

ORIGINAL

FILED

In the Supreme Court of the State of Nevada

NOV 15 2007

William Lester Witter,
Petitioner,

No. 50447

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

DOCKETING STATEMENT
CRIMINAL APPEALS

vs.

E.K. McDaniel, Warden, Ely State Prison,
Catherine Cortez Masto, Attorney General for
Nevada,

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

Respondents.

GENERAL INFORMATION

1. Judicial District Eighth County Clark
Judge Stephen Huffaker - trial judge District Ct. Docket No. C 117513
Valerie Vega - post-conviction judge, this appeal

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

(b) has the sentence been stayed pending appeal? Yes
(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 Gerald Bierbaum/Gary Taylor Telephone (702) 388-6577
Firm Law Offices of the Federal Public Defender
Address 411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
Client(s) William Lester Witter

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 J.J. Roger, Steven S. Owens Telephone (702) 671-2750
Firm Clark County District Attorney's Office
Address 200 S. Third Street
Las Vegas, Nevada 89155
Client(s) State of Nevada

Attorney Catherine Cortez Masto Telephone (775) 684-1100
Firm Attorney General's Office
Address 100 N. Carson Street
Carson City, Nevada 89701-4717
Client(s) State of Nevada; E.K. McDaniel, Warden, Ely State Prison

(List additional counsel on separate sheet if necessary)

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CLERK OF SUPREME COURT
DEPUTY CLERK

07-24876

6. **Nature of disposition below:**

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant of pretrial habeas |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant of motion to suppress evidence |
| <input type="checkbox"/> Judgment upon guilty plea | <input type="checkbox"/> Post-conviction relief (NRS ch. 177) |
| <input type="checkbox"/> Grant of pretrial motion to dismiss | grant <input type="checkbox"/> denial |
| <input type="checkbox"/> Parole/Probation revocation | <input checked="" type="checkbox"/> Post-conviction habeas (NRS ch. 34) |
| <input type="checkbox"/> Motion for new trial | <input type="checkbox"/> grant <input checked="" type="checkbox"/> denial |
| <input type="checkbox"/> <input type="checkbox"/> grant <input type="checkbox"/> denial | <input type="checkbox"/> Other disposition (specify) |
| <input type="checkbox"/> Motion to withdraw guilty plea | |
| <input type="checkbox"/> <input type="checkbox"/> grant <input type="checkbox"/> denial | |

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

- | | |
|--|---|
| <input checked="" type="checkbox"/> death sentence | <input type="checkbox"/> juvenile offender |
| <input type="checkbox"/> life sentence | <input type="checkbox"/> 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 a manner?

Yes _____ No X

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

Witter v. State, No. 27539, 112 Nev. 908, 921 P.2d 886, opinion affirming judgment of conviction, December 13, 1996

Witter v. State, No. 36927, unpublished order of affirmance denying appeal of post-conviction writ of habeas corpus, August 10, 2001

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):

Witter v. State, No. C117513, Eighth Judicial District Court, proper person petition for writ of habeas corpus filed October 27, 1997 (relates to NSC 36927)

Witter v. McDaniel, No. 2:01-cv-01034-RLH-LRL, U.S. District Court, Nevada (November 30, 2006 order to stay and hold case in abeyance in order for petitioner to file habeas petition in state court)

Witter v. State, No. C117513, Eighth Judicial District Court, petition for writ of habeas corpus filed February 14, 2007

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

Petitioner/Appellant's appeal from order granting the state's motion to dismiss petition for writ of habeas corpus, Eighth Judicial District, Clark County, State of Nevada

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 X

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

1. The district court erred in dismissing the petition on procedural grounds without addressing the constitutional issues arising from inconsistent application of the procedural rules to bar consideration of petitioner's claims.
2. The substantive constitutional claims in the petition are meritorious and justify granting relief from the conviction and death sentence.

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 X 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 X
Public interest: Yes X No _____

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

N/A days

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

Yes X No _____

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from September 26, 2007

19. Date of entry of written judgment or order appeal from September 29, 2007

- (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 September 29, 2007

- (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: N/A

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 October 29, 2007

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 (a) (1), 4 (b) (1); NRS
§34.575(1) appeal from order of district court granting or denying writ

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) <u>NRS §34.575(1) appeal from</u> <u>order of district court granting or denying writ</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.

William Lester Witter

Name of Appellant

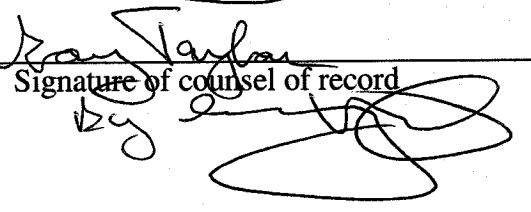
Gerald Bierbaum and Gary Taylor

Name of counsel of record

November 13, 2007

Date


Signature of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 13th day of November 2007, I served a copy of this completed docketing statement upon all counsel of record:

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

David Roger
Clark County District Attorney
Steven S. Owens
Chief Deputy District Attorney
200 South Third Street
Las Vegas, Nevada 89155-2212

Catherine Cortez Masto
Attorney General
Heather D. Proctor
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717



An employee of the Federal Public Defender's Office