

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

**INDICATE FULL CAPTION:**

MICHAEL LUIS COTA,  
Appellant,

vs.

STATE OF NEVADA,  
Respondent.

No. 77414

**DOCKETING STATEMENT  
CRIMINAL APPEALS**

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

Electronically Filed  
Dec 17 2018 11:31 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**GENERAL INFORMATION**

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.

Revised December 2015

1. Judicial District Ninth County Douglas

Judge Thomas Gregory District Ct. Case No. 18-CR-0116

2. If the defendant was given a sentence,

(a) what is the sentence?

Imprisonment in the State prison for a maximum term of 72 months and a minimum term of 24 months to run consecutive to the Ninth Judicial District Court case number 18-CR-0084.

(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 John E. Malone Telephone 775-461-0254

Firm \_\_\_\_\_

Address: 209 N. Pratt Ave.  
Carson City, NV 89701

Client(s) Michael Luis Cota

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 Douglas County District Attorney Telephone 775-782-9800

Firm \_\_\_\_\_

Address: PO Box 218  
Minden, NV 89423

Client(s) 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 known

**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):

State of Nevada vs. Michael Luis Cota, District Court Case No. 18-CR-0116  
Ninth Judicial District Court, County of Douglas

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

Appellant pleaded guilty to one count of Battery by a Prisoner (category B). He was sentenced to a term of 2 - 6 years, consecutive to the sentence imposed in State vs. Cota, Ninth Judicial District Court, case no. 18-CR-0084

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

Cota's juvenile records were improperly introduced at sentencing.

Testimony regarding gang membership was improperly introduced at sentencing.

**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 is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(1) as it involves a direct appeal from a guilty plea.

**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?

\_\_\_\_\_ 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 Oct 8, 2018

20. Date of entry of written judgment or order appealed from Oct 10, 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 Nov 6, 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) Judgment of conviction Other (specify) \_\_\_\_\_  
NRS 177.055 \_\_\_\_\_

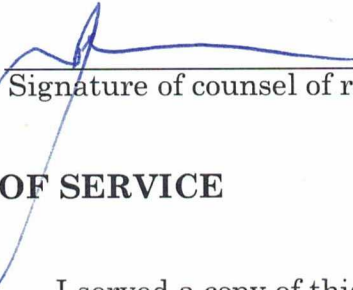
### VERIFICATION

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

Michael Luis Cota  
\_\_\_\_\_  
Name of appellant

John E. Malone, Esq.  
\_\_\_\_\_  
Name of counsel of record

Dec 6, 2018  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature of counsel of record

### CERTIFICATE OF SERVICE

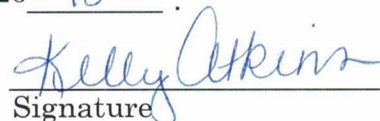
I certify that on the 6th day of 20 18, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

Douglas County District Attorney  
PO Box 218  
Minden, NV 89423

Dated this 6th day of December, 20 18.

  
\_\_\_\_\_  
Signature