

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAVON MICHAEL MIGUEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72700

FILED

AUG 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Javon Michael Miguel appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Miguel argues the district court erred by denying a claim of ineffective assistance of counsel raised in his December 12, 2014, petition. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the

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law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).


Miguel argued his trial counsel was ineffective during closing arguments for improperly stating Miguel drove the victim to Nevada from California. Miguel asserted this argument amounted to conceding his guilt for pandering by furnishing transportation. Miguel failed to demonstrate his counsel's performance was deficient or resulting prejudice.

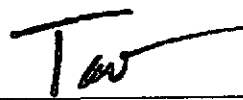
At the evidentiary hearing, Miguel's counsel testified he did not concede Miguel committed pandering by furnishing transportation. Counsel testified he had discussed the facts of the case with Miguel prior to trial. Counsel testified Miguel stated he drove the victim from California to Nevada, but that he had not induced or persuaded the victim to engage in prostitution. Counsel formulated the trial strategy based upon that discussion and gave a closing argument consistent with Miguel's statements.


The district court found counsel's testimony and closing argument demonstrated counsel did not improperly concede Miguel committed pandering. Substantial evidence supports the district court's conclusion. *See Strickland*, 466 U.S. at 691 (stating "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). In addition, the record in this case reveals that counsel specifically argued during closing arguments that the facts of this case did not meet the definition of pandering. Given the district court's findings and the record in this case, Miguel failed to demonstrate a reasonable probability of a different outcome had Miguel's counsel made a

different closing argument. Therefore, we conclude the district court did not err by denying this claim.

Having concluded Miguel is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk