

ORIGINAL

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA JUN 26 2008

INDICATE FULL CAPTION:

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

FERRILL JOSEPH VOLPICELLI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent

No. 51622

**DOCKETING STATEMENT
CRIMINAL APPEALS**
(Including appeals from pretrial and post-conviction rulings and other requests for post-conviction relief)

GENERAL INFORMATION

1. Judicial District Second Judicial District County Washoe County
Judge Honorable Steven P. Elliott District Ct Case No. CR03P1263

2. If the defendant was given a sentence,
(a) what is the sentence?
8 life sentences, minimum 10 years, concurrent
1 life sentence, minimum 10 years, consecutive

(b) has the sentence been stayed pending appeal?
N/A

(c) was defendant admitted to bail pending appeal?
N/A

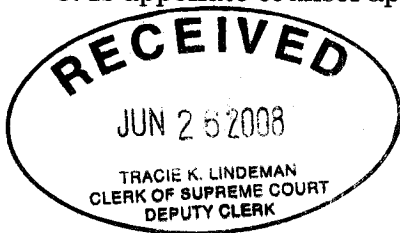
3. Was counsel in the district court appointed or retained ?

4. Attorney filing this docketing statement:

Attorney Kay Ellen Armstrong Telephone 775-883-3990
Firm: Attorney at Law
Address: 415 West Second Street
Carson City, NV 89703

Client(s) Ferrill Joseph Volpicelli

5. Is appellate counsel appointed or retained ?



08-16404

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 Washoe County District Attorney Telephone 775-337-5750

Firm: Appellate Division

Address: One South Sierra Street
Reno, NV 89520

Client(s) The State of Nevada

Attorney Nevada Attorney General Telephone 775-684-1100

Firm: _____

Address: 100 N. Carson Street
Carson City, NV 89701

Client(s) The State of Nevada

(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 checked="" type="checkbox"/> Post-conviction habeas (NRS ch. 34) |
| <input type="checkbox"/> Grant of pretrial motion to dismiss | <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"/> grant <input type="checkbox"/> denial | |
| <input type="checkbox"/> Motion to withdraw guilty plea | |
| <input type="checkbox"/> grant <input type="checkbox"/> denial | |

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

- death sentence
 life sentence

- juvenile offender
 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 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 pending before this court which are related to this appeal (e.g., separate appeals by co-defendants, appeal after post-conviction proceedings):

Volpicelli v. State, Docket No. 51297

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

Second Judicial District Court:

CR 02-0145 State v. Volpicelli
CR 02-0146 State v. Volpicelli
CR 02-0147 Volpicelli v. State
CR 02-0148 State v. Volpicelli
CR 02P 0147 State v. Volpicelli
CR98-2160 State v. Volpicelli
CR03W 1263 Volpicelli v. State
CR 03-1263 State v. Volpicelli
CR 02P 0148 Volpicelli v. State

Federal Court:

3:03-cv-00090-HDM-VPC Volpicelli v. United States of America

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

Post-conviction habeas denied following evidentiary hearing. Court held counsel not ineffective.

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

1. Counsel was ineffective for allowing the sentencing judge to rely on a "prior" felony conviction for habitual criminal enhancement, because the criminal activity supporting the conviction occurred after the criminal activity at issue in this appeal.
2. Counsel was ineffective for failing to argue possession of counterfeit labels is a lesser included offense of burglary.
3. Counsel was ineffective for failing to contest the restitution amount.

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?

2 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 11, 2008

19. Date of entry of written judgment or order appeal from April 14, 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

(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:

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 May 8, 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
NRS 534.575

SUBSTANTIVE APPEALABILITY

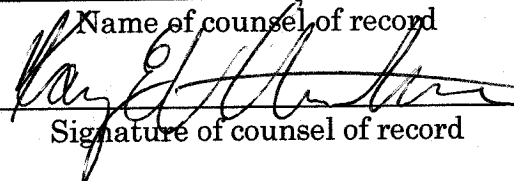
24. Specify statute, rule or other authority that grants this court jurisdiction to review from:

NRS 177.015(1)(b) _____	NRS 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) <input checked="" type="checkbox"/> _____
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.

Ferrill Joseph Volpicelli
Name of appellant
June 25, 2008
Date

Kay Ellen Armstrong
Name of counsel of record

Signature of counsel of record

KAY ELLEN ARMSTRONG
ATTORNEY AT LAW
415 WEST SECOND STREET
CARSON CITY, NEVADA 89703
PHONE (775) 883-3990, FAX (775) 882-8854

CERTIFICATE OF SERVICE

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Pursuant to NRCF 5(b) I certify that I am an employee of Kay Ellen Armstrong, Attorney at Law, and that on this date I deposited for delivery with Reno/Carson Messenger Service, a true copy of the attached supplement addressed to:

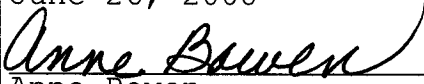
Terrence McCarthy, Deputy
Washoe County District Attorney
75 Court Street
Reno, NV 89520

Attorney General
100 N. Carson Street
Carson City, NV 89701

And on this date I deposited for delivery with the United States Postal Service a true copy of the attached supplement to:

Ferrill J. Volpicelli
#79565
P. O. Box 359
Lovelock, NV 89419

June 26, 2008



Anne Bowen