

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

TENNILLE RAE WHITAKER,
Appellant,

vs.
THE STATE OF NEVADA,
Respondent

No. 77294


DOCKETING STATEMENT
CRIMINAL APPEALS

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

FILED

JAN 11 2019

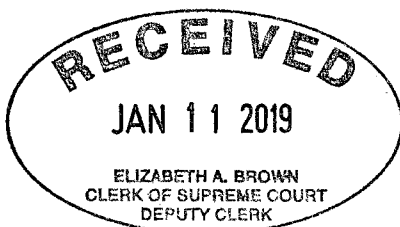
GENERAL INFORMATION

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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.



19-01759

1. Judicial District FOURTH County ELKO

Judge NANCY PORTER District Ct. Case No. CR-FP-17-3893

2. If the defendant was given a sentence,

(a) what is the sentence?

Aggregate sentence of 96-240 months; Four consecutive terms of 24-60 months in prison were imposed.

(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 KARLA K. BUTKO Telephone 775-786-7118

Firm KARLA K. BUTKO, LTD.

Address: P. O. Box 1249 Verdi, NV 89439

Client(s) TENNILLE RAE WHITAKER

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 TYLER INGRAM Telephone 775-738-3101

Firm ELKO COUNTY DISTRICT ATTORNEY'S OFFICE

Address: 540 Court Street, Second Floor Elko, NV 89801

Client(s) THE STATE OF NEVADA

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 checked="" 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 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):

None

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):

Counsel believes one of the issues in this appeal is under review at the Nevada Supreme Court but has not located the case name or counsel as of this date. This issue relates to the argument that NRS 201.540 is unconstitutional.

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

Appellant, TENNILLE RAE WHITAKER, was an elementary school teacher in Elko, Nevada; Ms. Whitaker was charged with violation of NRS 201.540 for allegations that she had consensual sex with four students, all over the age of 16, and who attended high school in Elko. Ultimately, Ms. Whitaker pled guilty to four counts of violating NRS 201.540. Ms. Whitaker completed a psycho-sexual evaluation which deemed she was a low risk to re-offend. At the sentencing hearing, the District Court received a petition with approximately 78 signatures of unknown people requesting Ms. Whitaker receive a prison term. She was sentenced to four consecutive prison terms, with an aggregate sentence of 96-240 months in prison. The appeal was timely filed.

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

1. NRS 201.540 is unconstitutional. NRS 201.540 violates the Equal Protection Clause of the Constitution. NRS 201.540 is unconstitutionally vague as it fails to define the term "pupil" and criminalizes otherwise legal acts.
2. The District Court violated Ms. Whitaker's right of due process when it received a petition signed by 78 people who were not victims under the law at sentencing, said petition failing to be served upon Ms. Whitaker so that she could investigate even who those persons were.
3. The District Court abused its discretion at sentencing when it failed to apply the law as it stood in 2015, the time of offense alleged in the Information.
4. The District Court abused its discretion at sentencing.
5. The State breached the plea bargain by its conduct at and before the sentencing hearing.

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 should be heard by the Nevada Supreme Court. NRS 201.540 is similar to statutory schemes in other states which have been under constitutional attack. Other states who have passed teacher/student sex crime laws are reviewing their statutory schemes to make sure they pass constitutional muster. Since Ms. Whitaker was not actually a teacher at the school the 16 year old males were students at, there is a key issue as to whether this statute actually applied to her conduct. The act of receiving a petition prior to sentencing with 78 names of members of the community prejudiced the sentencing.

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?

0 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 October 4, 2018

20. Date of entry of written judgment or order appealed from October 5, 2018

(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 17, 2018

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>XX</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.

TENNILLE RAE WHITAKER

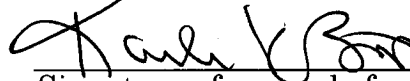
Name of appellant

January 11, 2019

Date

KARLA K. BUTKO, ESQ.

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the Jan 11 day of 20 19, I served a copy of this completed docketing statement upon all counsel of record:

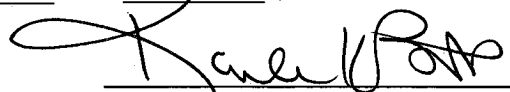
☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Tyler Ingram, Esq.,
Elko County District Attorney's Office
540 Court Street, Second Floor Elko, NV 89801

+ Byron Burgison
432 Court St
Renov, NV 89501

Dated this 11th day of January, 20 19.


Signature