

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DALE EDWARD FLANAGAN,

Appellant,

v.

THE STATE OF NEVADA and JACK PALMER,
Warden, Northern Nevada Correctional Center,

Respondents.

No. 63703

DOCKETING STATEMENT
CRIMINAL APPEALS

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

Electronically Filed
Aug 02 2013 04:58 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

1. Judicial District Eighth County Clark County, Nevada
Judge Michelle Leavitt District Ct Case No. 85C069269-1

2. If the defendant was given a sentence,

(a) what is the sentence?

Sentenced to 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 Cal J. Potter, III Telephone (702) 385-1954

Firm: Potter Law Offices

Address: 1125 Shadow Lane
Las Vegas, NV 89102

Client(s) Appellant, Dale Flanagan

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 Stephen S. Owens, Deputy District Attorney Telephone (702) 671-2750

Firm: Clark County District Attorney's Office

Address: 200 Lewis Avenue
Las Vegas, Nevada 89155

Client(s) Respondents, State of Nevada and Warden Palmer

Attorney _____ Telephone _____

Firm: _____

Address: _____

Client(s) _____

(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 ☐ To the extent the Appellant's rights are protected.

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):

12/19/1985 Nevada Supreme Court Case No. 171130
08/29/1989 Nevada Supreme Court Case No. 20383
06/09/1995 Nevada Supreme Court Case No. 27118
08/09/1995 Nevada Supreme Court Case No. 27320
09/12/2002 Nevada Supreme Court Case No. 40232

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):

Flanagan v. Baker, 2:09-cv-00085-KJD-GWF

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

Appeal from a dismissal of a state post-conviction petition challenging petitioner's convictions and death sentences

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

Whether the district court properly determined that state procedural default rules barred consideration of constitutional violations, including the presentation of false testimony and unlawful withholding of exculpatory material, when the state concealed the operative facts from petitioner?

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?

_____ 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 06/06/2013

19. Date of entry of written judgment or order appeal from 06/28/2013

(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 ☒. electronic service via e-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 N/A

22. Date notice of appeal filed 07/26/2013

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) _____	Other (specify) _____
NRS 177.055 <u>XXX</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.

Dale Flanagan

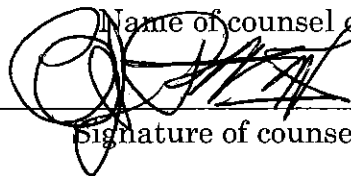
Name of appellant

08/02/2013

Date

Cal J. Potter, III

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

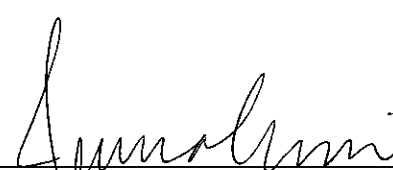
I certify that on the 2nd day of August, 2013, I served a copy of this completed docketing statement upon all counsel of record:

☐ by personally serving it upon him/her; or

Steven S. Owens, Deputy District Attorney
200 Lewis Avenue, Las Vegas, Nevada 89155
Tel: (702) 671-2750, Fax: (702) 477-2957

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

Dated this 2nd day of August, 2013.


Signature