

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 27 2018 02:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MARLO THOMAS,

Petitioner/Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents/Appellees.

Supreme Court No. 77345

District Court Case No. 96C136862-1

(Death Penalty Case)

**DOCKETING STATEMENT
CRIMINAL APPEALS**

GENERAL INFORMATION

1. Judicial District: Eighth County: Clark
Judge: Hon. Stefany Miley District Ct. Case No. 96C136862-1
2. If the defendant was given a sentence,
 - a. What is the sentence?

Death.
 - b. Has the sentence been stayed pending appeal?

Yes.

c. 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:

Joanne L. Diamond
Assistant Federal Public Defender
Federal Public Defender, District of Nevada
411 E. Bonneville Ave., #250
Las Vegas, Nevada, 89101
(702) 388-6577

Client: Marlo D. Thomas

5. Is appellate counsel appointed or retained?

Appointed.

6. Attorneys representing respondents:

Steven S. Owens
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2500

Client: William Gittere, Acting Warden, Ely State Prison, State of
Nevada

7. Nature of Disposition below:

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

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

 X 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:

Thomas v. State, Nev. Sup. Ct. No. 31019, unpublished (1998)
(order affirming convictions and sentences)

Thomas v. State, Nev. Sup. Ct. No. 40248 (2004) (opinion affirming in part and reversing in part denial of post-conviction petition for writ of habeas corpus, and remanding for new penalty hearing)

Thomas v. State, Nev. Sup. Ct. No. 46059 (2006) (opinion affirming sentences)

Thomas v. State, Nev. Sup. Ct. No. 65916, unpublished (2016)
(order affirming denial of post-conviction petition for writ of habeas corpus)

11. Pending and prior proceedings in other courts:

Thomas v. Filson, Petition for Writ of Habeas Corpus (Post-Conviction) filed October 20, 2017, in the Eighth Judicial District Court, Case No. 96C136862-1 (the subject of the instant appeal)

Thomas v. Filson, No. 2:17-cv-00475-RFB-VCF, United States District Court, D. Nev. (federal habeas corpus proceedings currently stayed pending exhaustion in state court)

12. Nature of the action:

Mr. Thomas'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 Mr. Thomas's claims of ineffective assistance of post-conviction counsel without permitting discovery and an evidentiary hearing?

Do the substantive constitutional claims in Mr. Thomas's petition require the reversal of his convictions 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)(2), the Supreme Court hears and decides all “direct appeals, post-conviction appeals, and writ petitions in death penalty cases.” This is a death penalty case, and thus falls under NRAP 17(a)(2).

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?

There was no trial or hearing in the district court in this action.

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:

September 27, 2018.

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

October 1, 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 mailed on October 1, 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:

October 30, 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).

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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.

DATED this 27th day of November, 2018.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ Joanne L. Diamond
JOANNE L. DIAMOND
Assistant Federal Public Defender
Nevada Bar No. 14139C

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

Attorneys for Marlo D. Thomas

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 27th day of November, 2018, electronic service of the foregoing DOCKETING STATEMENT CRIMINAL APPEALS shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney-Criminal

/s/ *Jeremy Kip*
An Employee of the
Federal Public Defender,
District of Nevada