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

3
4 JEMAR D. MATTHEWS,
5 Petitioner,

6 vs.

7 THE STATE OF NEVADA, DWIGHT
8 NEVEN, WARDEN,

9 Respondents.
10

No. 66844

Electronically Filed
Nov 18 2014 09:43 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE APPEAL STATEMENT

11 **GENERAL INFORMATION**

12 1. Judicial District: Eighth County: Clark
13 Judge: David Barker District Ct. Case No. 06C228460

14 2. If the defendant was given a sentence,

15 (a) what is the sentence?

16 Count 1: 120 months maximum with parole eligibility of 26 months;

17 Count 2: Life with minimum parole eligibility of 20 years plus equal and consecutive term
18 of life with minimum parole eligibility of 20 years for use of a deadly weapon;

19 Count 3: a maximum of 240 months with minimum parole eligibility of 48 months plus an
20 equal and consecutive term of 240 months with minimum parole eligibility of 48 months for use of
21 a deadly weapon;

22 Count 4: a maximum of 240 months with minimum parole eligibility of 48 months plus an
23 equal and consecutive term of 240 months with minimum parole eligibility of 48 months for use of
24 a deadly weapon;

25 Count 5: a maximum of 240 months with minimum parole eligibility of 48 months plus an
26 equal and consecutive term of 240 months with minimum parole eligibility of 48 months for use of
27 a deadly weapon;

28 Count 6: a maximum of 48 months with a minimum parole eligibility of 12 months;

1 Count 7: a maximum of 72 months with a minimum parole eligibility of 12 months;

2 Count 8: a maximum of 180 months with a minimum parole eligibility of 40 months plus an
3 equal and consecutive term of 180 months with a minimum parole eligibility of 40 months for use
4 of a deadly weapon;

5 Count 9: a maximum of 180 months with a minimum parole eligibility of 40 months plus an
6 equal and consecutive term of 180 months with a minimum parole eligibility of 40 months for use
7 of a deadly weapon;

8 Count 10: a maximum of 72 months with a minimum parole eligibility of 16 months;

9 Count 11: a maximum of 72 months with a minimum parole eligibility of 16 months;

10 All counts to run concurrent with credit for time served of 300 days.

11 (b) has the sentence been stayed pending appeal? No.

12 (c) was the defendant admitted to bail pending appeal? No.

13 3. Was counsel in the district court appointed [Yes] or retained ? [No]

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

15 Attorney: Todd M. Leventhal Telephone (702) 472-8686

16 Firm: Leventhal & Associates

17 Address: 626 S. Third Street, Las Vegas, Nevada 89101

18 Client(s): Jemar D. Matthews

19 5. Is appellate counsel appointed [Yes] or retained [No]?

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

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

23 Attorney General
24 State of Nevada
Victor H Schulze , II
25 Nevada Attorney General's Office
555 E. Washington Ave
Suite 3900
26 Las Vegas, NV 89101
Email: VSchulze@ag.nv.gov

27 Office of the District Attorney
28 Michelle Y. Jobe

1 Regional Justice Center, Third Floor
2 200 Lewis Avenue
3 PO Box 552212
4 Las Vegas, Nevada 89155

5 7. Nature of disposition below

- 6 ☐ Judgment after bench trial ☐ Grant of pretrial habeas
7 ☐ Judgment after jury verdict ☐ Grant of motion to suppress evidence
8 ☐ Judgment upon guilty plea ☒ Post-conviction habeas (NRS ch. 34)
9 ☐ Grant of pretrial motion to dismiss ☐ grant ☒ denial
10 ☐ Parole/probation revocation
11 ☐ Motion for new trial
12 ☐ grant ☐ denial
13 ☐ Motion to withdraw guilty plea
14 ☐ grant ☐ denial

15 8. Does this appeal raise issues concerning any of the following: No.

- 16 ☐ death sentence ☐ juvenile offender
17 ☐ life sentence ☐ pretrial proceedings

18 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?

- 19 ☒ Yes ☐ No

20 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):

21 Matthews v. State, Nos. 50052, 62241
22 Joshlin v. State, Nos. 49947, 58881

23 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):

24 Matthews v. State, post-conviction proceedings, 06C228460
25 Joshlin v. State, post-conviction proceedings, 06C228460
26 Matthews v. State, federal habeas proceedings, 2:14-cv-00472-GMN-PAL
27 Joshlin v. State, federal habeas proceedings, 2:13-cv-01014-JAD-NJK

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

Mr. Matthews pursued a pro se post-conviction petition which was denied by the court below.

13. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Ineffective Assistance of Counsel for failure to file pre-trial motion for fourth amendment violation (seizure of the person).
2. Ineffective Assistance of Counsel for failure to file motion based on illegal line-up once defendant invoked his right to counsel.
3. Ineffective Assistance of Counsel for failure to object to *Crawford* violation for use of police log of event.
4. Ineffective Assistance of Counsel for due process violation for cumulative error.

1 14. Constitutional issues: If the State is not a party and if this appeal challenges the constitutionality
2 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?

3 ☒ N/A

☐ Yes

☐ No.

4 If not, explain:

5 15. Issues of first impression or of public interest. Does this appeal present a substantial legal issue
6 of first impression in this jurisdiction or one affecting an important public interest?

First impression: ☐ Yes ☒ No

Public interest: ☐ Yes ☒ No

7 16. Length of trial. If this action proceeded to trial or evidentiary hearing in the district court, how
8 many days did the trial or evidentiary hearing last?

Six days.

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

☒ Yes ☐ No

11 **TIMELINESS OF NOTICE OF APPEAL**

12 18. Date district court announced decision, sentence or order appealed from: October 2, 2014.

13 19. Date of entry of written judgment or order appealed from:

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

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

(a) Was service by delivery ☐ or by mail ☒

17 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

Arrest judgment: Date filed:

19 New trial (newly
discovered evidence) Date filed:

20 New trial (other grounds) Date filed:

(b) Date of entry of written order resolving motion:

21 22. Date notice of appeal filed: November 6, 2014.

22 23. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b),
23 NRS 34.560, NRS 34.575, NRS 177.015(2), or other:

Response: NRAP 4(b).

24 **SUBSTANTIVE APPEALABILITY**

25 24. Specify statute, rule or other authority that grants this court jurisdiction to review from:

26 NRS 34. 575(1) [X]

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VERIFICATION

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

<u>Jemar D. Matthews</u>	<u>Todd M. Leventhal, Esq.</u>
Name of appellant	Name of counsel of record
<u>November 17, 2014</u>	<u>/s/ Todd M. Leventhal, Esq.</u>
Date	Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 17th day of November, 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 prepared to the following addresses:

Victor H Schulze , II	Office of the District Attorney
Nevada Attorney General's Office	Michelle Y. Jobe
555 E. Washington Ave	Regional Justice Center, Third Floor
Suite 3900	200 Lewis Avenue
Las Vegas, NV 89101	PO Box 552212
Email: VSchulze@ag.nv.gov	Las Vegas, Nevada 89155

/s/ Maribel Godinez
An employee of Leventhal & Associates