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# In the Supreme Court of the State of Nevada

SAMUEL HOWARD,

Appellant,

vs.

E.K. McDANIEL, WARDEN, and  
CATHERINE CORTEZ MASTO,  
ATTORNEY GENERAL FOR THE  
STATE OF NEVADA,

Respondents.

No. 57469

Electronically Filed  
**DOCKETING STATEMENTS** 11:10 a.m.  
**CRIMINAL APPEALS**  
Tracie K. Lindeman

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

## GENERAL INFORMATION

1. Judicial District Eighth County Clark  
Judge Hon. Michael Villani District Ct. Case No. C053867
2. If the defendant was given a sentence,  
(a) what is the sentence? Death  
(b) has the sentence been stayed pending appeal? No; No death warrant  
has been issued.  
(c) was defendant admitted to bail pending appeal? No
3. Was counsel in the district court appointed X or retained \_\_\_\_?
4. **Attorney filing this docketing statement:**  
Attorney Mike Charlton 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) Samuel Howard
5. Is appellate counsel appointed X 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 Roger, Nancy Becker Telephone (702) 671-2750  
Firm Clark County District Attorney  
Address 200 Lewis Avenue  
Las Vegas, Nevada 89155  
Client(s) State of Nevada
- Attorney Catherine Cortez Masto, David K. Neidert Telephone (775) 850-4110  
Firm Attorney General's Office  
Address 100 N. Carson Street  
Carson City, NV 89701-4717  
Client(s) E.K.McDaniel, Warden, Ely State Prison

1 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 |   |

6 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 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?

10 Yes ☐ No ☒

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

14 Howard v. State, No. 15113, 102 Nev. 572, 729 P.2d 1341 (December 15, 1986), cert.  
15 denied, 484 U.S. 872, 108 S.Ct. 203 (October 5, 1987) (order affirming conviction and  
sentence)

16 Howard v. State, No. 20368, 106 Nev. 713, 800 P.2d 175 (November 7, 1990) (order  
affirming denial of petition for post-conviction relief)

17 Howard v. State, No. 23386 (March 19, 1993) (unpublished order affirming denial of  
18 petition for post-conviction relief), cert. denied, 510 U.S. 840, 114 S.Ct. 122 (October 4,  
1993)

19 Howard v. State, No. 42593 (unpublished order affirming denial of post-conviction  
20 petition for writ of habeas corpus, December 1, 2004)

21 11. **Pending and prior proceedings in other courts.** List the case name, number and court  
22 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-  
23 defendants):

24 Howard v. McDaniel, et al., No. CV-N-88-0264-ECR, United States District Court, D.  
Nev. (federal habeas corpus proceeding dismissed without prejudice)

25 Howard v. McDaniel, et al., No. CV-N-91-196-ECR, United States District Court, D. Nev.  
26 (federal habeas corpus proceeding stayed to allow petitioner to return to state court to  
exhaust)

Howard v. McDaniel, et al., No. 2:93-CV-1209-LRH-LRL,<sup>1</sup> United States District Court, D. Nev. (federal habeas corpus proceedings dismissed on December 29, 2009)

Howard v. McDaniel, et al., No. 10-99003, United States Court of Appeals for the Ninth Circuit (appealing denial of third amended petition, No. 2:93-CV-1209-LRH-LRL) currently stayed pending resolution of appellant's fourth state post-conviction petition.

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

Petitioner/Appellant's appeal from order dismissing petition for writ of habeas corpus, Eighth Judicial District Court, Clark County

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

1. Did the district court err in summarily concluding that Mr. Howard had not demonstrated good cause and prejudice to overcome purported procedural time bars?
2. Possible other issues to be determined following review of court documents and the transcripts.

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   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 or evidentiary hearing in the district court, how many days did the trial or evidentiary hearing last?  
Twelve (12) days for trial; one (1) day for evidentiary hearing.

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 November 6, 2010

19. Date of entry of written judgment or order appeal from December 6, 2010

///

<sup>1</sup> This new action is a continuation of the prior action stayed while Petitioner exhausted his unexhausted issues. See CV-N-91-196-ECR.

1 (a) If no written judgment or order was filed in the district court, explain the basis for  
2 seeking appellate review:

3 N/A

4 20. If this appeal is from an order granting or denying a petition for a writ of habeas corpus,  
5 indicate the date written notice of entry of judgment or order was served December 6,  
6 2010

7 (a) Was service by delivery \_\_\_\_\_ or by mail X (specify).

8 21. If the time for filing the notice of appeal was tolled by a post-judgment motion,

9 (a) Specify the type of motion, and the date of filing of the motion: N/A  
10 Arrest judgment \_\_\_\_\_ Date filed \_\_\_\_\_  
11 New trial \_\_\_\_\_ Date filed \_\_\_\_\_  
12 (newly discovered evidence)  
13 New trial \_\_\_\_\_ Date filed \_\_\_\_\_  
14 (other grounds)

15 (b) Date of entry of written order resolving motion \_\_\_\_\_

16 22. Date notice of appeal filed December 21, 2010

17 23. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP  
18 4(b), NRS 34.560, NRS 34.575, NRS 177.015(2), or other  
19 NRAP 4(b), NRS 34.575(1)

20 **SUBSTANTIVE APPEALABILITY**

21 24. Specify statute, rule or other authority which grants this court jurisdiction to review the  
22 judgment or order appealed from:

23 NRS 177.015(1)(b) \_\_\_\_\_ NRS 34.560 \_\_\_\_\_  
24 NRS 177.015(1)(c) \_\_\_\_\_ NRS 34.575(1) X  
25 NRS 177.015(2) \_\_\_\_\_ NRS 34.575(2) \_\_\_\_\_  
26 NRS 177.015(3) \_\_\_\_\_ Other (specify) \_\_\_\_\_  
27 NRS 177.055 \_\_\_\_\_

28 **VERIFICATION**

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

23 Samuel Howard  
24 Name of Appellant

Mike Charlton  
Name of counsel of record

25 January 25, 2011  
26 Date

Mike Charlton  
Signature of counsel of record

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 25th day of January 2011. Electronic Service of the foregoing Docketing Statement shall be made in accordance with the Master Service List as follows:

Nancy A. Becker  
Deputy District Attorney

Catherine Cortez Masto  
Nevada Attorney General

Jeremy Kip  
An employee of the Federal Public Defender's Office