APPENDIX A

UNITED STATES COURT OF APPE

FOR THE TENTH CIRCUIT

In re: JASON BROOKS,

Movant.

No. 19-1251

(D.C. No. 1:18-CR-02666-LTB)
(D. Colo.)

ORDER

Before **LUCERO**, **MATHESON**, and **McHUGH**, Circuit Judges.

Jason Brooks, a Colorado state prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas application challenging his Colorado conviction for securities fraud. We deny authorization.

In 2010, Brooks pleaded guilty to four counts of securities fraud and was sentenced to 32 years' imprisonment. He filed his first § 2254 petition in 2014 claiming he received an inadequate plea advisement and ineffective assistance of counsel and challenging the state court's denial of the post-conviction motion in which he had raised essentially the same claims. The district court dismissed most of the claims as procedurally barred and denied the remaining claim on the merits. We denied Brooks' application for a certificate of appealability (COA) and dismissed the matter. *See Brooks v. Archuleta*, 621 F. App'x 921, 922, 928 (10th Cir. 2015).

Since then, Brooks has filed numerous unsuccessful post-conviction motions in state court, second or successive habeas petitions in federal district court (including

motions under Fed. R. Civ. P. 60(b) that the court construed as second or successive), requests in this court for COAs to allow him to appeal the denial of those petitions, and motions for authorization to file second or successive habeas applications. Most of those proceedings involved claims relating to the requirement under state law that he pay interest on the approximately $5 million in restitution he agreed to pay as part of the plea agreement.

In his current application, Brooks seeks to challenge his conviction on the ground that it is invalid and violates due process principles because, despite his admission of guilt, the "notes" he was selling were not securities within the meaning of the Colorado Securities Act (CSA). *See* Mot. for Auth. at 7-16. To be eligible for authorization, Brooks must show that his proposed claims rely on either newly discovered facts demonstrating his innocence or a new rule of constitutional law that the Supreme Court has made retroactively applicable to cases on collateral review. 28 U.S.C. § 2244(b)(2)(A), (2)(B), (3)(C). To obtain authorization based on a new factual predicate, he must make a prima facie showing that the new facts "could not have been discovered previously through the exercise of due diligence" and that they "would be sufficient to establish by clear and convincing evidence that . . . no reasonable factfinder would have found [him] guilty of the underlying offense." § 2244(b)(2)(B)(i), (ii).

Brooks' proposed claims do not meet these requirements. He purports to rely on both the new-rule-of-law and newly-discovered-facts provisions as the basis for authorizing the claims, but he cites no new rule of retroactively applicable constitutional law. Nor does he cite any new facts. Instead, he claims that under a state case issued in

2015, the notes he sold and that underpin his securities fraud conviction were not securities within the meaning of the CSA. *People v. Mendenhall*, 363 P.3d 758, 767-69 (Colo. App. 2015) (holding that "not all notes involve investments or constitute securities" and adopting the test used to determine whether a note is a security under the Securities Exchange Act in interpreting the meaning of "any note" under the CSA). And, relying on the holding in *Class v. United States*, 138 S. Ct. 798, 803 (2018), that "a guilty plea by itself" does not bar a criminal defendant "from challenging the constitutionality of the statute of conviction on direct appeal," Brooks maintains he should be permitted to challenge the constitutionality of the CSA on void-for-vagueness grounds in a second or successive § 2254 application.

But neither *Mendenhall* nor *Class* announces a new rule of constitutional law that the Supreme Court has made retroactively applicable to cases on collateral review. And contrary to Brooks' claim that these cases satisfy the new-facts requirement because he was unaware of them until recently, learning of a new legal theory is not the discovery of a new *fact*. *Cf. F.D.I.C. v. Arciero*, 741 F.3d 1111, 1118 (10th Cir. 2013) ("[L]earning of a new legal theory is not the discovery of new *evidence*.").

Because Brooks has failed to meet the standard for authorization in § 2244(b), we deny his motion. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." § 2244(b)(3)(E).

Entered for the Court

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk

APPENDIX B

FILED
United States Court of Appeals
Tenth Circuit

March 9, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JASON BROOKS,

Petitioner - Appellant,

v.

LOU ARCHULETA, Warden; THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents - Appellees.

No. 20-1326
(D.C. No. 1:14-CV-02276-SKC)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **TYMKOVICH**, Chief Judge, **HOLMES**, and **McHUGH**, Circuit Judges.

Jason Brooks is a Colorado prisoner.[1] He seeks a certificate of appealability (COA) to appeal the district court's rulings on two motions in this habeas corpus case. The first motion purported to request relief under Federal Rule of Civil Procedure 60(b)(6), and the second motion asked the district court to reconsider its ruling on the first motion. We deny Mr. Brooks a COA and dismiss this matter.

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Mr. Brooks represents himself. We construe his filings liberally without going so far as to assume the role of his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

I. Background

In 2010, Mr. Brooks pleaded guilty in a Colorado court to securities crimes. He received a thirty-two-year prison sentence. In 2014, he filed his first habeas corpus petition under 28 U.S.C. § 2254. The petition failed. In the years since, Mr. Brooks has filed three unsuccessful motions in this court seeking authorization to file a second or successive § 2254 petition. And in 2017, he sought relief in the district court, purportedly under Rule 60(b)(6), but the district court construed the filing as a second or successive § 2254 petition.

In 2020, Mr. Brooks filed the two motions that concern us here. In the first motion, styled a Rule 60(b)(6) motion, Mr. Brooks attacked his Colorado convictions on three theories, arguing that he did not sell "securities" as the term is used in the Colorado Securities Act, that Colorado lacked jurisdiction to prosecute him, and that enforcing the Colorado Securities Act violates due process. The district court construed the motion as an unauthorized second or successive § 2254 petition and concluded that it lacked jurisdiction to consider the merits of the claims. Mr. Brooks moved for reconsideration, and the district court reiterated its jurisdictional ruling.

II. Discussion

The district court's ruling that it lacked jurisdiction over the merits of Mr. Brooks's claims was a procedural ruling, hinging on its decision that the claims should be treated as second or successive § 2254 claims even though Mr. Brooks labelled them as Rule 60(b)(6) claims. To obtain a COA, then, Mr. Brooks must show "that

jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

Mr. Brooks cannot make that showing. A district court lacks jurisdiction to address the merits of a second or successive § 2254 claim unless the appropriate court of appeals has authorized the claim to be filed. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008). A Rule 60(b)(6) motion in a habeas corpus case will be treated as a second or successive § 2254 petition if it asserts, or reasserts, "claims of error in the movant's state conviction." *Gonzalez v. Crosby*, 545 U.S. 524, 538 (2005). Because the claims in Mr. Brooks's purported Rule 60(b)(6) motion attack his Colorado convictions, no reasonable jurist could debate the district court's decision to treat those claims as unauthorized second or successive § 2254 claims.

Mr. Brooks does not dispute that his claims target his Colorado convictions. Instead, he argues that his claims nevertheless fit under Rule 60(b)(6) because they arise from extraordinary circumstances. This argument addresses the wrong question. To be sure, relief under Rule 60(b)(6) is available only under extraordinary circumstances. *Gonzalez*, 545 U.S. at 536. But the question before us is not whether Mr. Brooks presented a *meritorious* motion under Rule 60(b)(6); the question is whether he presented a motion under Rule 60(b)(6) at all. He did not. He presented § 2254 claims alleging error in his Colorado convictions. The district court's ruling that it lacked jurisdiction to address the merits of those claims is not debatable. *See Cline*, 531 F.3d at 1251.

III. Conclusion

We grant Mr. Brooks's motion to proceed without prepaying fees, deny his application for a COA, and dismiss this matter.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX C

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: December 23, 2020
Original Proceeding, Habeas Corpus District Court, Weld County, 2009CR959	
Petitioner: Jason Trevor Brooks, **v.** **Respondents:** Executive Director of CDOC and Warden of the Sterling Correctional Facility.	Supreme Court Case No: 2020SA385
ORDER OF COURT	

Upon consideration of the Request for Court to Assert Original Jurisdiction Over Applicant's Writ of Habeas Corpus filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Request shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, DECEMBER 23, 2020.

APPENDIX D

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 4, 2020
Weld County 2009CR959	
Defendant-Appellee: People of the State of Colorado, **v.** **Plaintiff-Appellant:** Jason Trevor Brooks.	Court of Appeals Case Number: 2019CA2028
ORDER OF COURT	

To: All Parties and the Clerk of the District Court

Upon consideration of appellant's response to the Court's December 17, 2019, order and motion to file the notice of appeal out of time as to the judgment of conviction entered on April 27, 2010, in case 09CR959, the Court determines that appellant has not established that good cause exists to accept the notice of appeal as timely filed. *See People v. Baker*, 104 P.3d 893 (Colo. 2005).

IT IS THEREFORE ORDERED that the appeal is DISMISSED with prejudice.

BY THE COURT
Román, J.
Welling, J.
Brown, J.

APPENDIX E

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 6, 2020
Original Proceeding Court of Appeals, 2019CA2028	
In Re: **Plaintiff-Appellant:** Jason Trevor Brooks, **v.** **Defendant-Appellee:** The People of the State of Colorado.	Supreme Court Case No: 2020SA45
ORDER OF COURT	

Upon consideration of the Petition for Rule to Show Cause in Re: Request to File Out of Time Notice of Appeal Colorado Court of Appeals No. 2019CA2028 filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition for Rule to Show Cause in Re: Request to File Out of Time Notice of Appeal Colorado Court of Appeals No. 2019CA2028 shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MARCH 6, 2020.

APPENDIX F

19CA1032 Peo v Brooks 02-06-2020

COLORADO COURT OF APPEALS

DATE FILED: February 6, 2020

Court of Appeals No. 19CA1032
Weld County District Court No. 09CR959
Honorable Julie C. Hoskins, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Jason Trevor Brooks,

Defendant-Appellant.

ORDER AFFIRMED

Division VII
Opinion by JUDGE LIPINSKY
Fox and Berger, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced February 6, 2020

Philip J. Weiser, Attorney General, Joesph G. Michaels, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Jason Trevor Brooks, Pro Se

¶ 1 Defendant, Jason Trevor Brooks, appeals the district court's order denying his most recent postconviction motion. We affirm.

I. Background

¶ 2 In 2010, Brooks pleaded guilty to four counts of securities fraud. As part of the plea agreement, he agreed to pay more than $5.7 million in restitution.

¶ 3 The district court accepted the plea, sentenced Brooks to thirty-two years in the custody of the Department of Corrections, and ordered him to pay $5,131,760.96 in restitution.

¶ 4 Since then, Brooks has filed a plethora of postconviction motions. His motions filed since 2015 all relate to a letter he received that year from the Clerk of the Weld County Combined Court informing him that, "[b]eginning September 12, 2015, interest will be added at 1% per month of the current [restitution] balance." That letter was apparently based on a policy change regarding how the state planned to implement section 18-1.3-603(4)(b)(I), C.R.S. 2015, which at the time mandated post-judgment interest on restitution orders in the amount of "twelve percent per annum." (The interest rate has since been changed to eight percent per

annum.) *See People v. Ray*, 2018 COA 158, ¶¶ 6-8, 452 P.3d 117, 120 (discussing the policy change announced in 2015).

¶ 5 The district court issued orders denying all of Brooks's postconviction motions. Divisions of this court affirmed the orders that Brooks appealed. *See People v. Brooks*, (Colo. App. No. 18CA0336, Mar. 28, 2019) (not published pursuant to C.A.R. 35(e)) (*Brooks III*); *People v. Brooks*, (Colo. App. No. 16CA0755, June 29, 2017) (not published pursuant to C.A.R. 35(e)) (*Brooks II*); *People v. Brooks*, (Colo. App. No. 12CA1781, Mar. 6, 2014) (not published pursuant to C.A.R. 35(f)) (*Brooks I*).

¶ 6 Brooks purports to bring the postconviction motion at issue here pursuant to Crim. P. 52(b), even though he previously raised the same or similar postconviction claims pertaining to post-judgment interest on restitution.

¶ 7 The district court issued a written order denying the motion without holding an evidentiary hearing.

II. Standard of Review

¶ 8 We review the summary denial of a postconviction motion de novo. *People v. Medina*, 2019 COA 103M, ¶ 4, ___ P.3d ___, ___.

III. Analysis

¶ 9 Brooks purports to move for relief under Crim. P. 52(b), which provides, "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." That rule does not apply here because Brooks brought his claims regarding post-judgment interest on restitution to the attention of the district court and this court.

¶ 10 Regardless, though, Brooks cannot use Crim. P. 52(b) to circumvent Crim. P. 35. Crim. P. 35 specifically governs the filing of postconviction motions, while Crim. P. 52(b) does not. Thus Crim. P. 35 controls. *Cf. Beren v. Beren*, 2015 CO 29, ¶ 11, 349 P.3d 233, 239 ("If different statutory provisions cannot be harmonized, the specific provision controls over the general provision."). Brooks's reliance on *People v. Butcher*, 2018 COA 54M, ___ P.3d ___, ___ (*cert. granted* Apr. 22, 2019), is unavailing because *Butcher* involved a direct appeal of a judgment, not an appeal of an order denying a successive postconviction motion.

¶ 11 Brooks's claims regarding post-judgment interest on restitution are barred as successive. *See* Crim. P. 35(c)(3)(VI), (VII). As the division explained in *Brooks III*, "even though the district court denied [Brooks's previous postconviction motions] on

procedural grounds, nevertheless, it resolved the claims as contemplated by Crim. P. 35(c)(3)(VI)." *See Brooks III*, ¶ 16. Brooks cannot continue to file postconviction motions and appeals seeking to reassert these claims. *See People v. Rodriguez*, 914 P.2d 230, 249 (Colo. 1996) ("Rule 35 proceedings are intended to prevent injustices after conviction and sentencing, not to provide perpetual review"; "an argument raised under Rule 35 which does not precisely duplicate an issue raised" in a prior proceeding will be barred if it is an attempt to relitigate "the same issues on some recently contrived" theory. (quoting *People v. Bastardo*, 646 P.2d 382, 383 (Colo. 1982))).

¶ 12 Although Brooks argues that *Brooks II* was wrongly decided, the Colorado Supreme Court denied certiorari review of that ruling, at which time *Brooks II* became the law of the case. *See Hardesty v. Pino*, 222 P.3d 336, 340 (Colo. App. 2009) (the law of the case doctrine provides that "both an appellate holding and its necessary rationale" control future proceedings in the same case).

IV. Conclusion

¶ 13 The order is affirmed.

JUDGE FOX and JUDGE BERGER concur.

18CA0336 Peo v Brooks 03-28-2019

COLORADO COURT OF APPEALS DATE FILED: March 28, 2019

Court of Appeals No. 18CA0336
Weld County District Court No. 09CR959
Honorable Julie C. Hoskins, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Jason Trevor Brooks,

Defendant-Appellant.

ORDER AFFIRMED

Division VII
Opinion by JUDGE ASHBY
Dunn and Nieto*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced March 28, 2019

Philip J. Weiser, Attorney General, Patricia R. Van Horn, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Jason Trevor Brooks, Pro Se

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2018.

¶ 1 Defendant, Jason Trevor Brooks, appeals the district court's denial of his Crim. P. 32(d) motion. Because Brooks' motion is untimely as either a Crim. P. 32(d) or 35(c) motion, and also successive under Crim. P. 35(c)(3)(VI), we affirm.

I. Background

¶ 2 In 2010, Brooks pleaded guilty to four counts of securities fraud, and the prosecution dismissed the other twenty-two counts in the criminal indictment. As part of the plea agreement, Brooks agreed to pay restitution. The district court accepted the pleas, sentenced him to thirty-two years in prison, and ordered him to pay $5,132,352.46 in restitution.

¶ 3 Since then, Brooks has filed at least five unsuccessful postconviction motions in the district court. Brooks appealed the orders denying his first and fifth postconviction motions, and divisions of this court affirmed those orders. *See People v. Brooks*, (Colo. App. No. 12CA1781, Mar. 6, 2014) (not published pursuant to C.A.R. 35(f)) (*Brooks I*); *People v. Brooks*, (Colo. App. No. 16CA0755, June 29, 2017) (not published pursuant to C.A.R. 35(e)) (*Brooks II*).

¶ 4 Brooks filed the Crim. P. 32(d) motion at issue in this appeal in December 2017 claiming that he had a right to withdraw his plea because his plea was unknowingly and unintelligently entered. As the basis for his claim, he alleged that he was not advised that he would have to pay interest on the restitution amount before he entered his plea. The district court denied the motion finding that his allegations of ineffective assistance of counsel were insufficient to allow him to withdraw his plea. This appeal followed.

¶ 5 Reviewing de novo the district court's summary denial of Brooks' motion, we perceive no error. *See People v. Gardner*, 250 P.3d 1262, 1266 (Colo. App. 2010).

II. Crim. P. 32(d) Motion is Untimely

¶ 6 Crim. P. 32(d) provides that "[a] motion to withdraw a plea of guilty . . . may be made only before sentence is imposed or imposition of sentence is suspended." Once the sentence has been imposed, relief pursuant to Crim. P. 32(d) is not available. *Kazadi v. People*, 2012 CO 73, ¶ 14; *Crumb v. People*, 230 P.3d 726, 730 (Colo. 2010).

¶ 7 Here, because Brooks' motion to withdraw his plea was filed years after his sentencing, it is untimely. *Kazadi*, ¶ 14; *see also*

Glaser v. People, 155 Colo. 504, 507, 395 P.2d 461, 462 (1964) (finding that "[t]here is no ambiguity in the rule as adopted by this court. In plain language it says that a motion to withdraw a plea of guilty may be made only before sentence is imposed.").

¶ 8 Accordingly, we perceive no error in the district court's denial of it, albeit on grounds other than those relied on by the district court. *See People v. Glover*, 2015 COA 16, ¶ 22 (appellate court may affirm on any grounds supported by the record).

III. Crim. P. 35(c) Motion is Untimely and Successive

¶ 9 Even though Brooks repeatedly characterizes his motion as a motion to withdraw his plea under Crim. P. 32(d), because he is seeking to withdraw his plea after sentencing and is alleging that his plea was involuntarily and unknowingly entered, the motion is cognizable under Crim. P. 35(c). Crim. P. 35(c)(2)(I) (grounds for postconviction relief include when a conviction was entered in violation of the constitutions or laws of the United States or Colorado); *see generally People v. Kirk*, 221 P.3d 63, 64-65 (Colo. App. 2009) (indicating that there are two situations in which a plea can be withdrawn — before sentencing pursuant to Crim. P. 32(d) or after sentencing pursuant to Crim. P. 35(c)). However, even

under Crim. P. 35(c), Brooks is not entitled to relief because the motion is both untimely and successive.

¶ 10 Absent justifiable excuse or excusable neglect, postconviction challenges to non-class 1 felonies must be brought within three years of the conviction becoming final. § 16-5-402(1), (2)(d), C.R.S. 2018; *see People v. Abad*, 962 P.2d 290, 291 (Colo. App. 1997). Here, Brooks' conviction became final when he was sentenced in 2010. *See People v. Hampton*, 857 P.2d 441, 444 (Colo. App. 1992), *aff'd*, 876 P.2d 1236 (Colo. 1994) (absent a direct appeal, a conviction becomes final upon entry of the guilty plea and imposition of the sentence). Therefore, because Brooks filed this motion at least seven years after his conviction became final and has not alleged justifiable excuse or excusable neglect, it is time barred. *See Abad*, 962 P.2d at 291 (defendant bears the burden of establishing justifiable excuse or excusable neglect for an untimely motion).

¶ 11 Moreover, Brooks' claim that his plea is invalid because he was not advised that interest would be assessed on his restitution prior to him entering his guilty plea is similar to, if not identical to, the claims he raised in both his August 2015 and March 2016

postconviction motions. *See Brooks II*, slip op. at 6. Therefore, because this issue was raised in previous postconviction motions, the district court was required to deny it in accordance with Crim. P. 35(c)(3)(VI). Crim. P. 35(c)(3)(VI) (the district court shall deny any claim that was raised and resolved in a previous postconviction proceeding); *see People v. McDowell*, 219 P.3d 332, 335 (Colo. App. 2009) (a defendant may not use postconviction motions as a means of obtaining perpetual review of his conviction and sentence).

¶ 12 To the extent Brooks argues that Crim. P. 35(c)(3)(VI) cannot be used to procedurally bar his claim because this claim has never been resolved on the merits, we are not persuaded.

¶ 13 Crim. P. 35(c)(3)(VI) states that "[t]he court shall deny any claim that was raised and resolved in a prior appeal or postconviction proceeding on behalf of the same defendant." Contrary to Brooks' argument, that provision does not require the prior claim to have been resolved *on the merits* before it can be applied. Rather, it merely requires that the claim be raised and resolved.

¶ 14 Here, the district court did not deny Brooks' previous postconviction motions without addressing his claims. Rather,

when it denied Brooks' August 2015 motion, it acknowledged that he was raising a new claim based on interest being charged on his restitution, but that the motion was untimely and without justifiable excuse or excusable neglect under section 16-5-402, and successive to his previously filed motions. Brooks did not appeal that order.

¶ 15 Similarly, in ruling on defendant's March 2016 postconviction motion the district court addressed his claims finding that he was not raising any new issues and his sentence was not illegal. As noted above, a division of this court affirmed that order in *Brooks II.*

¶ 16 Thus, even though the district court denied each of those motions on procedural grounds, nevertheless, it resolved the claims as contemplated by Crim. P. 35(c)(3)(VI).

¶ 17 Further, Brooks' reliance on *People v. Walker*, 46 P.3d 495, 496-97 (Colo. App. 2002), to support his argument is misplaced. There, the district court, in ruling on the defendant's first postconviction motion, addressed only one of his two claims. Then, when the defendant filed a second postconviction motion asserting the previously unresolved claim, the district court denied it as successive. In reversing that order, a division of this court

concluded that because the district court had only addressed one of the two claims in the first motion, it could not bar the subsequent motion on successiveness grounds because the claim had not been resolved on the merits. *Id.*

¶ 18 In contrast, here, the district court addressed Brooks' previous claims about the interest on his restitution, albeit by ultimately concluding that those claims were procedurally barred. Consequently, *Walker* is factually distinguishable, and therefore, not applicable.

¶ 19 Finally, to the extent Brooks raises additional arguments in his briefs on appeal, we decline to address them because they were not raised in his postconviction motion to the district court. *See People v. Goldman*, 923 P.2d 374, 375 (Colo. App. 1996) (stating that defendant cannot raise new issue for first time on appeal from denial of a postconviction motion).

¶ 20 The order is affirmed.

JUDGE DUNN and JUDGE NIETO concur.

Additional material from this filing is available in the Clerk's Office.