

ORIGINAL

In the Supreme Court of the State of Nevada

Zane Michael Floyd,

Petitioner,

vs.

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

Respondents.

No. 51409

**DOCKETING STATEMENT**  
**CRIMINAL APPEALS**

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

**FILED**

APR 21 2008

**GENERAL INFORMATION**

1. Judicial District Eighth County Clark  
Judge Jackie Glass District Ct. Docket No. C-159897

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

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 counsel in the district court appointed ☒ or retained ☐?

4. Attorney filing this docketing statement:

Attorney Tiffani D. Hurst 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) Zane Michael Floyd

5. Is appellate counsel appointed ☒ or retained ☐?

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.

6. 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: Regional Justice Center, Third Floor; 200 Lewis  
Las Vegas, Nevada 89155  
Client(s) State of Nevada

**RECEIVED**

APR 21 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

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)

7. **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. 34)                                       |
| <input type="checkbox"/> Grant of pretrial motion to dismiss                            | <input type="checkbox"/> <input type="checkbox"/> grant <input checked="" type="checkbox"/> denial |
| <input type="checkbox"/> Parole/Probation revocation                                    | <input type="checkbox"/> Other disposition (specify)   |
| <input type="checkbox"/> Motion for new trial   |  |
| <input type="checkbox"/> <input type="checkbox"/> grant <input type="checkbox"/> denial |  |
| <input type="checkbox"/> Motion to withdraw guilty plea                                 |  |
| <input type="checkbox"/> <input type="checkbox"/> grant <input type="checkbox"/> denial |  |

8. **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 |

9. **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 ☒

10. **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):

Floyd v. State, NSC Case No. 36752, 118 Nev. 156, 42 P.3d, Opinion Affirming Floyd's Judgment of Conviction and Sentence, March 13, 2002, Rehearing Denied May 7, 2002

Floyd v. State, NSC Case No. 44868, Order of Affirmance, February 16, 2006

11. **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):

Floyd v. State, Clark County Eighth Judicial District Court Case No. C159897 Findings of Fact, Conclusions of Law and Order Denying Petition for Post-Conviction Relief, February 4, 2005

Floyd v. McDaniel, et al., U.S. District Court, Nevada Case No. 2:06-CV-00471-PMP(LRL), Order ("...federal habeas proceeding is STAYED and further proceedings shall be held in ABEYANCE pending petitioner's exhaustion of state court remedies."), April 25, 2007

Floyd v. State, Clark County Eighth Judicial District Court Case No. C159897 Findings of Fact Conclusions of Law and Order Denying Petition for Post-Conviction Relief, April 3, 2008

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

Petitioner/Appellant, Zane Michael Floyd, appeals from an Order of the Eighth Judicial District Court dismissing his claims as procedurally barred.

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

A. Could the district court properly deny Mr. Floyd's Claims on the basis of procedural default rules without addressing the allegations in the Amended Petition of the evidence with respect to applying those rules, and without conducting a fair evidentiary hearing?

B. Would the application of the procedural default rules to bar consideration of the merits of Mr. Floyd's constitutional claims violate his right to equal protection and due process under the state and federal constitutions where this court's application of the default rules has been arbitrary and inconsistent, resulting in disparate treatment of similarly situated capital habeas petitions?

C. Do the substantive constitutional violations in Mr. Floyd's Amended Petition require the reversal of his convictions and death sentence.

14. **Constitutional issues.** If the State is not a party and if this appeal challenges the constitutionality of a statute or municipal ordinance, 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 or evidentiary hearing in the district court, how many days did the trial or evidentiary hearing last?  
1 hour days (evidentiary hearing)

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 February 22, 2008

19. Date of entry of written judgment or order appeal from April 3, 2008

(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 by the District Court April 3, 2008

(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: 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 April 7, 2008

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 (a) (1), 4 (b) (1); NRS §34.575(1) appeal from order of district court 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 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) <u>X</u> _____
NRS 177.015(2) _____	NRS 34.575(2) _____
NRS 177.015(3) _____	Other (specify) _____
NRS 177.055 _____	

#### VERIFICATION

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

Zane Michale Floyd  
Name of Appellant

Tiffani D. Hurst  
Name of counsel of record

April 18, 2008  
Date

  
Signature of counsel of record

**CERTIFICATE OF SERVICE**

I certify that on the 18th day of April 2008, I served a copy of this completed docketing statement upon all counsel of record:

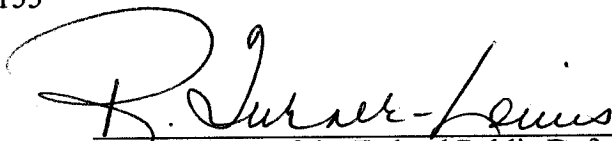
☐ by personally serving it upon him/her; or

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

Catherine Cortez Masto  
Attorney General  
John M. Warwick  
Deputy Attorney General  
Criminal Division  
100 North Carson Street  
Carson City, Nevada 89701-4717

Office of the District Attorney  
Regional Justice Center, Third Floor  
Attn: Steven Owens, Deputy District Attorney  
200 Lewis Avenue  
PO Box 552212  
Las Vegas, Nevada 89155

Dated this 18th day of April, 2008.



An employee of the Federal Public Defender's Office