

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MARLO THOMAS

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

No. 65916

Electronically Filed
Jul 14 2014 12:16 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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 Stefany Miley District Ct Case No. C136862

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

(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 BRET O. WHIPPLE, ESQ. Telephone (702) 731-0000

Firm: JUSTICE LAW CENTER

Address: 1100 SOUTH 10TH ST.
LAS VEGAS, NV, 89104

Client(s) APPELLANT

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 CATHERINE CORTEZ-MASTO Telephone (702) 687-3538
Firm: NEVADA ATTORNEY GENERAL
Address: 100 NORTH CARSON STREET
CARSON CITY, NEVADA 89701-4717

Client(s) COUNSEL FOR RESPONDENT

Attorney _____ Telephone _____
Firm: _____
Address: _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

7. 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 guilty plea | <input checked="" type="checkbox"/> Post-conviction habeas (NRS ch. 34) |
| <input type="checkbox"/> Grant of pretrial motion to dismiss | <input type="checkbox"/> grant <input checked="" type="checkbox"/> denial |
| <input type="checkbox"/> Parole/Probation revocation | <input type="checkbox"/> Other disposition (specify) |
| <input type="checkbox"/> Motion for new trial | |
| <input type="checkbox"/> grant <input type="checkbox"/> denial | |
| <input type="checkbox"/> Motion to withdraw guilty plea | |
| <input type="checkbox"/> grant <input type="checkbox"/> denial | |

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):

DIRECT APPEAL, CASE NO. 31019

APPEAL OF POST CONVICTION, CASE NO. 40248

DIRECT APPEAL, CASE NO. 46509

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):

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

Mr. Thomas was convicted of 2 counts of Murder with Use, 1 Count of Kidnapping with Use, 1 Count of Robbery with Use, and 1 Count of Conspiracy. He was sentenced to Death. His Direct Appeal was Denied. His Writ of Certiorari to the U.S. Supreme Court was Denied. His Petition for Writ of Habeas Corpus was denied after an evidentiary hearing by the District Court. This Court, however, reversed and remanded the case in order for the District Court to hold another Penalty Hearing. At the new Penalty Hearing, again Mr. Thomas was sentenced to Death. Mr. Thomas' Appeal of this sentence was denied. Mr. Thomas again filed a Petition for Writ of Habeas Corpus to the District Court, and it was denied.

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

Whether the District Court erred in Denying Thomas' Petition for Writ of Habeas Corpus on Multiple Instances of Ineffective Assistance of Penalty Phase Counsel.

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?

1 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 4-28-14

19. Date of entry of written judgment or order appeal from 6-02-14

(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 6-19-2014

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
NRS 34.575

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

Marlo Thomas

Bret O. Whipple

Name of appellant

Name of counsel of record

7-14-2014

Date

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 14 day of July, 2014, 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): CORTEZ-MASTO, CATHERINE. 100 N. CARSON ST. CARSON CITY, NV 89701

Dated this 14th day of July, 2014.

Signature