



IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DONOVINE MATHEWS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 72701

Electronically Filed
Apr 20 2017 04:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT

CRIMINAL APPEALS

(Including pretrial and post-conviction
habeas corpus and petitions for post-
conviction relief)

GENERAL INFORMATION

1. Judicial District Eighth County Clark
Judge Michelle Leavitt District Ct. No. C-16-313047-1
2. If the defendant was given a sentence,
(a) what is the sentence? Child Abuse, Neglect or Endangerment With Substantial Harm and sentenced to \$25 Admin. Fee; \$3 DNA collection fee; 36-120 months in prison; Consecutive to C304254-1; 0 days CTS; \$150 DNA analysis fee and genetic testing; previously imposed, the fee and testing in the current case are waived.
(b) has the sentence been stayed pending appeal? No.
(c) was defendant admitted to bail pending appeal? No.
3. Was counsel in district court appointed XX or retained _____?

4. Attorney filing this docketing statement:

Attorney Deborah L. Westbrook, #9285 Telephone 455-4576
Firm Clark County Public Defender's Office
Address 309 S. Third St., #226
Las Vegas, Nevada 89155
Client Donovine Mathews

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.

5. Is appellate counsel appointed X or retained _____?

6. Attorney(s) representing respondent(s):

Attorney STEVEN B. WOLFSON Telephone 455-4741
Firm Clark County District Attorney's Office
Address 200 S. Third St.
Las Vegas, Nevada 89155
Client(s) The 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 guilt plea | <input type="checkbox"/> Post-conviction relief (NRS ch. 177) |
| <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"/> Post-conviction habeas (NRS ch. 34) |
| <input type="checkbox"/> Motion for new trial | <input type="checkbox"/> grant <input type="checkbox"/> denial |
| <input type="checkbox"/> grant <input type="checkbox"/> denial | <input type="checkbox"/> Other disposition (specify) _____ |
| <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 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 XX

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 which 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: Appellate counsel did not serve as trial counsel; has not completed a thorough review of the lower court proceedings; and is therefore unable to concisely state the nature of the action at the present time.

13. **Issues on appeal.** State specifically all issue(s) in this appeal: Appellate counsel did not serve as trial counsel; has not completed a thorough review of the lower court proceedings; and is therefore unable to concisely state the principal issues on appeal at the present time.

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 with NRAP 44 and NRS 30.130?

N/A _____ Yes _____ No _____ Unknown at this time.

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: Division of Cases Between the Supreme Court and the Court of Appeals." Subsection (b) of Rule 17 provides that certain cases shall "presumptively" be heard and decided by the court of appeals. NOT INCLUDED in the cases to be "presumptively" assigned to the court of appeals are appeals of convictions for persons convicted of Category A and Category B felonies.

No provision of the Nevada Rules of Appellate Procedure suggests that Category A or Category B felonies should be assigned to the court of appeals for resolution.

Pursuant to the Judgment of Conviction, Mr. Mathews was adjudicated guilty of one count of Child Abuse, Neglect or Endangerment with Substantial Harm, which is classified as a "category B" felony.

That because this case is a Category B felony, and because the provisions that "presumptively" assign certain cases to the Court of Appeals expressly exclude cases involving Category B felonies, the Appellant respectfully requests this Court retain this case for resolution:

It is respectfully requested the Nevada Supreme Court retain this case for resolution.

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 XX
Public interest: Yes _____ No XX

17. **Length of trial.** If this action proceeded to trial in the district court, how many days did the trial last?

5 days.

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

Yes XX No _____

TIMELINESS OF NOTICE OF APPEAL

19. Date district court announced decision, sentence or order appealed from 03/07/17

20. Date of entry of written judgment or order appealed from 03/10/17

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

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 N/A
- (a) Was service by delivery or by mail _____ (specify).
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 _____ | Date filed _____ |
| (newly discovered evidence) | |
| New trial _____ | Date filed _____ |
| (other grounds) | |
- (b) Date of entry of written order resolving motion _____
23. Date notice of appeal filed 04/05/17
24. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.710, NRS 34.815, NRS 177.015(2), or other NRAP 4(b)

SUBSTANTIVE APPEALABILITY

25. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from:
- | | |
|--------------------------|--------------------------|
| NRS 177.015(1) (b) _____ | NRS 34.710(3) _____ |
| NRS 177.015(2) _____ | NRS 34.710(4) _____ |
| NRS 177.055 _____ | NRS 34.815 _____ |
| NRS 177.385 _____ | NRS 177.015(3) <u>XX</u> |

VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

Donovine Mathews
Name of appellant

Deborah L. Westbrook
Name of counsel or record

April 20, 2017
Date

/s/ Deborah L. Westbrook, #9285
Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 20th day of April, 2017, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ by personally serving it upon him/her District Attorney Appellate; or
☒ by mailing it by first class mail with sufficient postage prepaid to the following address(es):

STEVEN B. WOLFSON
Clark County District Attorney
Attn: Appellate Division
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155

Dated this 20th day of April, 2017.

/s/ Carrie M. Connolly
Signature