

**FILED**

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

**MAY 24 2016**

**INDICATE FULL CAPTION:**

JERICHO JAMES BRIOADY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 70311

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Smallegan*  
DEPUTY CLERK

**DOCKETING STATEMENT  
CRIMINAL APPEALS**

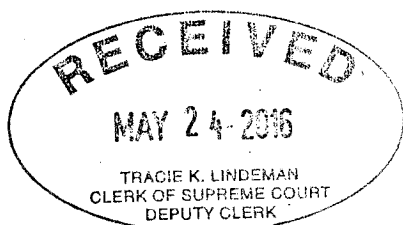
(Including appeals from pretrial and post-conviction  
rulings and other requests for post-conviction relief)

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions.



*16-16314*

1. Judicial District SECOND

County WASHOE

Judge SCOTT FREEMAN

District Ct. Case No. CR140357

2. If the defendant was given a sentence,

(a) what is the sentence?

LIFE IN PRISON WITH PAROLE ELIGIBILITY AFTER SERVICE OF TEN YEARS  
WITH A CONCURRENT TERM OF LIFE IN PRISON WITH PAROLE ELIGIBILITY  
AFTER SERVICE OF TEN YEARS

(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 filling this docketing statement:

Attorney KARLA K. BUTKO, ESQ.

Telephone 775-786-7118

Firm KARLA K. BUTKO, LTD.

Address: P. O. BOX 1249 VERDI, NV 89439

Client(s) JERICO JAMES BRIOADY

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 TERRENCE P. McCARTHY, ESQ. Telephone 775-328-3200

Firm WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

Address: P. O. BOX 11130 RENO NV 89520

Client(s) \_\_\_\_\_

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 checked="" type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Grant of motion to suppress evidence  |
| <input type="checkbox"/> Judgment upon guilty plea                        | <input type="checkbox"/> Post-conviction habeas (NRS ch. 34)   |
| <input type="checkbox"/> Grant of pretrial motion to dismiss              | <input type="checkbox"/> grant <input type="checkbox"/> denial |
| <input type="checkbox"/> Parole/probation revocation                      | <input type="checkbox"/> Other disposition (specify):          |
| <input checked="" type="checkbox"/> Motion for new trial                  |  |
| <input type="checkbox"/> grant <input checked="" 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:**

- |   |   |
|---|---|
| <input type="checkbox"/> death sentence           | <input type="checkbox"/> juvenile offender    |
| <input checked="" type="checkbox"/> life sentence | <input type="checkbox"/> 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):

None

**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):

CR14-0357, Trial case in 2nd Judicial District Court, State of Nevada v. Jericho James Brioday.

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

Mr. Brioday was charged with various offenses. There were pre-trial motions which were ruled upon by the district court which dealt with admission of evidence, allegations of Miranda violation. The case proceeded to a four day jury trial. Mr. Brioday was acquitted of two counsel of sexual assault on a minor but convicted on two counts of lewdness with a minor. It was discovered before sentencing that a juror failed to disclose that she was a prior victim of sexual abuse as a minor. That same juror disclosed that fact to the rest of the jury during deliberations. A motion for new trial based upon juror misconduct was denied by the district court. The case proceeded to sentencing and Mr. Brioday was sentenced to two concurrent terms of life in prison, with parole eligibility after service of ten years.

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

1. Juror misconduct violated the 5th Amendment right to a fair trial and due process under the law.
2. The district court erred when it failed to grant the motion to suppress the statement provided by Mr. Brioady at the Sparks Police Department as it was obtained in violation of the Fifth Amendment, his right to remain silent, right to counsel and Miranda.
3. The district court erred when it failed to admit evidence that the victim in the case had made prior false allegations of sexual misconduct against another male, in violation of the rights of confrontation found in the 6th Amendment.
4. The credit for time served granted by the Court was erroneous.
5. There was insufficient evidence under the 6th Amendment and Jackson v. Virginia, to sustain the conviction.
6. Cumulative error warrants a new trial.

**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. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is properly assigned to the Nevada Supreme Court. The sentence imposed is a life sentence. The case proceeded to jury trial. The jury misconduct issue is an issue of first impression for the Court. The district court's ruling on jury misconduct imposed a burden upon the defendant wherein there would never be juror misconduct worthy of a remedy. This issue needs the review of the Nevada Supreme Court.

**16. 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

**17. 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?

4 days

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

☒ Yes ☐ No

### TIMELINESS OF NOTICE OF APPEAL

19. Date district court announced decision, sentence or order appealed from Apr 11, 2016

20. Date of entry of written judgment or order appealed from Apr 11, 2016

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

21. 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 ☐

22. 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 (newly  
discovered evidence) \_\_\_\_\_ Date filed \_\_\_\_\_

New trial (other grounds) Juror miscon. Date filed Feb 10, 2016

(b) Date of entry of written order resolving motion Apr 11, 2016

23. Date notice of appeal filed Apr 28, 2016

24. 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(b); NRS 177.015(2)

### SUBSTANTIVE APPEALABILITY

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

|                              |                       |
|------------------------------|-----------------------|
| NRS 177.015(1)(b) <u>XXX</u> | NRS 34.560 _____      |
| NRS 177.015(1)(c) _____      | NRS 34.575(1) _____   |
| NRS 177.015(2) _____         | NRS 34.560(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.

JERICH JAMES BRIOADY

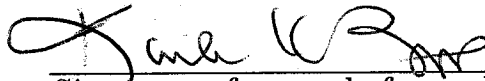
Name of appellant

May 23, 2016

Date

KARLA K. BUTKO

Name of counsel of record



Signature of counsel of record

### CERTIFICATE OF SERVICE

I certify that on the 23rd day of 20 16, 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):

Washoe County District Attorney's Office

1 South Sierra Street, Fourth Floor Reno, NV 89501

Dated this 23rd day of May, 20 16

  
Signature