

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

FREDYS A. MARTINEZ,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 75760

Electronically Filed
Jun 19 2018 12:59 p.m.

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

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

GENERAL INFORMATION

1. Judicial District Eighth County Clark
Judge Kathleen Delaney District Ct Case No. C226586

2. If the defendant was given a sentence,
(a) what is the sentence?

Count I- Sixty (60) to One Hundred Eighty (180) months; Count II- Forty Eight (48) to One Hundred Twenty (120) months to run concurrently with Count I; Count III- Sixty (60) months to Life, plus an equal and consecutive term of Sixty (60) months of Sixty months to Life for the use of a deadly weapon; the entire sentence to run concurrently to Counts I and II. Petitioner was given credit for two hundred eighty one (281) days for time served.

(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 filing this docketing statement:

Attorney Betsy Allen Telephone 702-386-9700

Firm: Law Office of Betsy Allen

Address: P.O. Box 46991
Las Vegas, NV 89114

Client(s) Fredys A. Martinez, Appellant

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 Steven B. Wolfson Telephone 702-671-2500

Firm: Clark County District Attorney

Address: 200 Lewis Ave., 2nd Floor
Las Vegas, NV 89155

Client(s) The State of Nevada, Respondent

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 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:

☐ death sentence
☒ life sentence

☐ juvenile offender
☐ 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):

49608, 55890, 56153, 57197, 58023, 58215, 61023, 62655, 69277, 70244

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):

3:10-cv-00777-ECR. (EOR 84-107)

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

On September 29, 2006, Petitioner FREDYS A. MARTINEZ [hereinafter "Petitioner" or "Martinez"] was charged by way of Grand Jury Indictment with Count 1- Burglary While in Possession of a Deadly Weapon (Felony-NRS 205.060); Count II- Burglary With Use of a Deadly Weapon, (Felony-NRS 200.481); Count III- First Degree Kidnapping with use of a Deadly Weapon (Felony- NRS 200.310, 200.320, 193.165); and Count IV- Sexual Assault with use of a Deadly Weapon (Felony- NRS 200.364, 200.366, 193.165) for acts committed on August 16, 2006 against the alleged victim in this case, Bianca Hernandez. (Indictment). Petitioner's 2-day jury trial began on April 11, 2007. On April 12, 2007, the jury (after deliberating for no more than 30 minutes) found Petitioner guilty of Counts 1, II, and III and found not guilty of Court IV.

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

- 1) PETITIONER'S REQUEST FOR STATE POST-CONVICTION RELIEF IS ENTITLED TO FULL CONSIDERATION ON THE MERITS BASED ON PRINCIPLES OF EQUITY AND EQUITABLE TOLLING.
- 2) MARTINEZ'S CLAIMS FOR INEFFECTIVE ASSISTANCE OF COUNSEL SHOULD BE DECIDED ON THE MERITS.

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. 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 ☐

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?

0 days

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

Yes ☐ No ☒

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from 04/04/18

19. Date of entry of written judgment or order appeal from 05/18/18

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

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 by the district court

(a) Was service by delivery ☒ or by mail ☐.

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:

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 _____

22. Date notice of appeal filed April 27, 2018

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)

SUBSTANTIVE APPEALABILITY

24. 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>XXXx</u> _____
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.

Fredys A. Martinez

Name of appellant

06/09/18

Date

Betsy Allen

Name of counsel of record

Betsy Allen

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 9th day of JUne, 2018, 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):

Dated this 6th day of June, 2018.

Betsy Allen
Signature

Digitally signed by Betsy Allen
DN: cn=Betsy Allen, o=Law Office of Betsy Allen,
ou, email=betsyallesq@yahoo.com, c=US
Date: 2018.06.09 07:31:45 -07'00'