

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMAR ANTWAN HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No.: 70679

**DOCKETING STATEMENT
CRIMINAL APPEALS**

Electronically Filed
Jul 14 2016 10:02 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1. Eighth Judicial District Court, Clark County.
Judge Carolyn Ellsworth, District Court Case No. C274370
2. If the Defendant was given a sentence,
 - (a) What is the sentence? On November 7, 2011, the Court sentenced the Appellant as follows:

Count 1—Battery with use of Deadly Weapon Resulting in Substantial Bodily Harm (70 months to 175 months with 182 days as credit for time served).
 - (b) Has the sentenced been stayed pending appeal? No.
 - (c) Was the defendant admitted to bail pending appeal? No.
3. Was counsel in the district court appointed ☒ or retained ☐?
4. Attorney filing this docketing statement:

MATTHEW D. CARLING, ESQ.
51 East 400 North, Bldg. #1
Cedar City, Utah 84720
(702) 419-7330 (Office)
(702) 446-8065 (Fax)
CedarLegal@gmail.com

Client: LAMAR ANTWAN HARRIS

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 of accompanied by a certificate that they concur in the filing of this statement. N/A

6. Attorney(s) representing respondents:

CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, Nevada 89155-2212

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
<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 the 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 decided 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 proceeding):

Lamar A. Harris v. Nevada, Supreme Court No. 59817.

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):

Lamar A. Harris v. Nevada, C274370, 8th Judicial District Court.

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

On June 22, 2011, the Justice Court held a preliminary hearing and bound the Defendant over to District court. On June 24, 2011, the State filed an *Information* charging the Defendant with one count of Attempt Murder with use of a Deadly Weapon, a felony; and one count of Battery with use of a Deadly Weapon Resulting in Substantial Bodily Harm, a felony. Arraignment was held on June 30, 2011. The matter went to trial on August 30, 2011. On September 2, 2011, the jury returned a verdict of “guilty” on battery with use of a deadly weapon and “not guilty” on the attempt murder charge. The Court sentenced the Defendant on November 7, 2011. Defendant appealed his conviction on December 8, 2011. The Supreme Court affirmed the conviction on December 13, 2012. On March 11, 2015, the Defendant filed his Petition for Writ of Habeas Corpus (Post-conviction) alleging ineffectiveness of counsel. The Defendant filed his first Supplemental Petition on July 27, 2015. The Court conducted an evidentiary hearing on December 8, 2015. The Court denied the Petition on June 6, 2016. Petitioner is appealing the District Court decision to deny his Petition for Writ of Habeas Corpus (Post-conviction).

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

CRIMINAL DEFENDANTS SHOULD HAVE A STATUTORY RIGHT TO COUNSEL IN POST-CONVICTION PROCEEDINGS OR, IN THE ALTERNATIVE, DEFENDANTS SHOULD BE ABLE TO RELY UPON A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL TO SHOW GOOD CAUSE TO EXCUSE ANY PROCEDURAL DEFAULT WHEN POST-CONVICTION COUNSEL’S PERFORMANCE IS GROSSLY NEGLIGENT AND UNPROFESSIONAL.

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 subparagraphs(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 matter should be assigned to the Court of Appeal pursuant to NRAP 17(b)(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: ☐ 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?

4 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?

June 6, 2016

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

June 6, 2016

(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.

June 6, 2016

(a) Was service by delivery [] (fax) or by mail [X].

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
discovery evidence) _____ Date filed _____

New trial (other grounds) _____ Date filed _____

(b) Date of entry of written order resolving motion _____

23. Date notice of appeal filed:

June 22, 2016

24. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.530, NRS 34.575, NRS 177.015(2), or other.

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)

☐ NRS 177.015(2)

☐ NRS 34.575(2)

☐ NRS 177.015(3)

☐ Other (specify) _____

VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

Lamar Antwan Harris
Name of appellant

Matthew D. Carling
Name of counsel of record

July 14, 2016
Date

/s/ Matthew D. Carling
Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 14th day of July, 2016, I served a copy of this completed docketing statement upon all counsel of records:

[] by personally serving it upon him/her; or

[X] by mailing it by first class mail with sufficient postage prepaid to the following address(es):

CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, Nevada 89155-2212

DATED this 14th day of July, 2016.

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling
MATTHEW D. CARLING, ESQ.
Nevada Bar No. 7302
Attorney for Appellant,
LAMAR ANTWAN HARRIS