

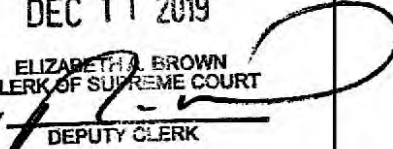
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIO CESAR ANGULO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77383-COA

FILED

DEC 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Julio Cesar Angulo appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 13, 2017, and a supplemental petition filed on May 4, 2018. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Angulo argues the district court erred by denying his claim that counsel was ineffective for failing to file a motion to suppress. In his petition, Angulo claimed counsel was ineffective for failing to file a motion to suppress the statements made by him to various police officers. First, he claimed statements he made to the Los Angeles Police Department (LAPD) detectives and the Las Vegas Metropolitan Police Department (LVMPD) detectives should be suppressed because he did not understand his rights. Second, he claimed his statements to the LVMPD detectives should be suppressed because he had previously invoked his right to an attorney and they did not re-read his *Miranda*¹ rights to him. Third, he claimed all of his

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

statements should have been suppressed because they were not voluntary because he suffers from schizophrenia.

To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous 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 the evidentiary hearing held in this case, counsel testified that she considered filing a motion to suppress. She believed she could be successful getting some of Angulo's statements suppressed. However, she also stated she did not want to have the statements suppressed because they could help support a mental health defense at trial. Therefore, she chose not to file the motion to suppress. This was a tactical decision made by counsel, and "[t]actical decisions are virtually unchallengeable absent extraordinary circumstances." *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Because counsel made a reasoned tactical decision, we conclude counsel was not deficient for choosing not to file a motion to

suppress Angulo's statements. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk