

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**INDICATE FULL CAPTION:**

William Branham,  
Appellant

v.

Isidro Baca, Warden,  
Respondent.

No. 74743

Electronically Filed  
Jan 17 2018 11:52 a.m.

**DOCKETING STATEMENT**  
**CRIMINAL APPEALS**  
Alison A. Brown  
Clerk of Supreme Court

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



**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 Judicial District County Washoe County

Judge Elliott A. Sattler District Ct. Case No. CR92-1048

2. If the defendant was given a sentence,

(a) what is the sentence?

Life without the possibility of parole

(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 Jonathan M. Kirshbaum Telephone (702) 388-6577

Firm Federal Public Defender, District of Nevada

Address: 411 E. Bonneville Ave., Suite 250  
Las Vegas, NV 89101

Client(s) William Branham

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 Telephone 775-328-3200

Firm Washoe County District Attorney's Office

Address: Mills B. Lane Justice Center, 1 South Sierra Street, South Tower, 4th Floor  
Reno, NV 89501

Client(s) Isidro Baca, Warden

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 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 checked="" 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):

Branham v. State, Nevada Supreme Court Case No. 45532

Branham v. State, Nevada Supreme Court Case No. 24648

**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):

Branham v. Ignacio, United States District Court Case No. 00-CV-0398-ECR(RAM)

Branham v. Ignacio, Ninth Circuit Case No. 02-17219

Branham v. Ignacio, United States Supreme Court No. 03-9712

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

This is an appeal from the denial of a state post-conviction petition for a writ of habeas corpus.

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

Whether the district court erred in finding Branham's petition procedurally defaulted.  
Branham raised the following ground for relief in his habeas petition:

UNDER RECENTLY DECIDED SUPREME COURT CASES, PETITIONER MUST BE GIVEN THE BENEFIT OF BYFORD V. STATE, AS A MATTER OF DUE PROCESS BECAUSE BYFORD WAS A SUBSTANTIVE CHANGE IN LAW THAT NOW MUST BE APPLIED RETROACTIVELY TO ALL CASES, INCLUDING THOSE THAT BECAME FINAL PRIOR TO BYFORD.

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 involves a Category A felony with a life sentence and therefore does not fall into one of the categories presumptively assigned to the Court of Appeals.

**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?

7 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 Dec 5, 2017

20. Date of entry of written judgment or order appealed from Dec. 5, 2017

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

N/A

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 December 15, 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); 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) <u>X</u> _____
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.**

William Branham  
\_\_\_\_\_  
Name of appellant

Jonathan M. Kirshbaum  
\_\_\_\_\_  
Name of counsel of record

January 17, 2018  
\_\_\_\_\_  
Date

/s/ Jonathan M. Kirshbaum  
\_\_\_\_\_  
Signature of counsel of record

### CERTIFICATE OF SERVICE

I certify that on the 17th day of 20 18 , 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):

Terrence P. McCarthy  
1 South Sierra Street, South Tower, 4th Floor  
Reno, NV 89501

Adam P. Laxalt  
Nevada Attorney General's Office  
100 N. Carson St., Carson City, NV 89701

Dated this 17th day of January , 20 18 .

Adam Dunn  
\_\_\_\_\_  
Signature