct discovery. However, Motley fails to demonstrate he was entitled to conduct discovery. *See* NRS 34.780(2). Accordingly, we conclude the district court did not err in this regard.

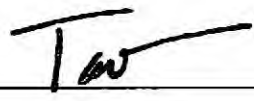
Motley also appears to argue that the district court erred by conducting a hearing concerning his postconviction petition outside of his presence. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A “defendant must show that he was prejudiced by the absence.” *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996). The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely directed the State to prepare an order denying the petition and Motley’s request for the production of documents. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner’s statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). Motley does not demonstrate he was prejudiced by his absence from the relevant hearing. Accordingly, we conclude the district court did not err in this regard.

Finally, Motley appears to argue that the Nevada Department of Corrections failed to apply good-time credits toward his sentence and as a result erred when calculating his sentence. However, Motley did not raise this claim in his petition and we decline to consider it in the first instance

on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Courtney Motley  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk