



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Electronically Filed  
Apr 12 2013 11:46 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**INDICATE FULL CAPTION:**

THE STATE OF NEVADA,

Appellant,  
-vs-

ANDRE D. BOSTON,

Respondent.

NO. (62931)

**DOCKETING STATEMENT  
CRIMINAL APPEALS**

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

**GENERAL INFORMATION**

1. Judicial District Eighth County Clark  
Judge Elissa F. Cadish  
District Ct. Docket No. 88C084650
2. If the defendant was given a sentence,  
(a) what is the sentence? N/A  
(b) has the sentence been stayed pending appeal? Pending Stayed? N/A  
(c) was defendant admitted to bail pending appeal? Admitted to Bail N/A
3. Was trial or post conviction counsel appointed ☒ or retained ☐ ?
4. **Attorney filing this docketing statement:**  
Attorney Jonathan E. VanBoskerck Telephone (702) 671-2750  
Firm Clark County District Attorney's Office  
Address 200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89101  
Client(s) State of Nevada

**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 Martin Hart Telephone (702) 380-4278  
Firm The Law Offices of Martin Hart Law, LLC  
Address 229 South Las Vegas Blvd., Ste. 200  
Las Vegas, Nevada 89101  
Client(s) Andre D. Boston

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_  
(List additional counsel on separate sheet if necessary)

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 guilt plea	<input type="checkbox"/>	Post-conviction relief (NRS ch. 177)
<input type="checkbox"/>	Grant of pretrial motion to dismiss	<input type="checkbox"/>	<input type="checkbox"/> grant <input type="checkbox"/> denial
<input type="checkbox"/>	Parole/Probation revocation	X	Post-conviction habeas (NRS ch. 34)
<input type="checkbox"/>	Motion for new trial	<input type="checkbox"/>	X grant <input 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 type="checkbox"/>	death sentence	<input type="checkbox"/>	juvenile offender
X	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 manner?

Yes \_\_\_\_\_ X \_\_\_\_\_ No \_\_\_\_\_

9. **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):

Boston v. State - Direct Appeal of Conviction (Sct. Case # 19607).

Boston v. State - Appeal from denial of 1<sup>st</sup> Petition for WHC (Sct. Case # 21871).

Boston v. State - 2<sup>nd</sup> Appeal from 2<sup>nd</sup> denial of 1<sup>st</sup> Petition for WHC (Sct. Case # 26034).

Boston v. State - Appeal from denial of 2<sup>nd</sup> Petition for WHC (Sct. Case # 58216).

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):

State v. Boston - Substantive criminal case (8<sup>th</sup> Jud. Dst. Ct. / Case # C84650).

Boston v. State - 1<sup>st</sup> Petition for WHC (8<sup>th</sup> Jud. Dst. Ct. / Case # C84650).

Boston v. State - 2<sup>nd</sup> Petition for WHC (8<sup>th</sup> Jud. Dst. Ct. / Case # C84650).

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

District Court granted a PWHC alleging that Boston's sentences were the functional equivalent of imposing a life without parole sentence on a juvenile under Graham v. Florida, \_\_ U.S. \_\_, 130 S.Ct. 2011 (2010).

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): N/A.

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

I. Whether District Court erred in construing Graham v. Florida, \_\_ U.S. \_\_, 130 S.Ct. 2011 (2010), as barring sentences that are allegedly the functional equivalent of life without parole.

II. Whether District Court erred in concluding that multiple sentences of life with parole for multiple unrelated criminal acts was the functional equivalent of imposing a life without parole sentence in violation of Graham v. Florida, \_\_ U.S. \_\_, 130 S.Ct. 2011 (2010).

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 To be filled in by secretary from other document.

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 X No ☐

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?

Days N/A days.

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

Yes ☐ No X

#### **TIMELINESS OF NOTICE OF APPEAL**

18. Date district court announced decision, sentence or order appealed from 3/22/13

19. Date of entry of written judgment or order appealed from 3/22/13

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

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 4/3/13.

(a) Was service by delivery or by mail Specify Electronic service.

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 N/A Date filed N/A

New trial N/A Date filed N/A

(newly discovered evidence)

New trial N/A Date filed N/A

(other grounds)

(b) Date of entry of written order resolving motion N/A

22. Date notice of appeal filed 4/3/13

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 NRS 34.575 (successor statute to NRS 34.815).

### **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) <u>N/A</u>	NRS 34.710(3) <u>N/A</u>
NRS 177.015(2) <u>N/A</u>	NRS 34.710(4) <u>N/A</u>
NRS 177.055 <u>N/A</u>	NRS 34.815 <u>34.575 successor to 34.815</u>
NRS 177.385 <u>N/A</u>	NRS 177.015(3) <u>N/A</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.

THE STATE OF NEVADA  
Name of appellant

JONATHAN E. VANBOSKERCK  
Name of counsel or record

4/12/13  
Date

/s/ Jonathan E. VanBoskerck  
Signature of counsel of record

### CERTIFICATE OF SERVICE

I certify that on the 12<sup>th</sup> day of April, 2013, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ by personally serving it upon him/her District Attorney Appellate; or  
☒ by mailing it by first class mail with sufficient postage prepaid to the following address(es):

Martin Hart, Esq.  
The Law Offices of Martin Hart Law, LLC  
229 South Las Vegas Blvd., Ste. 200  
Las Vegas, Nevada 89101

Dated this 12<sup>th</sup> day of April, Year.

/s/ j. garcia  
Signature