

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 11 2018 08:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JAMES MONTELL
CHAPPELL,

Petitioner/Appellant,

v.

WILLIAM GITTERE, Warden,
and ADAM PAUL LAXALT,
Nevada Attorney General,

Respondents/Appellees.

Supreme Court No. 77002

District Court Case No. 95C-131341

(Death Penalty Case)

**DOCKETING STATEMENT
CRIMINAL APPEALS**

GENERAL INFORMATION

1. Judicial District: Second

Department: V

County: Clark

Judge: Hon. Carolyn Ellsworth

District Ct. Case No. CR95-131341

2. **If the defendant was given a sentence,**

a. **What is the sentence?**

Death.

b. **Has the sentence been stayed pending appeal?**

Yes.

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

Federal Public Defender, District of Nevada

411 E. Bonneville Ave., Suite 250
Las Vegas, Nevada, 89101
(702) 388-6577

Client: James Montell Chappell

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
200 Lewis Avenue
Las Vegas, Nevada 89115
(702) 671-2500

Client: William Gittere, Warden, Ely State Prison, State of Nevada
and Adam Paul Laxalt, Nevada Attorney General.

7. Nature of Disposition below:

Post-conviction habeas (NRS Ch. 34) denial.

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

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 manner?

No.

10. Pending and prior proceedings in this Court:

Chappell v. State, Nev. Sup. Ct. No. 29884, (1998) (published opinion affirming in part and reversing in part judgment of conviction)

Chappell v. State, Nev. Sup. Ct. No. 43493 (2006) (unpublished order dismissing appeal of post-conviction writ of habeas corpus)

Chappell v. State, Nev. Sup. Ct. No. 49478 (2009) (unpublished opinion affirming sentence—penalty retrial)

Chappell v. State, Nev. Sup. Ct. No. 61967 (2015) (unpublished order affirming denial of post-conviction petition for writ of habeas corpus)

11. Pending and prior proceedings in other courts:

Chappell v. State, No. C131341, Eighth Judicial District Court, Petition for Writ of Habeas Corpus (Post-Conviction) filed October 19, 1999.

Chappell v. State, No. C131341, Eighth Judicial District Court, Petition for Writ of Habeas Corpus (Post-Conviction) filed June 22, 2010

Chappell v. State, No. C131341, Eighth Judicial District Court, Petition for Writ of Habeas Corpus (Post-Conviction) filed November 16, 2016

Chappell v. Baker, No. 2:16-cv-00645-JAD-VCF, U.S. District Court, Nevada

12. Nature of the action:

Chappell's appeal from the order dismissing his post-conviction petition for writ of habeas corpus, Eighth Judicial District Court, Clark County, State of Nevada

13. Issues on appeal:

Did the district court err in denying Chappell's claim of ineffective assistance of post-conviction counsel based on trial counsel's failure to investigate and present evidence of his Fetal Alcohol Spectrum Disorder (FASD)?

Did the district court err in limiting the evidentiary hearing on Chappell's claim of ineffective assistance of post-conviction counsel based on trial counsel's failure to investigate and present mitigation evidence at sentencing?

Did the district court err in denying Chappell's claim of ineffective assistance of post-conviction counsel based on counsel's failure to challenge first trial counsel's performance at the guilt phase of Chappell's trial?

Do the substantive constitutional claims in Chappell's post-conviction petition require the reversal of his conviction and death sentence?

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? No.

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?

Evidentiary hearing held on April 6, 2018 and May 21, 2018.

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:

August 8, 2018.

20. Date of entry of written judgment or order appealed from:

August 17, 2018.

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 August 17, 2018.

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:**

September 14, 2018.

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 11th day of October, 2018.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ Brad D. Levenson
BRAD D. LEVENSON
Assistant Federal Public Defender
Nevada Bar No. 13804C

411 E. Bonneville Ave., Suite 250
Las Vegas, Nevada 89101
(702) 388-6577

Attorneys for James M. Chappell

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 11th day of October, 2018, electronic service of the foregoing DOCKETING STATEMENT CRIMINAL APPEALS shall be made in accordance with the Master Service List as follows:

Steven Owens
Steven.Owens@clarkcountyda.com

/s/ Sara Jelinek _____
An Employee of the
Federal Public Defender,
District of Nevada