

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

2  
3           TYRONE JAMES, SR.,

4               Appellant,

5  
6           vs.

7           THE STATE OF NEVADA,

8               Respondent.

Case No. 71935

Electronically Filed  
Dec 29 2016 03:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9  
10                   **DOCKETING STATEMENT**  
11                   **CRIMINAL APPEALS**

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

12                   **GENERAL INFORMATION**

13 Appellants must complete this docketing statement in compliance with  
14 NRAP 14(a). The purpose of the docketing statement is to assist the Supreme  
15 Court in screening jurisdiction, identifying issues on appeal, assessing  
16 presumptive assignment to the Court of Appeals under NRAP 17, scheduling  
17 cases for oral argument, classifying cases for expedited treatment and  
18 assignment to the Court of Appeals, and compiling statistical information.

19                   **WARNING**

20 This statement must be completed fully, accurately and on time. NRAP  
21 14(c). The Supreme Court may impose sanctions on counsel or appellant if it  
22 appears that the information provided is incomplete or inaccurate. *Id.* Failure  
23 to fill out the statement completely or to file it in a timely manner constitutes  
24 grounds for the imposition of sanctions.  
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1     **1.     Judicial District:** Eighth                   **County:** Clark  
2     **District Ct. Case No.:** 10-C-265506

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

4         **(a)    what is the sentence?**

5             Twenty-five (25) years to life.

6         **(b)    has the sentence been stayed pending appeal?**

7             No.

8         **(c)    was defendant admitted to bail pending appeal?**

9             No.

10        **3.     Was counsel in the district court appointed ☒ or retained ☐ ?**

11        **4.     Attorney(s) filing this docketing statement:**

12        **Attorney(s):** Margaret A. McLetchie   **Telephone:** (702) 728-5300

13        **Firm:**         McLetchie Shell, LLC

14        **Address:**    701 East Bridger Avenue, Suite 520

15                       Las Vegas, Nevada 89101

16        **Client(s):**   Tyrone James, Sr.

17        **5.     Is appellate counsel appointed ☒ or retained ☐ ?**

18        If this is a joint statement by multiple appellants, add the names and  
19        addresses of other counsel and the names of their clients on an additional  
20        sheet accompanied by a certification that they concur in the filing of this  
21        statement.

22        **6.     Attorney(s) representing respondent(s):**

23        **Attorney(s):** Steven Owens                   **Telephone:** (702) 671-2750

24        **Firm:**         Office of the Clark County District Attorney

25        **Address:**    200 Lewis Avenue, Third Floor

26                       Las Vegas, NV 89155

27        **Client(s):**   The State of Nevada

28        ///

**Attorney(s):** Adam P. Laxalt                      **Telephone:** (775) 684-1100  
**Firm:** Office of the Attorney General  
**Address:** 100 North Carson Street  
Carson City, NV 89701  
**Client(s):** The State of Nevada

**7. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <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 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?

- |                              |  |
|------------------------------|--|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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):

*James v. State*, Case No. 57178

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1 **11. Pending and prior proceedings in other courts.** List the case  
2 name, number and court of all pending and prior proceedings in  
3 other courts that are related to this appeal (e.g., habeas corpus  
proceedings in state or federal court, bifurcated proceedings against  
co-defendants):

4 *State v. James*, Eight Judicial District Court Case No. 10-C-265506

5  
6 **12. Nature of action.** Briefly describe the nature of the action and  
the result below:

7 Appellant Tyrone James, Sr. appeals from the denial of his  
8 Supplemental Petition for Writ of Habeas Corpus.

9  
10 Following a jury trial, Mr. James was convicted of two counts of  
11 Sexual Assault With a Minor Under Sixteen Years of Age, in violation of  
12 Nev. Rev. Stat. §§ 200.364 and 200.366 (Counts One and Three); two counts  
13 of Open and Gross Lewdness, in violation of Nev. Rev. Stat. § 201.210  
14 (Counts Two and Four); and one count of Battery With Intent to Commit a  
15 Crime, in violation of Nev. Rev. Stat. § 200.400 (Count Five). Subsequently,  
16 at sentencing, the district court dismissed Counts Two and Four as lesser-  
17 included offenses of Counts One and Three. The Court then sentenced Mr. to  
18 twenty-five years to life on Counts One and Three, and two years to life on  
19 Count Five, all to run concurrent.  
20

21 In his Petition for a Writ of Habeas Corpus, Mr. James asserted several  
22 claims for relief relating to ineffective assistance of trial counsel by failing  
23 to retain an expert to rebut testimony from the State's expert witness that the  
24 medical examination of the victim in this case, demonstrated Mr. James had  
25 committed sexual assault. Mr. James also asserted that trial counsel was  
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1 ineffective because he failed to file any pretrial motions to exclude critical—  
2 but highly questionable—evidence from being introduced at trial, failed to  
3 conduct reasonable investigation prior to trial, and failed to object to the  
4 State’s use of a highly prejudicial PowerPoint presentation during its closing  
5 argument.  
6

7 Following the completion of briefing, the district court found that Mr.  
8 James was entitled to an evidentiary hearing only on trial counsel’s failure to  
9 retain an expert. After that hearing, the district court entered an order  
10 denying all of Mr. James’ claims.  
11

12 **13. Issues on appeal.** State specifically all issues in this appeal:

13 Mr. James appeals the district court’s order denying the claims raised  
14 in his supplemental petition for a writ of habeas corpus and its subsequent  
15 supplements thereto. The issues on appeal are whether:

16 1. The District Court erred in limiting the scope of the evidentiary  
17 hearing;  
18

19 2. Trial counsel provided ineffective assistance of counsel by, *inter alia*:

20 a. Failing to retain an expert witness to review the sexual assault  
21 examination of the victim in this matter, and by failing to rebut testimony  
22 from the examining physician;

23 b. Failing to move to exclude highly attenuated and prejudicial  
24 evidence;  
25

26 c. Failing to objection to the admission of attenuated and  
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1 prejudicial evidence at trial;

2 d. Failing to conduct adequate investigation; and

3 e. Failing to object to the State's use of a highly prejudicial  
4 PowerPoint presentation during closing argument.  
5

6 3. Whether trial counsel's deficient performance warrants reversal as  
7 cumulative error.  
8

9 **14. Constitutional issues.** If this appeal challenges the  
10 constitutionality of a statute, and the state, any state agency, or any officer or  
11 employee thereof is not a party to this appeal, have you notified the clerk of  
12 this court and the attorney general in accordance with NRAP 44 and NRS  
13 30.130?  
14

15 ☒ N/A

16 ☐ No

17 ☐ Yes

18 If not, explain:

19 **15. Assignment to the Court of Appeals or retention in the Supreme**  
20 **Court.** Briefly set forth whether the matter is presumptively retained by  
21 the Supreme Court or assigned to the Court of Appeals under NRAP 17,  
22 and cite the subparagraph(s) of the Rule under which the matter falls. If  
23 appellant believes that the Supreme Court should retain the case despite its  
24 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:

25 This case is presumptively retained by the Supreme Court pursuant to  
26 Nevada Rule of Appellate Procedure 17(a)(2) because it is an appeal from  
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the denial of a post-conviction petition for writ of habeas corpus.

**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?

The trial lasted 3 days. The evidentiary hearing on the writ lasted less than a day.

**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 3, 2016.

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

November 9, 2016.

**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 it served by delivery ☐ or by mail ☒

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2 **22. If the time for filing the notice of appeal was tolled by a post-**  
3 **judgment motion,**

4 (a) Specify the type of motion, the date of filing of the motion:

5 ☐ Arrest Judgment \_\_\_\_\_ Date of filing: \_\_\_\_\_

6 ☐ New trial (newly  
7 discovered evidence) \_\_\_\_\_ Date of filing: \_\_\_\_\_

8 ☐ New trial (other grounds) \_\_\_\_\_ Date of filing: \_\_\_\_\_

9 (b) Date of entry of written order resolving motion: \_\_\_\_\_

10 **23. Date of notice of appeal filed:** December 8, 2016.

11 **24. Specify statute or rule governing the time limit for filing the**  
12 **notice of appeal, e.g., NRAP 4(b), NRS 34.560, NRS 34.575, NRS**  
13 **177.015(2), or other**

14 The time limit for filing the notice of appeal in this matter is governed  
15 by NRS 34.575(1) and Nevada Rule of Appellate Procedure 4(b)(1)(A).

16 **SUBSTANTIVE APPEALABILITY**

17 **25. Specify the statute, rule, or other authority that grants this court**  
18 **jurisdiction to review from:**

19 NRS 177.015(1)(b) \_\_\_\_\_ NRS 34.560 \_\_\_\_\_

20 NRS 177.015(1)(c) \_\_\_\_\_ NRS 34.575(1)   X  

21 NRS 177.015(2) \_\_\_\_\_ NRS 34.560(2) \_\_\_\_\_

22 NRS 177.015(3) \_\_\_\_\_ Other (specify)   NRAP 4  

23 NRS 177.055 \_\_\_\_\_



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## VERIFICATION

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

Tyrone James, Sr.  
Name of Appellant

Margaret A. McLetchie  
Name of counsel of record

12/21/2016  
Date

  
Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 29<sup>th</sup> day of December, 2016, 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):**

Steven Owens  
Office of the Clark County District Attorney  
200 Lewis Avenue, Third Floor  
Las Vegas, NV 89155

Adam P. Laxalt  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701

Dated this 29<sup>th</sup> day of December, 2016.

  
Signature