

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM WITTER,

Petitioner/Appellant,

vs.

STATE OF NEVADA,

Respondents/Appellees.

Electronically Filed
Aug 01 2017 03:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 73431
District Court Case No. C117513

DOCKETING STATEMENT
CRIMINAL APPEALS

(Death Penalty Habeas Corpus
Case)

GENERAL INFORMATION

1. Judicial District: Eighth County: Clark
Judge: Hon. Stefany Miley District Ct. Case No. C117513
2. If the defendant was given a sentence,
(a) what is the sentence? Death
(b) has the sentence been stayed pending appeal? Yes
(c) was defendant admitted to bail pending appeal? No
3. Was counsel in the district court appointed X or retained ____?

4. Attorney filing this docketing statement:

Attorney David Anthony
Telephone (702) 388-6577
Firm Federal Public Defender District of Nevada
Address 411 East Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101

Client(s) William Witter

5. Is appellate counsel appointed __X__ 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 Steven Owens
Phone (702) 671-2794
Firm District Attorney, Eighth Judicial District, Clark County,
Nevada
Address Regional Justice Center, 200 E. Lewis Ave., Las Vegas,
Nevada
Client(s) State of Nevada

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) denial |

- ☐ Grant of pretrial motion to dismiss
- ☐ Parole/Probation revocation ☐ Other disposition (specify)
- ☐ Motion for new trial
 - ☐ grant ☐ denial
- ☐ Motion to withdraw guilty plea
 - ☐ grant ☐ denial

8. Does this appeal raise issues concerning any of the following:

- X death sentence ☐ juvenile offender
- ☐ life sentence ☐ 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 a manner?

Yes ____ No X

10. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously before this court which are related to this appeal (e.g., separate appeals by co-defendants, appeal after post-conviction proceedings):

Witter v. State, 112 Nev. 908 (1996) (direct appeal)

Witter v. State, No. 36927 (2000) (post-conviction)

Witter v. State, No. 50447 (2007) (post-conviction)

Witter v. State, No. 52964 (2008) (post-conviction)

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):

Witter v. State, 112 Nev. 908 (Nev. 1996) (direct appeal)

Witter v. State, No. C117513, Eighth Judicial District Court,

petition for writ of habeas corpus filed October 27, 1997

Witter v. McDaniel, Case No. 2:01-cv-01034-RCJ-CWH (D. Nev.

Sept. 4, 2001)

Witter v. State, No. C117513, Eighth Judicial District Court,

petition for writ of habeas corpus filed February 14, 2007

Witter v. State, No. C117513, Eighth Judicial District Court,

petition for writ of habeas corpus filed April 28, 2008

Witter v. Baker, Case Nos. 14-99009, 14-99010 (9th Cir.)

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

Witter is appealing the Eighth Judicial District Court's denial of his post-conviction petition.

13. Issues on appeal. State concisely the principal issues(s) in this appeal:

1. Whether Witter's sentence is unconstitutional because the jury in his capital case was not instructed that in order to find him eligible for the death penalty, it must first find that mitigation did not outweigh the statutory aggravating circumstances beyond a reasonable doubt.

2. Whether Witter's sentence is unconstitutional because the Nevada Supreme Court reweighed Witter's eligibility for the death penalty by substituting the decision of the appellate court for the decision of the jury.

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 X Yes No

If not, explain

15. 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 X No

Public interest: Yes X No

16. 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?

The court heard oral argument for one day on April 19, 2017. No trial or evidentiary hearing occurred.

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

Yes X No

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from May 31, 2017.
19. Date of entry of written judgment or order appeal from June 5, 2017. Final judgment was signed by the court on July 6, 2017, and entered on July 12, 2017.

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

N/A

20. 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

The written notice of entry of order was served on June 5, 2017.

(a) Was service by delivery by mail X by e-service (specify).

21. 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: N/A
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 ___N/A___

22. Date notice of appeal filed July 10, 2017.

23. 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), NRS 34.575(1)

SUBSTANTIVE APPEALABILITY

24. 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 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) _____X_____
NRS 177.015(2) _____	NRS 34.575(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.

DATED this 1st day of August, 2017.

Respectfully submitted
Rene L. Valladares
Federal Public Defender

/s/ David Anthony
David Anthony
Assistant Federal Public Defender

/s/ Tiffany Nocon
Tiffany Nocon
Assistant Federal Public Defender

Counsel for William Witter

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 1st day of August, 2017, electronic service of the foregoing DOCKETING STATEMENT CRIMINAL APPEALS shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney
steven.owens@clarkcountyda.com

/s/ Stephanie Young

An Employee of the Federal Public
Defender, District of Nevada