

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Dvontae Richard,

Appellant

vs.

State of Nevada,

Respondent

No. 70542

Electronically Filed
Jun 30 2016 10:39 a.m.

DOCKETING STATEMENT
CRIMINAL APPEALS
Tracie K. Lindeman
Clerk of Supreme Court

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

GENERAL INFORMATION

1. Judicial District Eighth County Clark
Judge Judge Barker (pretrial) Judge Israel (trial) District Ct Case No. C-15-308258-1

2. If the defendant was given a sentence,

(a) what is the sentence?

Ct 1 - conspiracy robbery - 12 to 72; Ct 2 - burglary possession of a firearm -36 to 180 consecutive to Ct 1; Ct 3 - grand larceny firearm - 24 to 120 consecutive to Ct 2; Ct 4 - grand larceny - 24 to 60 concurrent Ct 3; Ct 5 - robbery with use deadly weapon - 72 to 180 consecutive 48 to 180 consecutive to Ct 1, 2, 3; Ct 7 - conspiracy robbery - 28 to 72 concurrent to all counts; Ct 8 - attempt robbery - 48 to 120 concurrent all counts; Ct 9 - battery with intent to commit a crime - 48 to 120 concurrent to all counts.

(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 Brent D. Percival Telephone 702-868-5650

Firm: Law Office of Brent D. Percival

Address: 630 South Third Street, Las Vegas, Nevada 89101

Client(s) Dvontae Richard

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 Steven Owens Telephone 702-671-2500

Firm: Clark County District Attorneys office

Address: 200 Lewis Ave., 3rd Floor, Las Vegas NV 89155

Client(s) State of Nevada

Attorney _____ Telephone _____

Firm: _____

Address: _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- ☒ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Judgment upon guilty plea
- ☐ Grant of pretrial motion to dismiss
- ☐ Parole/Probation revocation
- ☐ Motion for new trial
 - ☐ grant ☐ denial
- ☐ Motion to withdraw guilty plea
 - ☐ grant ☐ denial

- ☐ Grant of pretrial habeas
- ☐ Grant of motion to suppress evidence
- ☐ Post-conviction habeas (NRS ch. 34)
 - ☐ grant ☐ denial
- ☐ Other disposition (specify)

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):

N/A

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):

N/A

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

Appellant Dvontae Richard was arrested on May 24, 2015 and was charged by a criminal complaint with committing five (5) crimes related to a robbery at Terrible Herst that occurred on the date of Richard's arrest. Subsequently, the state filed an amended complaint which added charges related to the Terrible Herst robbery and also added charges related to a May 20, 2015 robbery at the Bank of America ATM which had been charged by a separate criminal complaint. The state filed a Second Amended Complaint which contained 17 charges related to both the May 20th and May 25th incidents. After the preliminary hearing, Mr. Richard was bound over for trial on all but one of the charges in the Second Amended Complaint.

Prior to trial, a motion to suppress Mr. Richard's two statements given to police while he was admitted to UMC due to the gun shot wound he sustained. After an evidentiary hearing, the district court found the statements were voluntary and made after Miranda rights were given. Trial began on February 22, 2016 and concluded on February 26, 2016 when the jury acquitted Mr. Richard of kidnapping but convicted him of committing crimes enunciated in counts 1-5 and 7-9. Mr. Richard was sentenced as set forth on page 1 of this document. A timely notice of appeal was filed on June 1, 2016 and June 9, 2016.

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

Whether Mr. Richard was denied his Fifth and Fourteenth Amendment rights by the admission of two statements which were involuntary? Whether these rights were further violated by the district court's refusal to reconsider the voluntariness of his statements during the trial?

Whether Mr. Richard was denied his Sixth and Fourteenth Amendment rights by the district court's grant of a challenge for cause made as to one juror?

Whether Mr. Richard was denied his Sixth and Fourteenth Amendment rights to a jury which is drawn from a fair cross section of the community?

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?

3 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 5/25/2016

19. Date of entry of written judgment or order appeal from 5/27/2016 and 6/7/2016

(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 June 1, 2016 and June 9, 2016

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
NRAP 4(b)(1)(A)

SUBSTANTIVE APPEALABILITY

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

NRS 177.015(1)(b) <u>xx</u>	NRS 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) _____
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.

Dvontae Richard

Name of appellant

June 28, 2016

Date

Brent D. Percival

Name of counsel of record

/s/ Brent D. Percival

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 30th day of June, 2016, I served a copy of this completed docketing statement upon all counsel of record: E-filed with service through master service list

☐ by personally serving it upon him/her; or

☐ by mailing it by first class mail with sufficient postage prepaid to the following address(es):

Dated this 30th day of June, 2016.

/s/ Brent D. Percival

Signature