



ORIGINAL

In the Supreme Court of the State of Nevada

FILED

JUL 19 2004

INDICATE FULL CAPTION:

James Montell Chappell

No. 43493

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

Appellant(s),
Cross-Respondent
vs.

THE STATE OF NEVADA,

Respondent(s).
Cross-Appellant

DOCKETING STATEMENT
CRIMINAL APPEALS

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

GENERAL INFORMATION

1. Judicial District Eighth County Clark
Judge Douglas/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? No, sentence was vacated

(c) was defendant admitted to bail pending appeal? no

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

4. Attorney filing this docketing statement:

Attorney David M. Schieck, Esq. Telephone 382-1844
Firm Special Public Defender
Address 302 E. Carson Ste. 600
Las Vegas NV 89101
Client(s) Appellant/Cross-Respondent

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 Telephone
Firm Clark County District Attorney
Address 200 S. Third St.
Las Vegas NV 89155
Client(s) State

Attorney Nevada Attorney General Telephone
Firm
Address 1000 N. Carson
Carson City NV 89701
Client(s) State

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DEPUTY CLERK

(List additional counsel on separate sheet if necessary)

04-13076

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).....
Only as to penalty hearing

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.....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)

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

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

After an evidentiary hearing on Chappell's Petition for Writ of Habeas Corpus, the Court granted the Petition as to the Penalty Hearing only.

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:

- A. Whether the District Court erred in not granting Chappell a new trial based on ineffective assistance of trial counsel
- B. Whether the District Court erred in not granting Chappell a new trial based on ineffective assistance of appellate counsel on direct appeal

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

Evidentiary Hearing 1 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.....4-2-04.....

19. Date of entry of written judgment or order appeal from.....6-3-04.....

(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. 6-3-04

(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 6-24-04

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.....
NRAP 4(b)

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 177.015(2).....

NRS 177.055.....

NRS 177.385.....

NRS 34.710(3).....

NRS 34.710(4).....

NRS 34.815

Other (specify) NRS 34.575

VERIFICATION

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

James Chappell

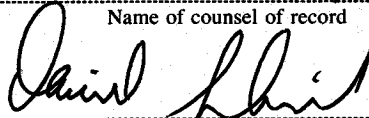
Name of appellant

7-14-04

Date

David M. Schieck, Esq.

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the.....14th.....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; or

☒ by mailing it by first class mail with sufficient postage prepaid to the following address(es):

D.A.'s Office, 200 S. Third St., Las Vegas NV 89155; and
NV A.G.'s Office, 100 N. Carson ST., Carson City NV 89701-4717

Dated this.....14.....day of.....July....., 2004

.....
Signature

KATHLEEN FITZGERALD, an employee of
DAVID M. SCHIECK, ESQ.