



In the Supreme Court of the State of Nevada

ORIGINAL

INDICATE FULL CAPTION:

THE STATE OF NEVADA

Appellant(s).

vs.

JAMES MONTELL CHAPPELL

Respondent(s).

No. 43493

DOCKETING STATEMENT CRIMINAL APPEALS

(Including pretrial and post-conviction habeas corpus, and petitions for post-conviction relief)

FILED

JUL 07 2004

GENERAL INFORMATION

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

1. Judicial District Eighth County Clark
Judge Kathy Hardcastle District Ct. Docket No. C131341

2. If the defendant was given a sentence,
(a) what is the sentence? Death, but the district court ordered a new penalty hearing.

(b) has the sentence been stayed pending appeal?
(c) was defendant admitted to bail pending appeal?

3. Was trial or post-conviction counsel appointed X or retained ?

4. Attorney filing this docketing statement:

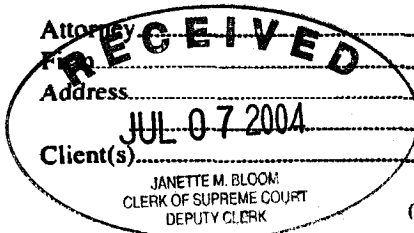
Attorney Steven Owens Telephone 702.671-2750
Firm Clark County District Attorney's Office
Address 200 South Third Street
Las Vegas, Nevada 89155
Client(s) The State of Nevada

If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an additional sheet accompanied by a certification that they concur in the filing of this statement.

5. Attorney(s) representing respondent(s):

Attorney David Schieck Telephone (702) 382-1844
Firm _____
Address 302 East Carson Street, Suite 600
Las Vegas, Nevada 89101
Client(s) James Chappell

Attorney _____ Telephone _____
Firm _____
Address _____
Client(s) _____



(List additional counsel on separate sheet if necessary)

04-12420

6. Nature of disposition below

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Judgment upon guilty plea
- ☐ Grant of pretrial motion to dismiss
- ☐ Parole/Probation revocation
- ☐ Motion for new trial
 - ☐ grant ☐ denial
- ☐ Motion to withdraw guilty plea
 - ☐ grant ☐ denial

- ☐ Grant of pretrial habeas
- ☐ Grant of motion to suppress evidence
- ☐ Post-conviction relief (NRS ch. 177)
 - ☐ grant ☐ denial
- ☒ Post-conviction habeas (NRS ch. 34)
 - ☒ grant ☐ denial
- ☐ Other disposition (specify).....

7. Does this appeal raise issues concerning any of the following:

- ☒ death sentence
- ☐ life sentence
- ☐ juvenile offender
- ☐ pretrial proceedings

8. Expedited appeals: The court may decide to expedite the appellate process in this matter. Are you in favor of proceeding in such manner?

Yes.....X.....No.....

9. 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):

Chappell v. State, 114 Nev. 1403 (1998) (Docket #29884)
reh. denied March 17, 1999

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

None, to counsel's knowledge.

11. Nature of action. Briefly describe the nature of the action and the result below:

Chappell was tried by a jury and convicted of burglary, robbery with use of a deadly weapon and murder with use of a deadly weapon. The jury sentenced him to death on the murder count. Four aggravating circumstances were found to exist. On appeal, this Court vacated the aggravator based on torture or depravity of mind, but affirmed. The district court concluded that a new penalty hearing was warranted.

12. No Merit Appeal. If appellant was the defendant below, does counsel intend to file an affidavit of no merit appeal pursuant to Anders v. California. 386 U.S. 738 (1967) and Sanchez v. State, 85 Nev. 95, 450 P.2d 793 (1969)?

Yes.....No.....

N/A

13. **Issues on appeal.** State concisely the principal issue(s) in this appeal:
Whether the district court erred in granting defendant a new penalty hearing.

14. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A ☒ Yes _____ No _____

If not, explain _____

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 ☒ _____

Public interest: Yes _____ No ☒ _____

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

_____ days

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

Yes _____ No _____

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from April 2, 2004

19. Date of entry of written judgment or order appeal from June 3, 2004

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

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
June 3, 2004

(a) Was service by delivery or by mail delivery (specify).

21. If the time for filing the notice of appeal was tolled by a post-judgment motion: N/A

(a) Specify the type of motion, and the date of filing of the motion:

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 _____

22. Date notice of appeal filed June 18, 2004

23. Specify statute or rule governing the time limit for filing the notice of appeal, e.g.,
NRAP 4(b), NRS 34.710, NRS 34.815, NRS 177.015(2), or other
NRS 34.575

SUBSTANTIVE APPEALABILITY

24. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from:

NRS 177.015(1)(b)	_____	NRS 34.710(3)	_____
NRS 177.015(2)	_____	NRS 34.710(4)	_____
NRS 177.055	_____	NRS 34.815	_____
NRS 177.385	_____	NRS 177.015(3)	<u>NRS 34.575</u>


VERIFICATION

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

THE STATE OF NEVADA
Name of appellant

STEVE OWENS
Name of counsel or record

July 2, 2004
Date


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 2nd day of July, 2004 I served a copy of this completed docketing statement upon all counsel of record:

- ☐ by personally serving it upon him/her District Attorney Appellate; or
- ☐ by mailing it by first class mail with sufficient postage prepaid to the following address(es):

David M. Schieck
Attorney at Law
302 East Carson Avenue, Suite No. 600
Las Vegas, Nevada 89101

Dated this 2nd day of July, 2004.

Margie English
Signature