

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG ANTHONY JOSEPH
DOWNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64950

FILED

OCT 16 2014

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Craig Downing's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Downing contends that the district court erred by denying his claim that counsel was ineffective at trial and on appeal. To prove ineffective assistance of trial counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and but for counsel's errors, the outcome of the proceeding 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*). To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and but for counsel's errors, the omitted issue would have had a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). We give deference to the district court's factual findings if supported by substantial evidence but review the court's application of the

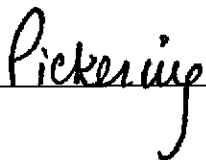
law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

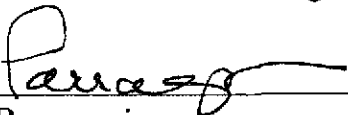
At trial, the State asserted that Downing and another man arranged to sell drugs to Ralph Monko and attacked him while his back was turned. The State also asserted that Ashley Womack was present during the incident. Downing did not dispute that he had arranged to sell drugs to Monko or that Womack was present, but claimed he attacked Monko in self-defense. When Monko was interviewed by police, he initially stated that he simply ran into Downing at a gas station, but later admitted that he met with him to buy drugs. When Womack was interviewed by police, she initially stated that she was not present during the incident, but later admitted that she was. At trial, the State asked a detective how he convinced Monko and Womack to “come clean” regarding the incident and how he knew their first versions were not truthful; the detective explained the interview tactics he used and that Monko and Womack’s second versions were consistent with the evidence and with each other.


In his petition, Downing contended that the State’s questions, and the detective’s responses, constituted impermissible vouching and therefore counsel was ineffective for failing to challenge them at trial and on appeal. “The prosecution may not vouch for the credibility of a witness either by placing the prestige of the government behind the witness or by indicating that information not presented to the jury supports the witness’s testimony.” *Evans v. State*, 117 Nev. 609, 630, 28 P.3d 498, 513 (2001). Here, the district court concluded that the statements “[did] not come close to meeting the ‘vouching’ threshold” and Downing failed to demonstrate that counsel was deficient. We agree. See *Rowland v. State*,

118 Nev. 31, 39, 39 P.3d 114, 119 (2002) (finding “nothing wrong” with a prosecutor’s statement that a witness who initially lied to law enforcement “finally” told the truth at trial). Moreover, Downing fails to demonstrate that challenging the statements would have changed the result of trial or would have had a reasonable probability of success on appeal. We conclude that the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Carolyn Ellsworth, District Judge
Eric G. Jorgenson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk