

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DOMONIC RONALDO MALONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent

No. 61006

Electronically Filed
Jun 26 2012 10:27 a.m.

DOCKETING STATEMENT
CRIMINAL APPEALS

(Including appeals from pretrial and post-conviction rulings and other requests for post-conviction relief)

GENERAL INFORMATION

1. Judicial District Eighth County Clark
Judge Michael P. Villani District Ct Case No. C224572

2. If the defendant was given a sentence,

(a) what is the sentence?

See attached

(b) has the sentence been stayed pending appeal?

No

(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 David M. Schieck Telephone 702-455-6265

Firm: Clark County Special Public Defender

Address: 330 South Third Street Ste 800
Las Vegas NV 89155

Client(s) Domonic Ronaldo Malone

5. Is appellate counsel appointed ☒ or retained ☐ ?

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

Count 1 - maximum of 48 months with a minimum parole eligibility of 19 months in the Nevada Department of Corrections (NDC); Count 2 - maximum of 60 months with a minimum parole eligibility of 24 months in the NDC, Count 2 to run consecutive to Count 1; Count 3 - Life with a minimum parole eligibility after 5 years in the NDC, Count 3 to run concurrent with Count 2; Count 4 - 6 months in Clark County Detention Center, Count 4 to run concurrent with Count 3; (Count 5 and Count 6-Not Guilty); Count 7 - 12 months in the Clark County Detention Center, Count 7 to run consecutive to Count 3; Count 8 - maximum of 60 months with a minimum of parole eligibility of 24 months in the NDC, Count 8 to run concurrent with Count 7; Count 9 - maximum of 120 months with a minimum of parole eligibility of 48 months in the NDC, Count 9 to run consecutive to Count 8; Count 10 - Not Guilty; Count 11 -Life without the possibility of parole, Count 11 to run consecutive to Count 9; Count 12 - Life without the possibility of parole, Count 12 to run connective to Count 11; Count 13 - Life without the possibility of parole plus a consecutive term of Life without the possibility of parole for the use of a deadly weapon, Count 13 to run consecutive to Count 12; Count 14 - Life without the possibility of parole plus a consecutive Life without the possibility of parole for the use of a deadly weapon, Count 14 to run consecutive to Count 13; Count 15 - 180 months with a minimum parole eligibility of 48 months in the NDC plus a consecutive term of 180 months maximum and 48 months minimum for use of a deadly weapon, Count 15 to run concurrent with Count 14; Count 16 - maximum of 180 months with a minimum parole eligibility of 48 months in the NDC plus a consecutive term of 180 months maximum and 48 months minimum for use of a deadly weapon, Count 16 to run consecutive to Count 15. 2,148 days credit for time served.

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 Steven Wolfson Telephone 702-671-2500

Firm: Clark County District Attorney

Address: 200 Lewis Ave., 3rd Floor
Las Vegas NV 89155

Client(s) The State of Nevada

Attorney Catherine Cortez-Masto Telephone 702-687-3538

Firm: Nevada Attorney General

Address: 100 North Carson St.
Carson City NV 89701

Client(s) The State of Nevada

(List additional counsel on separate sheet if necessary)

7. 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 habeas (NRS ch. 34)
 - ☐ grant ☐ denial
- ☐ Other disposition (specify)

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):

Jason McCarty v. State of Nevada, Case No. 58101

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):

St v. Donald Herb, Case No. C224572 (GPA, Accessory to Murder, filed 8/2/06) sentencing 7/3/12

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

3 defendants charged with Murder with Use of a Deadly Weapon. 1 defendant negotiated and agreed to testify. The Court severed the trials of the remaining 2 defendants. The State filed Notice of Intent to Seek Death Penalty against Mr. Malone. After a jury returned a verdict of first degree murder, they sentenced Mr. Malone to Life without Parole.

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

Defendant was improperly bound over solely by unsubstantiated testimony of a co-conspirator.
(D Ct. Improperly denied Writ).

Jury issues. (Former prosecutor improperly taints juror Hinzman.)
Batson issues. 1/13 date

Improper actions by the State regarding

Vouching for the testifying co-conspirator both via plea agreement to "tell the truth" as well as arguments regarding the testimony being reliable.

Court did not allow our instructions on guilt phase.

Co-conspirator statements at trial were not corroborated by the telephone records, therefore insufficient evidence to support conviction. (Specifically during the second beating indicating that the victim Victoria was not present) AND the expert that they had testify did not offer his expert opinion regarding the significance of the cell tower records that supported the arguments by DiGiacamo.

State improperly compared execution to "going to sleep" during voir dire.

Court denied our Motion to sever counts

Closing argument. Improper argument regarding Defendant's decision to not testify. Motion for mistrial denied. 1/31

Court erred in allowing in evidence at the sentencing regarding the murder case that was dismissed against the defendant. (Improperly granted the State's motion to reconsider)

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?

20 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 4/24/12

19. Date of entry of written judgment or order appeal from 5/28/12

(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 June 5, 2012

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(b)

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) _____
NRS 177.015(2) _____	NRS 34.575(2) _____
NRS 177.015(3) <u>x</u> _____	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.

Domonic Malone

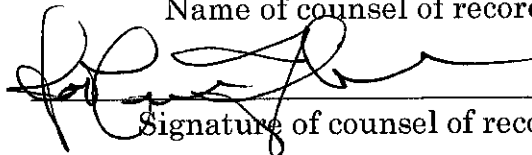
Name of appellant

June 15, 2012

Date

JoNell Thomas

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 18 day of June, 2012, 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):

Dated this 18 day of June, 2012.

See next page
Signature

CERTIFICATE OF SERVICE

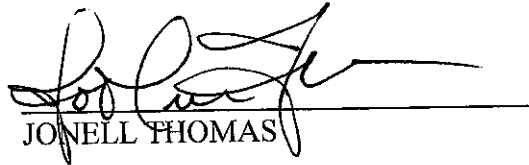
I certify that on the ^{24th}~~15th~~ day of June, 2012, I served a copy of this completed docketing statement upon all counsel of record:

by personally serving it upon him/her; or

XX by efileing to the following:

District Attorney's Office
Nevada Attorney General's Office

Dated this ^{24th}~~15th~~ day of June, 2012.


JONELL THOMAS