

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

KUPAA KEA,

Appellant,

v.

STATE OF NEVADA,

Respondent.

No. 73016

**DOCKETING STATEMENT
CRIMINAL APPEALS**

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

Electronically Filed
May 31 2017 04:19 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 Second County Washoe

Judge Scott Freeman District Ct. Case No. CR12-0110

2. If the defendant was given a sentence,

(a) what is the sentence?

Pursuant to a guilty plea to two counts of Battery with a Deadly Weapon Causing Substantial Bodily Harm, a violation of NRS 200.481(2)(e), Appellant was sentenced to a minimum of thirty-five (35) months to a maximum of one hundred fifty-six (156) months on each count, to be served consecutively, with credit for one hundred sixty-four (164) days time served.

(b) has the sentence been stayed pending appeal?

No

(c) was defendant admitted to bail pending appeal?

N/A

3. Was counsel in the district court appointed ☒ or retained ☐ ?

4. **Attorney filling this docketing statement:**

Attorney Victoria T. Oldenburg Telephone 775-971-4245

Firm Oldenburg Law Office

Address: P.O. Box 17422
Reno, NV 89511

Client(s) Kupaa Kea

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 Terrence P. McCarthy, Esq. Telephone 775-337-5750

Firm State of Nevada

Address: P.O. Box 11130
Reno, NV 89520

Client(s) State of Nevada

Attorney Adam Laxalt Telephone 775-684-1100

Firm Nevada Attorney General

Address: 100 North Carson Street
Carson City, NV 89701

Client(s) 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 type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant of motion to suppress evidence |
| <input type="checkbox"/> Judgment upon guilty plea | <input checked="" 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 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):

On June 26, 2012, in the underlying criminal matter Appellant filed a direct appeal in Supreme Court Case No. 61160. Defendant also filed an appeal on May 31, 2016 in Supreme Court Case No. 70539, appealing the district court's order denying his Motion to Correct or Modify Illegal Sentence.

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:

On February 14, 2014, Appellant filed a Petition for Writ of Habeas Corpus (Post-Conviction) ("Petition"). On February 23, 2015, the State filed a Motion to Dismiss the Petition. On March 20, 2015 Appellant filed an Opposition to the Motion to Dismiss. On June 22, 2016, Appellant filed a Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) ("Supplemental Petition"). On August 8, 2016, the State filed a Motion to Dismiss the Petition and Supplemental Petition. On September 9, 2016, Appellant filed an Opposition to the Motion to Dismiss. An evidentiary hearing on the Petition and Supplemental Petition was held on January 23, 2017. On April 4, 2017, the district court issued Findings of Fact, Conclusions of Law, and Judgment denying the Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) and issued its Notice of Entry of Order on April 5, 2017.

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

Whether the district court erred in dismissing Appellant's habeas claims that (1) trial counsel was ineffective for failing to investigate the evidence which resulted in Appellant's guilty plea not being knowing, intelligent, and voluntary; (2) trial counsel was ineffective at sentencing; (3) trial counsel was ineffective because she induced Appellant into pleading guilty by promising him he would receive concurrent sentences, and by presenting him with a guilty plea when he was under the influence of strong narcotic medication and not competent to enter a guilty plea; (4) trial counsel was ineffective in her representation of Appellant on his direct appeal; (5) trial counsel was ineffective for failing to investigate his juvenile history as it pertained to the charges against him and sentencing; (6) trial counsel was ineffective for failing to investigate the police interrogation of Appellant and Miranda violations which resulted in Appellant's guilty plea not being knowing, intelligent, and voluntary.

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:

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(1).

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?

_____ 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 04/04/2017

20. Date of entry of written judgment or order appealed from 04/5/2017

(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 May 8, 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

NRS 34.575

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) X _____
NRS 177.015(2) _____	NRS 34.560(2) _____
NRS 177.015(3) _____	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.

Kupaa Kea


Name of appellant

Victoria T. Oldenburg

Name of counsel of record

May 31, 2017

Date



Signature of counsel of record

CERTIFICATE OF SERVICE


I certify that on the May 31 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):

Mr. Terrence P. McCarthy, Esq.
P.O. Box 11130
Reno, NV 89520

Dated this 31st day of May, 20 17.



Signature