

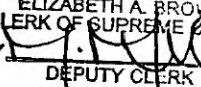
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ALBERTO MACHADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87165

FILED

JAN 16 2025

ELIZABETH A. BROY
CLERK OF SUPREME
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge. The district court denied appellant Jose Alberto Machado's petition after conducting an evidentiary hearing. We affirm.

To demonstrate ineffective assistance of counsel, a petitioner must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that 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*). 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), and both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions. *Id.* at 690. We give deference to the district court's factual findings that are supported

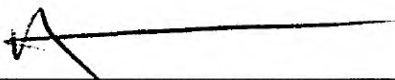
by substantial evidence and not clearly wrong but review its application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

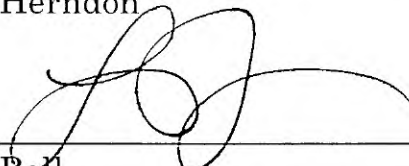
Machado argues that counsel should have objected to Detective Edelen's description of the accuser as "my victim" and characterization of the accuser's account as "not a false allegation." Counsel, however, relied on Edelen's references to "my victim" and Edelen's characterization of the account to support a defense theory that Edelen had prejudged the matter and pursued evidence not to investigate the allegations but solely to inculcate Machado. The defense thus sought to persuade the jury that Machado's admissions to Edelen were false and not a reliable confession of guilt. The jury ultimately acquitted Machado of a count that rested solely on alleged acts Machado admitted when interrogated by Edelen. As the detective's comments supported the defense theory and that theory was persuasive enough to bring about a partial acquittal, we conclude that counsel did not perform deficiently in omitting an objection to that testimony. We therefore conclude that the district court did not err in denying this claim.

Machado also argues on appeal that counsel should have challenged testimony by Officer Torres-Gallegos regarding consent. This claim, however, was expressly abandoned by postconviction counsel during the evidentiary hearing. We therefore need not address it. *Cf. Ford v. Warden*, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995) (providing that a postconviction petitioner cannot raise a new claim on appeal that was not presented to the district court); *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (holding that this court need not consider arguments raised on appeal that were not presented to the district court in the first

instance), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004).

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


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Kathleen M. Drakulich, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk