

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAZEN ALOTAIBI,  
Appellant,  
vs.  
RENEE BAKER, WARDEN LOVELOCK  
CORRECTIONAL CENTER; AND  
JAMES DZURENDA, DIRECTOR OF  
THE NEVADA DEPARTMENT OF  
CORRECTIONS,  
Respondents.

No. 79752-COA

**FILED**

OCT 16 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

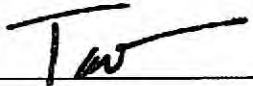
Mazen Alotaibi appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Alotaibi argues the district court erred by denying his claim of ineffective assistance of counsel raised in his November 28, 2018, postconviction petition for a writ of habeas corpus and supplement. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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 687, 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).

Alotaibi argued his trial counsel was ineffective for failing to discuss with him whether they should have requested a jury instruction for a lesser-related offense. At the evidentiary hearing conducted in this matter, Alotaibi did not present evidence regarding whether he would have agreed to request such an instruction. Thus, Alotaibi did not demonstrate by a preponderance of the evidence that he would have agreed to request such an instruction. Therefore, he did not demonstrate a reasonable probability of a different outcome at trial but for counsel's failure to discuss this issue with him. Accordingly, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Stefany Miley, District Judge  
Clark Hill PLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk