

1 **In the Supreme Court of the State of Nevada**

2 SIAOSI VANISI

No. 65774

3 Appellant,

4 vs.

5 RENEE BAKER, WARDEN,¹ and
6 CATHERINE CORTÉZ MASTO,
7 ATTORNEY GENERAL FOR THE
8 STATE OF NEVADA,

 Respondents.

DOCKETING Electronic Filed
CRIMINAL APPEAL 2014 09:48 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
(Including pretrial and post conviction
habeas corpus, and petitioners for post-
conviction relief)

9 **GENERAL INFORMATION**

10 1. Judicial District Second County Washoe
 Judge Hon. Connie J. Steinheimer District Ct. Case No. CR98-0516

11 2. If the defendant was given a sentence,
12 (a) what is the sentence? Death
13 (b) has the sentence been stayed pending appeal? Yes
14 (c) was defendant admitted to bail pending appeal? No

15 3. Was counsel in the district court appointed X or retained ____?

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

17 Attorney Tiffani D. Hurst Telephone (702) 388-6577
18 Firm Federal Public Defender, District of Nevada
19 Address 411 East Bonneville Avenue, Suite 250
 Las Vegas, Nevada 89101
 Client(s) Siaosi Vanisi

20 5. Is appellate counsel appointed X or retained ____?

21 **If this is a joint statement by multiple appellants, add the names and**
22 **addresses of other counsel on an additional sheet accompanied by a**
23 **certification that they concur in the filing of this statement.**

24 6. **Attorney(s) representing respondent(s):**

25 Attorney Terence McCarthy
26 Telephone (775) 337-5750 E-mail: tmccarth@da.washoecounty.us
27 Firm Washoe County District Attorney's Office
28 Address One South Sierra St.
 Reno, Nevada 89520
 Client(s) Renee Baker, Warden, Ely State Prison, State of Nevada

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¹ Renee Baker is substituted for her predecessor, E.K. McDaniel, as Warden of Ely State Prison. NRAP 43(c)(1).

Attorney Catherine Cortez-Masto
Telephone (775) 684-1100
Firm Attorney General of Nevada
Address 100 N. Carson St.
Carson City, Nevada 89701-4717
Client(s) Renee Baker, Warden, Ely State Prison; State of Nevada

7. **Nature of disposition below:**

- ☐ Judgment after bench trial ☐ Grant of pretrial habeas
☐ Judgment after jury verdict ☐ Grant of motion to suppress evidence
☐ Judgment upon guilty plea ☒ Post-conviction habeas (NRS ch.34)
☐ Grant of pretrial motion to _____grant Xdenial
dismiss
☐ Parole/Probation revocation ☐ Other disposition (specify)
☐ Motion for new trial
☐ grant ☐ denial
☐ Motion to withdraw guilty plea
☐ grant ☐ denial

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

- ☒ death sentence ☐ juvenile offender
☐ life sentence ☐ 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 a manner?

Yes ____ No X

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

Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001) (opinion affirming conviction and sentence)

Vanisi v. State, Nev. Sup. Ct. No. 50607, 2010 WL 3270985 (Nev. April, 2010) (order affirming denial of post-conviction petition for writ of habeas corpus)

11. **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).

Vanisi v Baker, et al., Petition for Writ of Habeas Corpus (Post-Conviction) filed May 4, 2011, in the Second Judicial District Court, Case No. CR98-0516 (the subject of the instant appeal).

Vanisi v. Baker, et al., 3:10-cv-0448-MMD-VPC, United States District Court, D. Nev. (federal habeas corpus proceedings currently stayed pending exhaustion)

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12. **Nature of action.** Briefly describe the nature of the action and the result below:
Petitioner/Appellant's appeal from order dismissing post-conviction petition for writ of habeas corpus, Second Judicial District Court, Washoe County

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

1. Will the failure of Mr. Vanisi's state habeas counsel to employ an investigator, conduct an adequate investigation of the offense or Mr. Vanisi's life history, employ an adequate expert to conduct necessary and comprehensive mental health evaluation (relating to issues in addition to competency), interview potential witnesses, or obtain relevant records allow consideration of his claims in the petition for writ of habeas corpus filed on May 4, 2011?
2. Will NRS 34.726, 34.810, and 34.800 be applied in such a manner as to forever deny Mr. Vanisi an adequate and fair evaluation of the constitutionality of his first degree murder conviction and death sentence?
3. Did Mr. Vanisi suffer prejudice as a result of the ineffective assistance of his initial state habeas counsel?
4. Are this Court's limitations on the right to effective assistance of post conviction affected by the Supreme Court's decision in Martinez v Ryan?
5. Did the district court err in failing to grant relief on the substantive claims in Mr. Vanisi's petition for writ of habeas corpus filed May 4, 2011:
 - A. Mr. Vanisi suffered the ineffective assistance of counsel during his penalty trial which resulted in the death penalty (Claim One);
 - B. Mr. Vanisi suffered the ineffective assistance of counsel at pre-trial and during his guilt- innocence trial which resulted in his first degree murder conviction (Claim Three);
 - C. Mr. Vanisi was deprived of his constitutional rights to expert assistance to aid in his defense during his guilt/innocence and penalty trials (Claim Two);
 - D. Mr. Vanisi was not competent during his initial state post-conviction habeas proceedings (Claim Four);
 - E. The trial judge improperly denied Mr. Vanisi's rights to due process, equal protection and a fair trial during the voir dire proceedings (Claim Five);
 - F. The Nevada Supreme Court violated equal protection, due process and the right to a jury determination of every element of the offense when it purported to re-weigh and re-sentence Mr. Vanisi after invalidating an aggravating circumstance (Claim Six);
 - G. Mr. Vanisi was deprived of his constitutional rights because the mutilation aggravating factor is overly broad and did not protect against the arbitrary and capricious infliction of the death penalty (Claim Seven);
 - H. Mr. Vanisi's rights to due process, equal protection, a fair and impartial jury and a reliable sentence were violated by the trial judge's erroneous

1 and unconstitutional jury instructions (Claim Eight);

- 2 I. The State of Nevada violated Article 36 of the Vienna Convention on
3 Consular Relations when it failed to notify the Tongan Consulate of his
4 arrest and detention (Claim Nine);
- 5 J. Mr. Vanisi's rights to effective counsel, due process, confrontation, a
6 reliable trial, equal protections, and freedom from cruel and unusual
7 punishment were violated by the trial judge's refusal to allow him to
8 represent himself and the denial of his counsel's motion to withdraw
9 (Claim Ten);
- 10 K. Execution by lethal injection violates Mr. Vanisi's rights to freedom
11 from cruel and unusual punishments (Claim Eleven);
- 12 L. Mr. Vanisi's rights to due process, equal protection and a reliable
13 sentence were violated because his trial, sentencing, and appellate
14 proceedings occurred before judicial officers who were popularly elected
15 (Claim Twelve);
- 16 M. Mr. Vanisi's rights to due process, equal protection and a reliable
17 sentence were violated by the failure of the grand jury or court to
18 consider and find probable cause related to each element of capital
19 eligibility (Claim Thirteen);
- 20 N. Mr. Vanisi's rights to due process, equal protection, confrontation,
21 effective assistance of counsel and a reliable sentence were violated by
22 overreaching misconduct of the prosecutors (Claim Fourteen);
- 23 O. Mr. Vanisi's rights to due process, equal protection and effective
24 assistance of counsel were violated by the trial judge's use of a stun belt
25 restraining device during his guilt/innocence and penalty trials (Claim
26 Fifteen);
- 27 P. Mr. Vanisi's rights to due process, equal protection, a fair trial, a fair and
28 impartial jury, and a reliable sentence were violated by the introduction
of improper victim impact testimony (Claim Sixteen);
- Q. Mr. Vanisi's rights to due process, effective assistance of counsel, equal
protection, a fair and impartial jury, a fair trial, and a reliable sentence
were violated by his trial counsel's failure to renew their motion for
change of venue at the conclusion of voir dire and the trial judge's
pretrial ruling which denied Mr. Vanisi the ability to make a sufficient
record to establish cause for a change of venue (Claim Seventeen);
- R. Mr. Vanisi was prevented from asserting the defense of "Not Guilty by
Reason of Insanity," and trial counsel were precluded from introducing
evidence of Mr. Vanisi's state of mind, as well as his incompetency, as
a result of the Nevada Legislature (Claim Eighteen);
- S. The Nevada capital punishment system operates in an arbitrary and
capricious manner (Claim Nineteen);
- T. Mr. Vanisi's rights to an impartial jury, due process, equal protection and
a reliable sentence were violated by the "death qualification" of his jury
(Claim Twenty);

- 1 U. The Nevada capital punishment system allows prosecutor the freedom
to select defendants who will face the death penalty in an arbitrary,
2 inconsistent, and discriminatory manner (Claim Twenty-One);
3 V. Mr. Vanisi's rights to due process, equal protection and a fair trial were
violated by the arbitrary admission of gruesome and prejudicial
4 photographs of the victim and autopsy (Claim Twenty-Two);
5 W. Mr. Vanisi's rights to the effective assistance of appellate counsel and
post-conviction counsel were violated (Claim Twenty-Three); and,
6 X. The cumulative effect of all the errors presented in Mr. Vanisi's habeas
petition rendered his conviction and sentence invalid (Claim Twenty-
7 Four).

8 14. **Constitutional issues.** If the State is not a party and if this appeal challenges the
9 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?

10 N/A X Yes _____ No _____
11 If not, explain

12 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
13 important public interest?

14 First-impression: Yes _____ No X
Public interest: Yes _____ No X

15 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?

16 Mr. Vanisi's first trial commenced on January 11, 1999 and ended in a mistrial on
17 January 15, 1999. Mr. Vanisi's second trial commenced on September 13, 1999 and
the jury returned a guilt verdict on September 27, 1999. Mr. Vanisi's penalty phase
18 commenced on October 1, 1999 and the jury returned a death verdict on October 6,
1999.

19 On January 27, 2005, February 18, 2005, and May 2 and 18, 2005, the state district
20 court took evidence relating to the initial state post-conviction and affirmed the
judgment and death sentence on November 8, 2007. On December 5 and 6, 2013,
21 the state district court conducted an evidentiary hearing (second state post-conviction)
and denied habeas relief on April 10, 2014.

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

24 Yes X No _____

25 TIMELINESS OF NOTICE OF APPEAL

26 18. Date district court announced decision, sentence or order appealed from April 10,
27 2014.

- 1 19. Date of entry of written judgment or order appeal from April 25, 2014.
- 2 (a) If no written judgment or order was filed in the district court, explain the basis
- 3 for seeking appellate review:
- 4 N/A
- 5 20. If this appeal is from an order granting or denying a petition for a writ of habeas
- 6 corpus, indicate the date written notice of entry of judgment or order was served
- 7 April 25, 2014
- 8 (a) Was service by delivery _____ by mail _____ by e-service X (specify).
- 9 21. If the time for filing the notice of appeal was tolled by a post-judgment motion,
- 10 (a) Specify the type of motion, and the date of filing of the motion: N/A
- 11 Arrest judgment _____ Date filed _____
- 12 New trial _____ Date filed _____
- 13 (newly discovered evidence)
- 14 New trial _____ Date filed _____
- 15 (other grounds)
- 16 (b) Date of entry of written order resolving motion _____
- 17 22. Date notice of appeal filed May 23 , 2014
- 18 23. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*,
- 19 NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015(2), or other
- 20 NRS 34.575(1)

SUBSTANTIVE APPEALABILITY

- 21 24. Specify statute, rule or other authority which grants this court jurisdiction to review
- 22 the judgment or order appealed from:
- 23
- | | |
|-------------------------|------------------------|
| NRS 177.015(1)(b) _____ | NRS 34.560 _____ |
| NRS 177.015(1)(c) _____ | NRS 34.575(1) <u>X</u> |
| NRS 177.015(2) _____ | NRS 34.575(2) _____ |
| NRS 177.015(3) _____ | Other (specify) _____ |
| NRS 177.055 _____ | |

VERIFICATION

22 I certify that the information provided in this docketing statement is true and complete to

23 the best of my knowledge, information and belief.

24 Vanisi Siaoosi

25 Name of Appellant

Tiffani D. Hurst

Name of counsel of record

26 June 6 , 2014

27 Date

/s/ Tiffani D. Hurst

Signature of counsel of record

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