

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

**INDICATE FULL CAPTION:**

DANIEL JAMES RODRIGUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71920

Electronically Filed  
Jan 04 2017 02:02 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
**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.

Revised December 2015

1. Judicial District Second County Washoe

Judge David Hardy/Lynne Simons District Ct. Case No. CR16-0567

2. If the defendant was given a sentence,

(a) what is the sentence?

4-10 years prison consecutive to 1-10 years, suspended with probation up to 5 years. Credit for 53 days time served.

(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 Martin H. Wiener Telephone (775) 322-4008

Firm Law Offices of Martin H. Wiener

Address: 316 S Arlington Ave, Reno, NV 89501

Client(s) Daniel James Rodriguez

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 Washoe County District Attorney Telephone (775) 328-3200

Firm \_\_\_\_\_

Address: One S Sierra St, 4th Floor, Reno, NV 89501

Client(s) State of Nevada

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 type="checkbox"/> Motion for new trial                   |  |
| <input type="checkbox"/> grant <input 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 type="checkbox"/> life sentence  | <input checked="" 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):

None.

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

Daniel was charged with battery with a deadly weapon causing substantial bodily harm to a person over age 60. The jury acquitted him of the substantial harm, but convicted on the others. The weapon was a screw driver, and the defense challenged whether a screw driver could be a deadly weapon as an offense element. The judge denied that challenge, instructing the jury on the "functional test" definition, not the "inherently dangerous" definition. Without the deadly weapon element, the conviction offense was only for misdemeanor battery, also reducing the elderly victim sentence enhancement to a misdemeanor level.

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

Whether the jury was instructed on an incorrect definition of "deadly weapon"; and, whether the conviction for elderly victim was against the weight of the evidence and inconsistent with the acquittal on the substantial harm element.

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:

Rule 17(b)(1) exempts this appeal from Court of Appeals assignment because it involves conviction for a Category B felony.

**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?

2 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 11/9/16

20. Date of entry of written judgment or order appealed from 11/15/16

(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) \_\_\_\_\_ Date filed \_\_\_\_\_

(b) Date of entry of written order resolving motion \_\_\_\_\_

23. Date notice of appeal filed 12/9/16

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)(1)

**SUBSTANTIVE APPEALABILITY**

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

NRS 177.015(1)(b) _____	NRS 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) _____
NRS 177.015(2) _____	NRS 34.560(2) _____
NRS 177.015(3) <u>  X  </u> _____	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.

Daniel James Rodriguez  
Name of appellant

Martin H. Wiener  
Name of counsel of record

1/4/17  
Date

/s/ Martin H. Wiener  
Signature of counsel of record

**CERTIFICATE OF SERVICE**

I certify that on the   4th   day of   20     17  , 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):
- By emailing it to Respondent's counsel of record,  
Washoe County District Attorney

Dated this   4th   day of   January  , 20   17  .

/s/ Barbara Oltman  
Signature