

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

THOMAS WILLIAM MOONEY,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 72736

**DOCKETING STATEMENT
CRIMINAL APPEALS**

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

Electronically Filed
Apr 05 2017 01:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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.

1. Judicial District Fourth County Elko

Judge Alvin R. Kacin District Ct. Case No. CR-FO-16-0304

2. If the defendant was given a sentence,

(a) what is the sentence?

On Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 26 and 27, Mr. Mooney was sentenced to 28-72 months in the Nevada Department of Corrections concurrently with one another. On Counts 28, 29 and 30, Mr. Mooney was sentenced to 24-60 months in the Nevada Department of Corrections concurrently with one another. The sentences in Counts 28, 29 and 30 are to be served consecutively with the other fourteen aforementioned 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 filling this docketing statement:

Attorney Benjamin Christian Gaumond Telephone 775-738-2521

Firm Elko County Public Defender's Office

Address: 571 Idaho Street, Elko, NV 89801.

Client(s) Thomas William Mooney.

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 Tyler J. Ingram Telephone 775-738-3101

Firm Elko County District Attorney's Office

Address: 540 Court Street, Second Floor, Elko, NV 89801

Client(s) The State of Nevada

Attorney Adam P. Laxalt Telephone 775-684-1100

Firm Office of the Attorney General

Address: 100 North Carson Street, Carson City, NV 89104.

Client(s) The State of Nevada

(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 checked="" 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):

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:

Mr. Mooney was convicted at jury trial of fourteen counts of Possession of a Component of an Explosive or Incendiary Device with Intent to Manufacture an Explosive or Incendiary Device or Devices. He also entered conditional guilty pleas to three counts of Possession of a Firearm by a Person Previously Convicted of a Felony Offense. Mr. Mooney's aggregate sentence was 52-132 months in the Nevada Department of Corrections with credit for 361 days time served.

Mr. Mooney filed a motion to suppress evidence. The district court denied said motion. In the conditional guilty plea agreement, Mr. Mooney reserved the right to appeal the denial of said motion.

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

Mr. Mooney alleges that the district court erred in denying his motion to suppress evidence. Evidence that was seized was done so in contravention of the Fourth Amendment to the United States Constitution. Mr. Mooney's parents allowed law enforcement to search Mr. Mooney's bedroom without Mr. Mooney's consent. Mr. Mooney, an adult, had an expectation of privacy in his own bedroom.

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:

Under NRAP 17(b)(1), a judgment based on a plea of guilty is presumptively assigned to the Nevada Court of Appeals. However, under NRAP 17(b)(1), a case is presumptively assigned to the Court of Appeals if it involves "any direct appeal from a judgment of conviction based on a jury verdict that does not involve a conviction for any offenses that are category A or category B felonies[.]" As such, since Mr. Mooney was convicted of fourteen category B felonies at the jury trial, this case should remain in the Nevada Supreme Court.

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?

4 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 Feb 28, 2017

20. Date of entry of written judgment or order appealed from Mar 1, 2017

(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 Mar 29, 2017

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>This statute applies.</u>	Other (specify) <u>NRS 174.035(3)</u>
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.

Thomas William Mooney
Name of appellant

Benjamin Christian Gaumond
Name of counsel of record

Apr 5, 2017
Date


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 5 April 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):

Dated this 5th day of April, 20 17.


Signature