

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI

Petitioner/Appellant,

vs.

WILLIAM GITTERE, Warden,
Ely State Prison; AARON
FORD, Nevada Attorney
General, et al.,

Respondents/Appellees.

Electronically Filed
Mar 20 2019 03:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 78209

District Court Case No. CR98-0516

(Death Penalty Habeas Corpus
Case)

DOCKETING STATEMENT CRIMINAL APPEALS

GENERAL INFORMATION

1. Judicial District: Second

County: Washoe

Judge: Hon. Connie J. Steinheimer

District Ct. Case No. CR98-0516

2. If the defendant was given a sentence,

a. What is the sentence?

- Count I: Death
- Count II: 180 months, with minimum parole eligibility after 72 months, with consecutive like term for use of a deadly weapon; consecutive to Count I.
- Count III: 180 months, with minimum parole eligibility of 72 months, with a consecutive like term for use of a deadly weapon; consecutive to Counts I & II.
- Count IV: 180 months with minimum parole eligibility of 72 months, with a consecutive like term for use of a deadly weapon; consecutive to Counts I, II, & III.

- Count V: 120 months with minimum parole eligibility of 48 months; consecutive to Counts I, II, III, & IV.

b. Has the sentence been stayed pending appeal? The U.S. District Court for the District of Nevada stayed Mr. Vanisi's death sentence pending resolution of Mr. Vanisi's federal habeas proceedings. *See* Case No. 3:10-cv-448-MMD-CBC, ECF No. 13.

c. Was the defendant admitted to bail pending appeal? No.

3. Was counsel in the district court appointed [X] or retained []?

4. Attorney filing this docketing statement

Randolph M. Fiedler
Assistant Federal Public Defender
Federal Public Defender, District of Nevada
411 E. Bonneville Avenue
Las Vegas, Nevada 89101
702-388-6577

Attorney for Petitioner-Appellant Siaosi Vanisi

5. Is appellate counsel appointed [X] or retained []?

6. Attorneys representing respondent(s)

Jennifer P. Noble
Appellate Deputy
Joseph R. Plater

Appellate Deputy
Washoe County District Attorney's Office
P.O. Box 11130
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775-337-5757

Attorneys for William Gittere, Warden, Ely State Prison, State of Nevada

Aaron Ford
Nevada Attorney General
Heather Proctor
Chief Deputy Attorney General
100 N. Carson St.
Carson City, Nevada 89701
775-684-1271

Attorneys for William Gittere, 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
- | | |
|--|--|
| <input checked="" type="checkbox"/> Death Sentence | <input type="checkbox"/> Juvenile Offender |
| <input type="checkbox"/> Life Sentence | <input type="checkbox"/> Pretrial Proceeding |
9. Expedited Appeals: The Court may decide to expedite the appellate process in this matter. Are you in favor of proceeding in such a manner? No.

10. Pending and prior proceedings in this court.
 - *Vanisi v. 2d Jud. Dist. Ct.*, No. 34771
 - *Vanisi v. State*, No. 35249
 - *Vanisi v. 2d Jud. Dist. Ct.*, No. 45061
 - *Vanisi v. State*, No. 50607
 - *Vanisi v. Warden*, 65774
11. Pending and prior proceedings in other courts
 - *Vanisi v. State*, No. CR98-0516 (2d Jud. Dist. Ct.) (criminal complaint filed on Jan. 14, 1998).
 - *Vanisi v. State*, No. CR98-0516 (2d Jud. Dist. Ct.) (pro se petition for writ of habeas corpus filed on Jan. 18, 2002)
 - *Vanisi v. McDaniel*, et al., No. 3:10-cv-00448-MMD-CBC (Dist. Nev.) (petition for writ of habeas corpus filed on July 19, 2010)
 - *Vanisi v. McDaniel*, et al., No. CR98-0516 (2d Jud. Dist. Ct.) (petition for writ of habeas corpus filed on May 4, 2011)
12. Nature of the action.

This Court remanded this case for an evidentiary hearing “concerning whether Vanisi was prejudiced by postconviction counsel’s failure to substantiate their claim of ineffective assistance of trial counsel for failure to introduce additional mitigation evidence.”¹

On remand, after a competency hearing, the district court accepted Vanisi’s waiver of this evidentiary hearing. The court then denied Vanisi’s remaining post-conviction claim. The court also denied Vanisi’s motion to supplement his petition with a claim that his severe mental illness renders him ineligible for the death penalty.

13. Issues on appeal:

- Did the district court err by finding that Vanisi was competent to waive his evidentiary hearing?
- Did the district court err by accepting Vanisi’s waiver of his evidentiary hearing?
- Did the district court err by denying Vanisi’s motion to supplement his petition?

¹ *Vanisi v. Baker*, No. 65774, 2017 WL 4350947, at *3 (Nev. Sept. 28, 2017).

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 case is presumptively heard by this Court because it is a death penalty case. *See* NRAP 17(a)(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? The competency hearing in the district court lasted one 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: the district court held that Mr. Vanisi was competent on September 24, 2018. The court accepted his waiver on September 25, 2018. The court denied Mr. Vanisi's claim on September 25, 2018. The court denied Mr. Vanisi's motion to supplement his petition on January 25, 2019.
20. Date of entry of written judgment or order appealed from: On February 6, 2019, the district court filed its Notice of Entry of Order denying Mr. Vanisi's claim. On February 22, 2019, the district court filed its Notice of Entry of Order denying Mr. Vanisi's motion for leave to file supplement.
21. If this appeal is from an order granting or denying a petition for writ of habeas corpus, indicate the date written entry of

judgment or order was served by the district court: Both were served electronically on the day they were filed.

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 the motion and (b) Date of entry of written order resolving motion. Not applicable.
23. Date notice of appeal filed: Feb. 28, 2019.
24. Specify statute or rule governing the time limit for filing the notice of appeal: NRAP 4(b); NRS 34.575(1)
25. Specific the statute, rule or other authority that grants this court jurisdiction to review from. NRS 34.575(1).

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 20th day of March, 2019.

Respectfully submitted,

/s/ *Randolph M. Fiedler*

RANDOLPH M. FIEDLER

Assistant Federal Public Defender

Nevada State Bar No. 12577

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702-388-6577

Attorney for Siao Si Vanisi

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20th day of March, 2019, electronic service of the foregoing DOCKETING STATEMENT shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble
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/s/ Sara Jelinek

An Employee of the Federal Public
Defender, District of Nevada