

4. **Attorney filing this docketing statement:**

MARIO D. VALENCIA

Mario D. Valencia, Attorney at Law, LLC

1055 Whitney Ranch Dr., Ste. 220

Henderson, NV 89014

(702) 940-2222

Counsel for DeAngelo R. Carroll

5. Is appellate counsel appointed or retained? Appointed.

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):**

STEVEN S. OWENS

Chief Deputy District Attorney

Office of the Clark County District Attorney

200 Lewis Avenue

P.O. Box 552212

Las Vegas, NV 89155-2212

(702) 671-2750

Counsel for The State of Nevada

7. **Nature of disposition below:**

Judgment after jury verdict.

Note: This appeal was made possible, however, after the district court granted Mr. Carroll's post-conviction habeas petition. The district court found Mr. Carroll's attorney failed to file a notice of appeal, thereby denying Mr. Carroll of his appeal rights. Mr. Carroll therefore was given relief at the district court level to proceed with this

appeal.

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

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? No.

10. **Pending and prior proceeding 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): *Carroll (DeAngelo) v. District Court* (No. 50576); *Hidalgo, III (Luis) v. District Court* (No. 48233); *Counts v. District Court* (No. 50939); *Counts v. State* (No. 51549); *Hidalgo, III (Luis) v. State* (No. 54272); *Hidalgo, Jr. (Luis) v. State* (No. 54209); *Counts v. State* (No. 55608); *Counts v. State* (No. 57217); *Carroll v. State* (No. 63115).

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): *State v. Espindola, Hidalgo, Carroll, Counts and Taoipu* (C212667); *Counts v. Neven* (2:11-cv-01571-GMN-GWF) (federal habeas).

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

Mr. Carroll was charged with conspiracy to commit murder and murder with use of a deadly weapon. He pleaded not guilty to the charges. He had a jury trial. The jury found him guilty of count 1 (conspiracy to commit murder) and count 2 (first degree murder with use of a deadly weapon).

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

Appellate counsel cannot say at this time what issues will be raised in this appeal. Appellate counsel did not represent Mr. Carroll in the district court proceedings. Mr. Carroll's court-appointed trial attorneys gave their file materials to Mr. Carroll's court-appointed post-conviction counsel (Patrick E. McDonald). Mr. McDonald has been suspended from the practice of law of Nevada. It therefore has been difficult to get all of Mr. Carroll's file materials in this case from trial counsel. Counsel has received some file materials, around six banker's boxes, from the law firm where Mr. McDonald's worked, and last fall received some more documents via email. Counsel has not had the time to review all of these materials, but an initial review shows that some documents are missing. Counsel also has limited access via the internet to documents filed in the district court, so he must order paper copies of the district court's entire file (including transcripts and documents submitted but not filed, juror notes, etc.). He also must review the evidence admitted at trial before he is able to identify what issues will be raised on appeal.

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

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? Again, counsel is not in a position at this time to inform the court whether this appeal presents a substantial legal issue of first-impression or one affecting an important public interest for the reason stated above in the response to question number 13.

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? Six (6) days.

17. **Oral argument.** Would you object to submission of this appeal for disposition without oral argument? No.

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from: August 12, 2010.

19. Date of entry of written judgment or order appealed from: September 8, 2010 (Judgment of Conviction); March 23, 2011 (Amended Judgment of Conviction).

20. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date the written notice of entry of judgment or order was served by the district court.

This is Mr. Carroll's direct appeal from his conviction and sentence. Mr. Carroll was granted the right to proceed with this appeal, however, by the district court after it granted Mr. Carroll's post-conviction habeas petition. The order granting Mr. Carroll's post-conviction habeas petition and granting him his right to a direct appeal was entered on July 30, 2012. Notice of entry of the order was filed on August 3, 2012, but served by mail on August 2, 2012.

Mr. Carroll's appeal was docketed in this court as case No. 63115. The State then moved to dismiss Mr. Carroll's appeal, arguing his post-conviction was untimely. Mr. Carroll opposed the motion. On July 23, 2013, the Court entered an Order of Remand. The Court agreed with the district court that Mr. Carroll was deprived of his right to a direct appeal due to ineffective assistance of counsel. The Court however remanded the case to the district court for the "limited purpose of conducting an evidentiary hearing on the applicable procedure bars and entering the necessary written factual findings and legal conclusions concerning whether Carroll established good cause to excuse the delay in filing his post-conviction petition."

The district court held an evidentiary hearing on October 21,

2013. On January 1, 2014, the district court entered written findings of fact, conclusions of law and order, stating Carroll established good cause to excuse delay in filing his post-conviction petition. Notice of entry of the order was filed and served January 6, 2014.

(a) Was service by delivery or by mail? 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: N/A

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

22. Date notice of appeal filed: January 6, 2014 in the district court. January 8, 2014 in the Nevada Supreme Court.

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(c)

SUBSTANTIVE APPEALABILITY

24. Specify statute, rule or other authority that grants this court jurisdiction to review from: NRS 177.105(3)

VERIFICATION

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

DeAngelo R. Carroll
Name of Appellant

Mario D. Valencia
Name of counsel of record

January 16, 2014
Date

/s/ Mario D. Valencia
Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on January 16, 2014, I served a copy of this completed docketing statement upon all counsel of record:

x by electronically filing it with the Nevada Supreme Court on January 16, 2014. Electronic service of the foregoing document shall then be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attorney General

STEVEN OWENS
Chief Deputy District Attorney

/s/ Mario D. Valencia
MARIO D. VALENCIA