

IN THE SUPREME COURT OF THE STATE OF NEVADA

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WILLIAM P. CASTILLO

Petitioner/Appellant,

v.

TIMOTHY FILSON, ET AL.,

Respondents/Appellees.

Electronically Filed  
Aug 07 2017 12:06 p.m.  
Supreme Court No. 73465 Elizabeth A. Brown  
Clerk of Supreme Court

District Court Case No. C133336-1

(Death Penalty Habeas Corpus Case)

**DOCKETING STATEMENT  
CRIMINAL APPEALS**

**GENERAL INFORMATION**

1. Judicial District: Eighth

Department: XIX

County: Clark

Judge: Hon. William D. Kephart

District Court Case No. C133336-1

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 or retained? Appointed.

4. Attorney filing this docketing statement:

Brad D. Levenson, Assistant Federal Public Defender

(702) 388-6577

411 E. Bonneville Ave., #250, Las Vegas, Nevada, 89101

Client: William P. Castillo

5. Is appellate counsel appointed or retained? Appointed.

6. Attorneys representing respondents:

Steven Wolfson, Clark County District Attorney

Steven S. Owens, Chief Deputy District Attorney

(702) 671-2500

200 Lewis Avenue, Las Vegas, Nevada 89155

Client: State of Nevada

7. Nature of Disposition below: Post-conviction habeas (NRS Ch. 34), denial.
8. Does this appeal raise issues concerning any of the following?
- |                             |                                    |
|-----------------------------|------------------------------------|
| <u>  X  </u> Death Sentence | <u>      </u> Juvenile offender    |
| <u>      </u> Life Sentence | <u>      </u> 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? No.
10. Pending and prior proceedings in this Court:
- Castillo v. State, 114 Nev. 271, 956 P.2d 103 (1998) (direct appeal)
- Castillo v. State, Nev. Sup. Ct. No. 40982, unpublished (2004) (post-conviction)
- Castillo v. State, Nev. Sup. Ct. No. 56176, unpublished (2013) (post-conviction)
11. Pending and prior proceedings in other courts:
- Castillo v. State, No. C133336, Eighth Judicial District Court, petition for writ of habeas corpus filed April 2, 1999

Castillo v. State, No. C133336, Eighth Judicial District Court,  
petition for writ of habeas corpus filed September 18, 2009

Castillo v. State, No. C133336, Eighth Judicial District Court,  
petition for writ of habeas corpus filed January 6, 2017

Castillo v. Filson, No. 2:04-cv-00868-RCJ-GWF, U.S. District  
Court, Nevada, second amended petition for writ of habeas corpus,  
filed May 19, 2014 (currently pending)

12. Nature of the action: Castillo is appealing the Eighth Judicial District Court's denial of his post-conviction petition.

13. Issues on appeal:

Whether Castillo'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.

Whether Castillo's sentence is unconstitutional because the Nevada Supreme Court reweighed Castillo's eligibility for the death penalty

by substituting the decision of the appellate court for the decision of the jury.

Whether Castillo's sentence is unconstitutional because the Nevada Supreme Court's application of the avoid or prevent lawful arrest aggravating circumstance is arbitrary and capricious and due to the insufficiency of the evidence.

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? Not applicable.
15. Assignment to the Court of Appeals or retention in the Supreme Court: This matter is presumptively retained by the Supreme Court because under NRAP 17(a)(1), the Supreme Court hears and decides all "death penalty cases." This is a death penalty case, and thus falls under NRAP 17(a)(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.

Public interest? 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? The court heard oral argument for one day on May 3, 2017. No trial or evidentiary hearing occurred.
18. Oral Argument: Would you object to submission of this appeal for disposition without oral argument? Yes.

#### **TIMELINESS OF NOTICE OF APPEAL**

19. Date district court announced decision, sentence or order appealed from: May 3, 2017.
20. Date of entry of written judgment or order appealed from: June 5, 2017.
21. If this appeal is from an order granting or denying a petition for writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the district court: The written notice of entry of order was served on June 5, 2017.

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; and (b) Date of entry of written order resolving the motion. Not applicable.
23. Date notice of appeal filed: July 5, 2017.
24. Specify statute or rule governing the time limit for filing the notice of appeal: NRAP 4(b); NRS 34.575(1).

#### **SUBSTANTIVE APPEALABILITY**

25. Specify statute, or rule or other authority that grants this court jurisdiction to review from: NRS 34.575(1).

## 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 7th day of August, 2017.

Respectfully submitted  
RENE L. VALLADARES  
Federal Public Defender

/s/ Brad D. Levenson  
BRAD D. LEVENSON  
Assistant Federal Public Defender  
411 E. Bonneville Ave., Suite 250  
Las Vegas, Nevada 89101  
Phone: (702) 388-6577  
Facsimile: (702) 388-5819

Counsel for Petitioner/Appellant  
William P. Castillo



## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th 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  
200 Lewis Avenue  
Las Vegas, Nevada 89155

/s/ Stephanie Young  
An Employee of the Federal Public  
Defender, District of Nevada