

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JOSE FERNANDO MONAY-PINA, A/K/A
JOSE FERNANDO MONAYPINA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent

No. 74199

**DOCKETING STATEMENT
CRIMINAL APPEALS**

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

Electronically Filed
Feb 07 2018 09:16 a.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 8th County Clark

Judge Hon. Linda Marie Bell District Ct. Case No. C-16-313118-2

2. If the defendant was given a sentence,

(a) what is the sentence?

Please see appendix 1, as attached.

(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 Thomas D. Boley, Esq. Telephone 702-435-3333

Firm Boley & AlDabbagh, Ltd.

Address: 1900 E. Bonanza Rd.

Las Vegas, NV 89101

Client(s) JOSE FERNANDO MONAY-PINA

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 _____ Telephone _____

Firm _____

Address:

Client(s) _____

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 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 checked="" 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):

The co-defendant has also filed an appeal no. 74241

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):

None.

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

Trial on a robbery and attempted murder scenario. Both co-defendants were found guilty.

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

1. That the burden was shifted to Defendant in a statement made in closing by the State of Nevada.
2. Insufficiency of the evidence to prove all counts, specifically identification of Mr. Monay-Pina.
3. In an abundance of caution, Counsel reserves the right to raise any issues on appeal that present themselves on the forthcoming transcripts.

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:

Pursuant to NRAP 17, convictions for Category B felonies are not presumptively assigned to the Court of Appeals. NRAP 17 (b). As this is the case, Mr. Monay-Pina respectfully requests that the Nevada Supreme Court retain this case, as he is appealing Category B felonies after a jury conviction.

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?

3 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 Sept 7, 2017

20. Date of entry of written judgment or order appealed from Sept 21, 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 October 12, 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)

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>X</u> _____	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.

Jose Fernando Monay-Pina

Name of appellant

02/05/2018

Date

Thomas D. Boley, Esq.

Name of counsel of record

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 6th day of February 2017, day of 20 _____, 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):

Adam Laxalt, Esq.; Steve Owens, Esq.

555 E. Washington Ave, Ste 3900

Las Vegas, NV 89101

Dated this 5th day of February, 2018

Signature

APPENDIX 1

Count 1: 24-60 months

Count 2: 24-120 months, concurrent to count 1

Count 3: 24-120 months, with 12-60 months deadly weapon enhancement, concurrent to count 1 and 2

Count 4: 24-120 months, concurrent to counts 1,2,3.

Count 5: 24-120 months, with 24-60 months deadly weapon enhancement, concurrent to count 1, 2, 3.

Count 6: 24-120 months, concurrent to count 1,2,3,4,5.

Count 7: 24-120 months, with 24-60 months deadly weapon enhancement, concurrent to count 1, 2, 3.

Count 8: 24-120 months, concurrent with counts 1,2,3,4,5,6,7

Count 9: 24-60 months, concurrent with counts 1,2,3,4,5,6,7,8

Count 10: 24-60 months, concurrent with counts 1,2,3,4,5,6,7,8,9

Count 11: 364 days

Count 12: 12-60 months, concurrent with counts 1,2,3,5,7

Count 13: 24-60 months, concurrent with counts 1,2,3,4,5,6,7,8,9,10,11, and 12.

\$25 administrative assessment fee

\$150 DNA analysis fee

\$3.00 genetic marker Analysis fee