

ORIGINAL

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Attorneys for Latisha Babb

FILED

AUG 20 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

LATISHA BABB,

Appellant,

vs.

JENNIFER LOZOWSKY, ET AL,

Respondents.

Docket No.: 49929

**DOCKETING STATEMENT
CRIMINAL APPEAL**

1. **Judicial District:** Second Judicial District **County:** Washoe
Judge: Connie Steinheimer **District Court Case No.:** CR98P0074B

2. **If the defendant was given a sentence,
(a) what is the sentence?**

This is an appeal of the denial of a habeas petition. The underlying sentence is as follows: Life Imprisonment Without the Possibility of Parole as to Murder in the First Degree; a consecutive term of Life Imprisonment Without the Possibility of Parole as to the Use of a Deadly Weapon; and 72 to 180 months consecutive for Robbery with Use of a Deadly Weapon.

(b) has the sentence been stayed pending appeal?

No.

(c) was defendant admitted to bail pending appeal?

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No. AUG 20 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
LAS VEGAS 2260, 702-2236-002
8/14/07

07-18357

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3. **Was counsel in the district court appointed X or retained ?**
Appointed.

4. **Attorney filing this docketing statement:**
Lisa A. Rasmussen, Esq.
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
3993 Howard Hughes Parkway, Suite 400
Las Vegas, NV 89169
Telephone: (702) 789-3100
Facsimile: (702) 822-2650

On behalf of Latisha Babb

5. **Is appellant counsel appointed X or retained ?**
Appointed.

6. **Attorney(s) representing respondent(s):**
Richard A. Gammick, Esq.
Terrence P. McCarthy, Esq.
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

On behalf of the State of Nevada, Jennifer Lozowsky and E.K. McDaniel

7. **Nature of disposition below:**
- Judgment after bench trial Grant of pretrial habeas
 - Judgment after jury verdict Grant of motion to suppress evidence
 - Judgment upon guilty plea Post-conviction habeas (NRS ch. 34)
 - Grant of pretrial motion to dismiss grant denial
 - Parole/Probation revocation Other disposition (specify)
 - Motion for new trial
 - grant denial
 - Motion to withdraw guilty plea
 - grant denial

8. **Does this appeal raise issues concerning any of the following:**
 death sentence juvenile offender
 life sentence pretrial proceedings

9. **Expedited appeals:** The court may decide to expedite the appellate process in this matter.
Are you in favor of proceeding in such manner?
 Yes No

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10. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (e.g. separate appeals by co-defendants, appeal after post-conviction proceedings):

1. Latisha Babb v. Jennifer Lozowsky, et al.
Nevada Supreme Court Docket No. 34195
-Direct Appeal from the Judgment of Conviction dated May 7, 1999
2. Latisha Babb v. Jennifer Lozowsky, et al.
Nevada Supreme Court Docket No. 42886
-Post Conviction Appeal from the Petition for Writ of Habeas Corpus dated December 4, 2001.

11. **Pending and prior proceedings in other courts:** List the case name, number and court of all pending and prior proceedings in other courts that are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

1. Latisha Babb v. Jennifer Lozowsky, E.K. McDaniel, Case No. CV-S-05-0061 PMP (RJJ)

Appellant filed a federal habeas petition in the United States District Court, District of Nevada, in January 2005. The undersigned was appointed to represent Ms. Babb in the federal proceedings. In February 2006, the federal court ordered Ms. Babb's federal Petition stayed in order for Ms. Babb to exhaust certain claims before the Second Judicial District Court.

Pursuant to the federal court's order the undersigned filed a successor Petition for Writ of Habeas Corpus in the Washoe County District Court shortly thereafter.

Appellant's Petition for Writ of Habeas Corpus was dismissed in April 2007.

12. **Nature of action.** Briefly describe the nature of the action and the result below:
Latisha Babb was convicted of murder in the first degree with the use of a deadly weapon and robbery with the use of a deadly weapon.

13. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

1. Whether Ms. Babb's conviction and sentence are invalid due to the court's failure to sever the trial;
2. Whether Ms. Babb's conviction and sentence are invalid due to the trial court's failure to properly instruct the jury concerning premeditation and deliberation;
3. Whether Ms. Babb's sentence and conviction are invalid due to the ineffective assistance of counsel based upon (a) counsel's failure to make an opening statement; (b) counsel's admission to the jury in his closing argument that Ms. Babb had committed robbery; and (c) counsel's failure to investigate and present mitigating evidence for the sentencing hearing;

1 4. Whether Ms. Babb's conviction and sentence are invalid due to the aggravators
2 presented against her in support of a death penalty verdict.

3 5. Whether Ms. Babb's conviction and sentence are invalid because the trial court
4 allowed the jurors to be instructed that they must give "equal and exact justice," which
5 improperly minimized the State's burden of proof;

6 6. Whether Ms. Babb's conviction and sentence are invalid based upon the trial
7 court's failure to properly instruct the jury concerning the elements of the capital offense with
8 regard to (a) the instruction on malice aforethought and (b) the felony murder instruction;

9 7. Whether Ms. Babb's conviction and sentence are invalid based upon the trial
10 court's failure to properly instruct the jury during the penalty phase hearing with regard to (a) the
11 elements of the aggravating factors; and (b) the application of the aggravating factors;

12 8. Whether Ms. Babb's conviction and sentence are invalid based upon the unfairly
13 prejudicial atmosphere in which her trial took place;

14 9. Whether Ms. Babb's conviction and sentence are invalid based upon the admission
15 of co-defendant's statements which were read to the jury in violation of her Sixth Amendment
16 right to confrontation;

17 10. Whether Ms. Babb's conviction and sentence are invalid based upon violations of
18 her constitutional guarantees of due process, equal protection, the effective assistance of counsel,
19 a fair tribunal, an impartial jury and a reliable sentence due to the cumulative errors resulting
20 from the gross misconduct by the state officials and witnesses and the deprivation of Ms. Babb's
21 right to the effective assistance of counsel; and

22 11. Whether Ms. Babb was denied her Constitutional right to due process to trial
23 before an impartial jury and to a reliable sentence in violation of her guarantees under the Fifth,
24 Sixth, Eighth and Fourteenth Amendments to the United States Constitution based on the use of
25 an element of felony murder as an aggravating factor during the penalty phase of her trial.

26 14. **Constitutional issues.** If the State is not a party and if this appeal challenges the
27 constitutionality of a statute or municipal ordinance, have you notified the clerk of this court and
28 the attorney general in accordance with NRAP 44 and NRS 30.130?

Not Applicable.

15. **Issues of first-impression or of public interest.** Does this appeal present a substantial
legal issue of first-impression in this jurisdiction or one affecting an important public interest?

First-impression: Yes No (See Item # 4 listed above)

Public interest: Yes No

16. **Length of trial:** If the action proceeded to trial or evidentiary hearing in the district court,
how many days did the trial or evidentiary hearing last?

Not applicable.

17. **Oral argument.** Would you object to submission of this appeal for disposition without
oral argument?

Yes No

TIMELINESS OF NOTICE OF APPEAL

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18. **Date district court announced decision, sentence or order appealed from:**
June 29, 2007

19. **Date of entry of written judgment or order appeal from:** Order Granting Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction) filed on April 5, 2007 and the Findings of Fact, Conclusions of Law and Judgment dated June 29, 2007. Service of the Order was effected on July 26, 2007.

20. **If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the district court:**

(a) was service by delivery or by mail .

21. **If the time for filing the notice of appeal was tolled by a post judgment motion, (a) Specify the type of motion, and the date of filing of the motion:** Not Applicable.

Arrest judgment _____ Date filed _____

New trial _____ Date filed _____

(newly discovered evidence)

New trial _____ Date filed _____

(other grounds)

(b) **Date of entry of written order resolving motion** _____

Not Applicable.

22. **Date notice of appeal filed:** July 26, 2007.

23. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g. NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015(2), or other:**

NRAP 4(b).

SUBSTANTIVE APPEALABILITY

24. **Specify statute, rule or other authority that grants this court jurisdiction to review from:**

NRS 177.015(1)(b) _____ NRS 34.560 _____

NRS 177.015(1)(c) _____ NRS 34.575(1) _____

NRS 177.015(2) _____ NRS 34.575(2) _____

NRS 177.015(3) _____ Other (specify) _____

NRS 177.055 _____

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VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

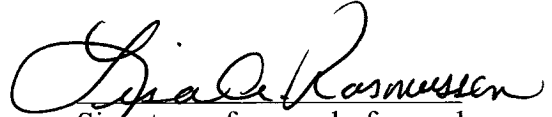
LATISHA BABB

LISA A. RASMUSSEN, ESQ.

Name of Appellant

Name of counsel of record

Aug. 16, 2007
Date


Signature of counsel of record

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Watt, Tieder, Hoffar & Fitzgerald, LLP, that I am a person competent to serve papers and not a party to the above-entitled action and that on the 16th day of August, 2007, I served a copy of the foregoing:

DOCKETING STATEMENT

upon the following via U.S. Mail

Richard A. Gammick, Esq.
Terrence P. McCarthy, Esq.
Washoe County District Attorney's Office
P.O. Box 30083
Reno, Nevada 89520



An Employee of Watt, Tieder, Hoffar & Fitzgerald, LLP