

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DAVID BURNS,
Appellant,
v.

THE STATE OF NEVADA,
Respondent.

No. 77424

Electronically Filed
Nov 26 2018 11:17 a.m.

DOCKETING STATEMENT
CRIMINAL APPEALS
Alison A. Brown
Clerk of Supreme Court

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

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.

1. Judicial District Eighth County Clark

Judge Charles Thompson District Ct. Case No. C267882-2

2. If the defendant was given a sentence,

(a) what is the sentence?

Count 1, 12-72 months NDOC, Count 2, 24-120 months NDOC, Count 3, 24-180 months NDOC, Count 4, 24-180 months NDOC w c/s 24-180 u/d/w. Count 5, Life w/o parole w c/s 40-240 u/d/w. Count 6, 24-180 w c/s 24-180 u/d/w, Count 7, 48-240 w c/s 40-240 u/d/w, Count 8, 24-180 months NDOC. Counts 1,2,3,4 c/c to Count 5, Counts 6&8 c/c to Count 7, Count 8 c/s to Count 5.

(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 Jamie Resch Telephone 702-483-7360

Firm Resch Law, PLLC d/b/a Conviction Solutions

Address: 2620 Regatta Drive Suite 102

Las Vegas, NV 89128

Client(s) David Burns

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 Steven B. Wolfson Telephone 702-671-2500

Firm Clark County District Attorney

Address: 200 Lewis Ave.
Las Vegas, NV 89101

Client(s) State of Nevada

Attorney Adam P. Laxalt Telephone 775-687-3538

Firm Nevada Attorney General

Address: 100 N. Carson St.
Carson City, NV 89701

Client(s) State of Nevada

(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 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 checked="" 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):

#64809, #68497, #69959- NSC

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):

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

On November 27, 2017, Burns filed a counseled Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). On October 25, 2018, the District Court filed an order denying relief on all claims in the petition. Petitioner now appeals the district court's decision to the Nevada Supreme Court. An evidentiary hearing was held on September 20, 2018.

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

Whether the District Court erred in denying all claims raised below including: Whether trial counsel were ineffective in failing to file a notice of appeal, or by failing to challenge improperly notice cellular phone expert witness testimony; whether the State withheld or trial counsel failed to discover or utilize exculpatory information about a plea deal offered to a key State witness; whether trial counsel ineffectively opened the door to damaging evidence, whether trial counsel failed to properly challenge prosecutorial misconduct, whether trial counsel was ineffective at sentencing; Whether trial counsel failed to seek to strike the notice of intent to seek the death penalty; Whether trial counsel ineffectively addressed a juror note. Petitioner further asserts the cumulative effect of all errors violated his right to a fair trial.

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 matter involves a post-conviction appeal from a Category A felony and therefore is not presumptively assigned to the Court of Appeals. See 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?

1 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 9/20/2018

20. Date of entry of written judgment or order appealed from 10/25/2018

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

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 N/A Date filed _____

New trial (newly discovered evidence) N/A Date filed _____

New trial (other grounds) N/A Date filed _____

(b) Date of entry of written order resolving motion N/A

23. Date notice of appeal filed 11/8/2018

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

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) <u>xxx</u> _____
NRS 177.015(2) _____	NRS 34.560(2) _____
NRS 177.015(3) _____	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.

David Burns

Name of appellant

JAMIE J. RESCH

Name of counsel of record

11/26/2018

Date

/s/ Jamie J. Resch, Esq.

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 26 NOV 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):

Steven Wolfson, 200 Lewis Ave., Las Vegas, NV 89101
Adam P. Laxalt, 100 N. Carson St., Carson City, NV 89701

Dated this 26th day of November , 20 18 .

/s/ Jamie J. Resch, Esq.

Signature