

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BRYAN MICHAEL FERGASON,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Respondent.

No. 72640

DOCKETING STATEMENT
CIVIL APPEALS

FILED

MAY 08 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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 and settlement conferences, 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, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.



17-15220

1. Judicial District EIGHTH Department VIII (8)
County CLARK Judge Douglas Smith
District Ct. Case No. A 537416

2. Attorney filing this docketing statement:

Attorney Brian Ferguson (Pro Per) Telephone None - incarcerated
Firm HOSP / P.O. BOX 650 Indian Springs, NV 89070
Address

Client(s) Self - Appellant Brian Ferguson

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Adele V. Karoun Telephone (702) 382-0711
Firm MARQUIS AURBACH COFFING 10001 PARK ROW DR. Las Vegas, NV 89145
Address

Client(s) LAS Vegas Metropolitan Police Department

Attorney Matthew Christian Telephone (702) 828-4970
Firm 400 S. Martin Luther King Blvd. Las Vegas, NV 89106
Address

Client(s) Las Vegas Metropolitan Police Department

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|-------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following? No,

- ☐ Child Custody Not Applicable.
- ☐ Venue Not Applicable.
- ☐ Termination of parental rights Not Applicable.

6. 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:

PRIOR PROCEEDINGS

Bryan Ferguson v. LUMPD

NSC NO. 62357

131 Nev. Advance Opinion 94

(Filed Dec 24, 2015) 364 P.3d 542.

Related Supreme Court Cases:
60547, 60809, 61094, 61616,
62264, 71680, 72379

* (Listed in SC Docket sheet)
(Dated April 24, 2017)

MONROE v. LUMPD

NSC NO. 61616 - Appeal Dismissed

Holmes v. LUMPD

NSC NO. 62274 - Reversed and Remanded

Holmes v. LUMPD

NSC NO. 60547 - Dismissed

Holmes v. LUMPD

NSC NO. 60804 - Dismissed

Holmes v. LUMPD

NSC NO. 61094 - Dismissed

MONROE v. LUMPD

NSC NO. 62264 Affirmed in Part
and Reversed in Part
and Remanded

Pending Proceedings

Holmes v. LUMPD

NSC NO. 72379

Monroe v. LUMPD

NSC NO. 71680

List may be incomplete, Appellant
seeks leave to supplement record @ 16
and 17 if needed

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

PRIOR PROCEEDINGS

Underlying Criminal Cases/ Appeals used as basis
for Forfeiture

The State of Nevada v. Bryan Ferguson

Case No. C228752 Dept. 4 - Clark County (April 6, 2009)

The State of Nevada v. Daimon Monroe

Case No. C228752-1 Dept 4 - Clark County (Sept 17, 2010)

The State of Nevada v. Robert Holmes

Case No. C228752 Dept 7 - Clark County (Jan 5, 2014)

The State of Nevada v. Tonya Trevarthen

Case No. C228752 Dept 7 - Clark County (Oct 3, 2008)

The State of Nevada v. Daimon Monroe

Case No. C228754 - Dept 20 - Clark County (Aug 4, 2008)

The State of Nevada v. Bryan Ferguson

Case No. C228754 Dept 1 - Clark County (March 30, 2010)

Nevada Sup Ct

Case No. 6152877
71222

Pending Proceedings

Ferguson v. Nevada

Case No. 2:14-CV-00179-GMN-VCF
U.S. Dist. Court - Dist. of Nevada
2254 Habeas Petition

Monroe has pending actions
challenging aspects of the
illegal traffic stop, search and
seizure, and other issues impacting
the basis for Forfeiture not
available to Appellant.

Nevada Sup. Ct

Case No. 62193

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

Civil Forfeiture Proceeding, Plaintiff Lumpo vs. Claimant Bryan Ferguson.

Plaintiff's filed a self-titled Renewed Motion for Summary Judgment after this Honorable Court Reversed and Remanded the Granting of Summary Judgment in the Ferguson v. LUMPO published decision filed December 24, 2015 (No. 62357)¹ 131 Nev. Advance Opinion 94. The motion was the subject of hearings on April 19, 2016; June 28, 2016 (continued); October 18, 2016 (continued); February 7, 2017 (continued); and March 7, 2017 (motion granted). The district court denied Appellant's motions to strike, for discovery, an Evidentiary Hearing, Counsel, to stay the proceedings and related matters.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Whether the Plaintiff failed to present evidence sufficient to satisfy its burden "to present evidence showing an absence of genuine issue of material fact regarding whether the funds seized from Ferguson's bank accounts were subject to forfeiture as proceeds attributable to the commission of a felony" p. in contradiction to the NSC's opinion in Ferguson v. Lumpo, NSC case no. 62357.
- (2) Whether the district court erred by granting Summary Judgment?
- (3) Whether the district court erred by denying the motions and requests for relief filed by Ferguson throughout the proceedings?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Robert Holmes, III v. LUMPO, NSC Case NO. 72379; DC case 07A537416

Daimon Monroe v. LUMPO, NSC Case NO. Unknown; DC case 07A537416
pending
71680

¹ See, also 364 P.3d 592 (2015).

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, 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:

12. Other issues. Does this appeal involve any of the following issues?

☒ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

The Respondent (Plaintiff LUMPP) has failed to comply with this Court's 3 Judge Panel published decision as to the whether assets are subject to forfeiture as proceeds attributable to the commission of a felony. The renewed motion for summary judgment should have been barred (devoted) on the law of the case doctrine and the failure to meet the burden under NRCP 56 (E) as they utilized inadmissible and disputed facts. See, Ferguson v. LUMPP, NVC NO. 62357 (Filed 12/24/2015) 131 Nev. Advance Opinion 131, 364 P.3d 542 (2015). The published opinion covers the seizure of property (U.S. Const.), the public policy and history of forfeiture and the NRS sections involved, and has become precedent on the issues in the state of Nevada.

13. 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:

The case should be retained by the NSC to maintain the uniformity of this Court's decision in Ferguson v. Luma, supra, 364 P.3d 592 (2015).

NRAP 17 not available to Appellant in time for filing (2 week lead time to attend law library) seeks waiver of citing subparagraph(s) of the Rule or Leave to Supplement / Amend, but believed to be NRAP 17(a)(11).

14. Trial. If this action proceeded to trial, how many days did the trial last? Not Applicable

Was it a bench or jury trial? Not Applicable.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from March 17, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: Not Applicable.

Note: The Notice of Appeal was filed March 16, 2017, but is considered timely per NRAP 4(a)(6).

17. Date written notice of entry of judgment or order was served March 20, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax certified mail / return receipt requested.

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing Not applicable

☐ NRCP 52(b) Date of filing Not applicable

☐ NRCP 59 Date of filing Not applicable

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion Not applicable

(c) Date written notice of entry of order resolving tolling motion was served Not applicable

Was service by: Not applicable.

☐ Delivery

☐ Mail

19. Date notice of appeal filed March 22, 2017 (Nevada Supreme Court Docket Sheet).

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

1. 02/06/2017 - Robert Holmes (NSC case No. 72379)
2. Unknown - Daimon Monroe (NSC Case No. 71680)

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1) and NRAP 4(a)(6).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) Motions for Summary Judgment per NRAP 56(c) are appealable.

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This Court reviews a district court's granting of summary judgment "de novo" without deference to the findings of the lower court." Ward v. Safeway Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing GES, Inc. v. Corbett, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001)).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Las Vegas Metropolitan Police Department - Plaintiff

U.S. Currency \$201,656.73 - Defendant

Bryan Michael Ferguson - Claimant

Robert Holmes, III - Claimant

Dalmon Monroe - Claimant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Civil forfeiture action - the Defendant is the property seized.

Robert Holmes, III - Separate Summary Judgment granted, on Appeal
NSC Number 72379

Dalmon Monroe - Separate Summary Judgment proceedings not available
to Appellant Ferguson, NSC Number 71680.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Robert Holmes, III, on appeal, NSC Case No 72379.

Dalmon Monroe, March 7, 2017 minutes reflect April 18, 2017 hearing
on the motion for summary judgment as to him and judgment
on April 19, 2017, see also NSC Case No 71680.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Not Applicable.

(b) Specify the parties remaining below:

Not applicable.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Not Applicable.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

Appellant seeks waiver of Reg. to attach
Due to hardship of copy and mailing costs,
and leave to supplement.

1. Renewed motion for Summary Judgment Against Def. Below Ferguson - filed (03/15/2016) 22 pages
 2. Claimant's opposition to Plaintiff's Renewed motion for Summary Judgment and other Relief - filed (05/18/2016) 21 pages
 3. Reply in Support of Renewed motion for Summary Judgment - filed (06/01/2016) 22 pages (not including exhibits)
 4. Notice of motion and motion to strike and/or Continue Hearing and other Relief - filed (06/16/2016) 11 pages
 5. Opposition to motion to strike and/or Cont. Hearing and other Relief - filed (07/12/2016) 2 pages
 6. Reply to opposition (H.S.) Filed (07/12/2016) 10 pages.*
 7. Supplement to Renewed motion for Summary Judgment - filed (02/09/2017) 55 pages (includes exhibits)
 8. Motion to Strike Supplement and other Relief - filed (02/23/2017) 10 pages.
 9. Reply in Support of Supplement to Renewed motion for Summary Judgment - filed (03/01/2017) 6 pages.*
 10. Findings of Fact, Conclusions of Law, and Order - filed (03/17/2017) 9 pages
 11. Motion for Reconsideration and other Relief - filed (03/16/2017) 2 pages
 12. Opposition to motion for Reconsideration - filed (03/27/2017) 9 pages
- * Orders not avail. in time for this filing.

Approx. 196
Pages total
(not all)
Reg. Docs
avail. to
Appellant

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Bryan Ferguson
Name of appellant

NONE - Pro Se
Name of counsel of record

5-1-17
Date

Not applicable
Signature of counsel of record

Nevada United States
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 1 day of May, 2017, 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): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Adele V. Karawm, Esq
10001 Park Run Drive
Las Vegas, NV 89145

Matthew Christian, Esq.
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106

Attorneys for Plaintiff, LUMPD

Dated this 1 day of May, 2017

[Signature]
Signature BRYAN MICHAEL FERGASON # 96803