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

4 TROY MULLNER

5 Appellant,

6 vs.

7 THE STATE OF NEVADA,

8 Respondent.

S.Ct. No. 71030

D.C. No. C283463

Electronically Filed  
Oct 07 2016 09:36 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CRIMINAL APPEALS

9  
10 **GENERAL INFORMATION**

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12 1. Eighth Judicial District; Clark County  
Judge Valerie Adair; District Court Case No. C283463

13 2. Sentence:

14  
15 a) On January 23, 2014, Mullner was adjudged a habitual criminal and sentenced to  
16 TEN (10) YEARS to LIFE on Count 1; TEN (10) YEARS to LIFE on COUNT 2 to  
17 run consecutive to Count 1; TWO (2) to SIX (6) YEARS on COUNT 3 to run  
18 consecutive to COUNT 2; TEN (10) YEARS to LIFE on COUNT 4 to run  
19 concurrent to Count 3; TEN (10) YEARS to LIFE on COUNT 5 to run concurrent  
20 to Count 4; TEN (10) YEARS to LIFE on COUNT 6 to run concurrent to COUNT  
21 5; TEN (10) YEARS to LIFE on COUNT 7 to run concurrent to COUNT 6; TEN  
22 (10) YEARS to LIFE on COUNT 8 to run concurrent to COUNT 7; TEN (10)  
23 YEARS to LIFE on COUNT 9 to run concurrent to COUNT 8; and ONE (1) to  
24 FOUR (4) YEARS on COUNT 10 to run consecutive to COUNT 9. Mullner  
25 received FIVE HUNDRED SEVENTY-TWO (572) DAYS credit for time served.

26 b) The Appellant's sentence has not been stayed.

27  
28 c) The Appellant has not been admitted to bail pending appeal.

3. Appellant was represented by appointed counsel in District Court.

4. Attorney filing this docketing statement:  
Jean J. Schwartzer  
10620 Southern Highlands Parkway  
Suite 110- 473  
Las Vegas, NV 89141  
(702) 979-9941

5. Appellate counsel is appointed.

6. Respondent Attorney:  
Deputy District Attorney Steven Owens;  
Clark County District Attorney's Office  
200 Lewis Avenue, 9<sup>th</sup> Floor  
Las Vegas, Nevada 89155  
(702) 671-2750

7. Disposition Below:

a) Judgment of Conviction Upon Guilty Plea

b) Grant of Petition of Writ of Habeas corpus (Post-Conviction)—this is a  
Lozada Appeal.)

8. N/A

9. Appellant is not in favor of proceeding in an expedited manner.

10. Prior proceedings in this court:

Case No. 65449 – Mullner v. State of Nevada

Case No. 65542 – Mullner v. Kocka, Esq.

11. In **Case No. 65449**, Appellant filed an untimely Notice of Appeal from his  
Judgment of Conviction. This Court dismissed his appeal.

In **Case No 65542**, Appellant filed a Petition for Writ of Mandamus  
informing this Court that his trial attorney, Frank Kocka, Esq., did not file a

1 Notice of Appeal on his behalf despite Appellant asking Mr. Kocka to do  
2 so in writing and in person. This Court denied the Petition.

3  
4 Appellant then filed a **Petition for Writ of Habeas Corpus** (Post-  
5 Conviction) in District Court alleging deprivation of appeal. This Petition  
6 was granted and this Lozada appeal follows.

7  
8 12. An evidentiary hearing on Appellant's Petition for Writ of Habeas Corpus  
9 (Post-conviction), which was filed after this Court dismissed Appellant's  
10 initial direct appeal due to an untimely Notice of Appeal, was held. At the  
11 close of the hearing, the District Court found that Appellant was denied his  
12 right to a direct appeal and granted him a Lozada appeal. Therefore this  
13 appeal is from Appellant's Judgment of Conviction.

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15 13. Issues Appellant is raising in this appeal from his Judgment of Conviction:  
16 a) Appellant's sentence amounts to cruel and unusual punishment in  
17 violation of the Eighth Amendment to the United States Constitution as  
18 well as Article 1, Section 6 of the Nevada Constitution.  
19 b) The District Court erred in adjudicating Appellant a large habitual  
20 criminal based upon stale prior convictions and a conviction stemming  
21 from a crime committed as a juvenile.

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23 14. N/A

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25 15. First Impression? Yes.

26 Public Interest? Yes.

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28 16. N/A: Appellant entered a plea of guilty.

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2 17. I do not object to the submission of this appeal for disposition without oral  
3 argument.

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5 **TIMELINESS OF NOTICE OF APPEAL**

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7 18. Judgment of Conviction was entered on January 28, 2014. However, Appellant  
8 filed a Petition for Writ of Habeas Corpus (Post-Conviction) alleging  
9 deprivation of appeal. The District Court granted the Petition. The Findings of  
10 Fact, Conclusion of Law and Order was filed on August 10, 2016.

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12 19. Notice of Entry of Decision and Order was Filed on August 11, 2016

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14 20. Service of Notice was done via mail.

15  
16 21. No.

17  
18 22. The Notice of Appeal was filed on August 11, 2016 by the District Court Clerk  
19 pursuant to NRAP 4(c)(1)(B)(iii).

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21 23. The statute governing the time limit for filing the Notice of Appeal is NRAP  
22 4(b). However, Appellant filed a Petition for Writ of Habeas Corpus (Post-  
23 Conviction) alleging deprivation of appeal. The District Court granted the  
24 Petition and Appellant a Lozada appeal and filed the Notice of Appeal  
25 pursuant to NRAP 4(c)(1)(B)(iii).

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27 24. The statute which grants this Court jurisdiction to review the instant appeal is  
28 NRS 177.015(3).

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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.

Troy Mullner

Jean J. Schwartzer

October 6 , 2016

/s/ Jean Schwartzer

Dated this 6<sup>th</sup> day of October, 2016.

Respectfully submitted,

/s/ Jean J. Schwartzer  
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ADAM LAXALT, ESQ.  
Nevada Attorney General

STEVEN S. OWENS, ESQ.  
Chief Deputy District Attorney

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