

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Electronically Filed
Mar 30 2015 03:03 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

LUIS HIDALGO, III,
Appellant,
vs.

Case No. 67640

THE STATE OF NEVADA,
Respondent,
_____ /

DOCKETING STATEMENT CRIMINAL APPEALS

GENERAL INFORMATION

1. Judicial District: Eighth Judicial District. County: Clark. Judge: Hon.
Valerie Adair. District Ct. Case No.: C212667.

2. If the defendant was given a sentence?

(a) What is the sentence?

Two consecutive life sentences, and three concurrent terms.

(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?

Retained.

4. Attorney filing this docketing statement: Attorney: Richard F. Cornell,
Telephone: 775/329-1141; Firm: Law Offices of Richard F. Cornell; Address: 150
Ridge Street, Second Floor, Reno, Nevada 89501; client: Appellant, Luis Hidalgo,
III.

5. Is appellate counsel appointed or retained?

Retained.

6. Attorney(s) representing respondent(s): Attorney: Marc DiGiacomo;
Telephone: 702/671-2500; Firm: Clark County District Attorney's Office;
Address: 200 Lewis Ave. Las Vegas, Nevada 89101; Client(s): The State of
Nevada, on relation of the Warden of the Correctional Center where Appellant is
housed and the Director of the Department of Corrections.

7. Nature of disposition below:

Post-Conviction *Habeas* denial.

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 manner?

No opinion.

10. Pending and prior proceedings in this court. List the case and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Direct appeal: Hidalgo v. State, no. 54272.

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:

None to the undersigned's knowledge. There may be a pending *habeas* proceeding involving the co-defendant, Luis Hidalgo, Jr.; the undersigned has received conflicting reports on that matter.

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

After a lengthy jury trial, Appellant was tried and convicted of a four-count indictment charging conspiracy to commit murder, second degree murder with use of deadly weapon, and two counts of solicitation to commit murder. Appellant was sentenced to 120 months to life with an equal and consecutive term pursuant to NRS 193.165, with other sentences to run concurrently thereto. This Court entered an Order of Affirmance on June 21, 2012. After an unsuccessful Petition

for Writ of Certiorari to the United States Supreme Court, this Court issued its Remittitur on April 17, 2013. Petitioner filed a three ground Petition for Writ of *Habeas Corpus* on January 2, 2014. He timely filed a Supplemental Petition adding two more grounds. The court below granted an evidentiary hearing. At the conclusion of the hearing the court summarily denied the Writ Petition from the bench. Subsequently the court below entered its written Findings of Fact, Conclusions of Law and Order on March 12, 2015, with Notice of Entry thereof on March 16, 2015.

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

Did the court below impinge Appellant's Fifth, Sixth and Fourteenth Amendments Rights to a fair trial, to due process of law, and to effective assistance of counsel in the following regards, individually or cumulatively:

a. Counsel did not tender an instruction to give to the jury, directing the jury not to find the weapon enhancement if the jury were to find Appellant guilty of a second degree murder on a conspiracy theory, absent evidence of use of a weapon as part of the conspiracy.

b. Counsel failed and refused to tender a jury instruction that out-of-court statements made by co-conspirators may not be considered against the defendant if the statements themselves are the only evidence of the defendant's participation in

the conspiracy.

c. Counsel failed to object to Instructions 19, 20 and 22 and failed to tender instructions that more precisely defined the judge - made concepts of “vicarious liability for a second degree murder”, consistently with the statutory elements of NRS 200.030(2) and 200.020(2).

d. Counsel did not seek a “Morales” severance (i.e., bifurcation) in the middle of trial in order to gain the admission of Jayson Taoipu’s testimony from the Counts trial.

e. Counsel failed to file a Motion to Sever the Trial of the Solicitation of Murder Counts, which occurred after the murder of Hadland, from the Murder and Conspiracy to Murder Counts.

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?

Not applicable.

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? This appeal presents several substantial legal issues of

first impression.

Public interest: Yes.

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?

Jury trial: 14 days. Evidentiary hearing post-trial: ½ day.

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

See: NRAP 34(f).

TIMELINESS OF NOTICE OF APPEAL

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

December 15, 2014.

19. Date of entry of written judgment or order appeal from:

Written judgment entered March 12, 2015; Notice of Entry thereof entered March 16, 2015.

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

N/A.

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:

March 16, 2015. Service was by mail.

21. If the time for filing the notice of appeal was tolled by a post judgment motion, ...

N/A.

22. Date notice of appeal filed:

March 23, 2015.

23. Specify statute or rule governing the time limit for filing the notice of appeal:

NRS 34.575(1) [30 days].

SUBSTANTIVE APPEALABILITY

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

NRS 34.575(1).

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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.

Luis Hidalgo, III
Name of Appellant

Richard F. Cornell
Name of counsel on record

March 30, 2015
Date


Signature of counsel on record

CERTIFICATE OF SERVICE


I certify that on the 30th day of March, 2015, 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 addresses:

Marc DiGiacamo, Chief Deputy District Attorney
Clark County District Attorney's Office,
200 Lewis Ave.
Las Vegas, NV 89155

DATED this 30th day of March, 2015.


Signature