



In the Supreme Court of the State of Nevada

FILED

OCT 18 2004

INDICATE FULL CAPTION:

SHAWN RUSSELL HARTE

Appellant(s),

VS.

STATE OF NEVADA

Respondent(s).

43877

No

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

DOCKETING STATEMENT
CRIMINAL APPEALS

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

GENERAL INFORMATION

1. Judicial District Second County Washoe
Judge The Honorable Connie Steinheimer District Ct. Docket No. CR98P0074A
2. If the defendant was given a sentence,
(a) what is the sentence? Death

(b) has the sentence been stayed pending appeal? Automatically
(c) was defendant admitted to bail pending appeal? No
3. Was trial or post-conviction counsel appointed XX or retained _____?
4. **Attorney filing this docketing statement:**

Attorney.....Donald York Evans, Ltd.....Telephone.....(775) 348-7400
Firm.....Donald York Evans, Ltd.....
Address.....P.O. Box 864.....Ren NV 89504.....
Client(s).....Shawn Harte.....

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):
- Terrence McCarthy, D.D.A.
328-2283
- Attorney Richard Gammick by and through Telephone
Firm District Attorney's Office
Address P.O. Box 30083, Reno NV 89520
- Client(s) State of Nevada
- Attorney
Firm
Address
Client(s)
- RECEIVED
SEP 24 2004
JANETTE M. BLOOM

(List additional counsel on separate sheet if necessary)

04-17691

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.....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):

In the Supreme Court of the State of Nevada No. 34195, LATISHA MARIE BABB, Appellant, vs. The State of Nevada, Respondent -- SHAWN RUSSELL HARTE, Appellant, vs. The State of Nevada, Respondent, No. 34227

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):

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

Post Conviction Writ of Habeas Corpus asserting ineffective assistance of counsel at sentencing, which was denied.

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.....☒

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

Did trial counsel fail to fulfill his Sixth Amendment obligation of effective assistance of counsel at the sentencing proceedings.

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 XX 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...XX.....

Public interest: Yes...XX.....No.....

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

2.5.....days

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

Yes.XX.....No.....

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from August 12, 2004

19. Date of entry of written judgment or order appeal from August 25, 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 3 days later

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

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:

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 August 25, 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. 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 34.710(3).....

NRS 177.015(2).....

NRS 34.710(4).....

NRS 177.055.....

NRS 34.815

NRS 177.385.....

Other (specify).....

VERIFICATION

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

Shawn Russell Harte

Name of appellant

9-23-04

Date

Donald York Evans, Ltd.

Name of counsel of record

Signature of counsel of record

CERTIFICATE OF SERVICE

2004

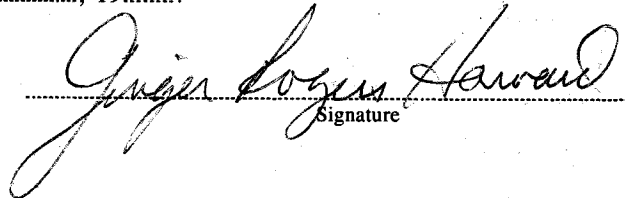
I certify that on the 23rd day of September, ~~19xx~~, I served a copy of this completed docketing statement upon all counsel of record:

☐ by personally serving it upon him/her; or

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

Terrence McCarty, Esq.
Appellate Division
P.O. Box 30083
Reno NV 89520

Dated this 23rd day of September, ~~19xx~~ 2004


Signature