

SUPREME COURT OF THE STATE OF NEVADA

TONEY A. WHITE,)

#1214172,)

Appellant,)

)

v.)

STATE OF NEVADA,)

)

Respondent.)

_____))

Electronically Filed
Jun 07 2019 10:36 a.m.
78483
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No: C-16-313216-2
D.C. case no.: C-16-313216-2

Dept.: XII

E-filed

DOCKETING STATEMENT - CRIMINAL APPEALS

1. Eighth Judicial District, County of Clark, Judge Michelle Leavitt, District
Court Case number: C-16-313216-2.

2. If the Defendant was given a sentence,

(a.) what is the sentence?

Defendant was sentenced to the Nevada Department of Corrections as follows:

On Count 1 - to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS in the Nevada
Department of Corrections (NDC);

On Count 2 - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY-SIX (66) MONTHS, CONCURRENT with COUNT 1 in the NDC;

On COUNT 3 - to LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a parole eligibility of FIVE (5) YEARS for the Use of a Deadly Weapon, CONCURRENT TO COUNT 2 in the NDC;

On COUNT 4 - to LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a parole eligibility of FIVE (5) YEARS for the Use of a Deadly Weapon, CONSECUTIVE with COUNT 3 in the NDC;

On COUNT 5 - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 4 in the NDC;

On COUNT 6 - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with

a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 5 in the NDC;

On COUNT 7 - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY-SIX (66) MONTHS, CONCURRENT with COUNT 6 in the NDC;

and COUNT 8 - to THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC), CONCURRENT with COUNT 7 for and AGGREGATE TOTAL of LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS with ONE THOUSAND ONE HUNDRED THIRTY-FOUR (1,134) DAYS credit for time served. CLERK'S NOTE: Subsequent to Court, COURT ORDERED, COUNT 3 CONCURRENT TO COUNT 2.

(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? APPOINTED.

4. Attorney filing this docketing statement:

Attorney: Terrence M. Jackson Telephone: 702.386.0001

Firm: Law Office of Terrence M. Jackson

624 South Ninth Street

Las Vegas, Nevada 89101

Client: Toney Anthony White

5. Is appellate counsel appointed or retained? APPOINTED.

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

Attorney: Steven B. Wolfson Telephone: 702.671.2500

Firm: Clark County District Attorney

200 East Lewis Avenue

Las Vegas, Nevada 89155-2212

Client: State of Nevada

Attorney: Steven S. Owens Telephone: 702.671.2500

Firm: Chief Deputy District Attorney - Appellate Division

200 East Lewis Avenue

Las Vegas, Nevada 89155-2212

7. Nature of disposition: Judgment upon guilty plea.

8. Does this appeal raise issues concerning any of the following: No.

☐ 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: None.

11. Pending and prior proceedings in other courts: None.
12. Nature of action. Briefly describe the nature of the action and the result below:

Defendant/Appellant entered a plea of guilty to all counts of the Grand Jury Indictment midway through his trial. He was sentenced on March 14, 2019.
13. Issues on Appeal. State specifically all issues in this appeal:
 1. Whether Defendant was improperly denied the constitutional right to represent himself;
 2. Whether the Court erred by denying Defendant's request for another counsel;
 3. Whether the Court erred in denying Defendant's Motion to Withdraw his plea of guilty;
 4. Whether the aggregate sentence of life with a minimum parole eligibility of twenty years was an excessively harsh and vindictive punishment which violated the Eighth Amendment;
 5. Whether there was insufficient evidence of guilt under *Jackson v. Virginia* for Defendant's guilty plea to be valid on each count of the Indictment;
 6. Whether the accumulation of error in this case violated the Defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments;
 7. Defendant respectfully requests the right to add additional issues to his

Opening Brief if this is warranted by further research.

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

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 issues or circumstances that warrant retaining the case, and include an explanation of their importance or significance:

This case is assigned to the Court of Appeals pursuant to NRAP 17(b)(1) as this is a direct appeal from a Judgment of Conviction based upon a plea of guilty. However, because of the unusual fact pattern surrounding the plea of guilty to all counts of the Indictment in the middle of trial, which then resulted in an extremely lengthy sentence, the Supreme Court should retain this Appeal.

Defendant originally pled guilty to a negotiated plea on October 19, 2017. On January 9, 2018, Defendant filed Motion to Withdraw Plea of Guilt and moved for appointment of new counsel or to represent himself *pro per*. The Court denied his *pro per* request for *pro per* representation however the Court granted Defendant's request for new counsel. After many hearings the Court granted the Defendant withdrawal of his first plea of guilty and reset the trial on February 19, 2019. Midway through the jury trial on February 22, 2019, Defendant pled guilty to all charges without any negotiations. Numerous questions from the circumstances of the plea make it the kind of case which requires Supreme Court analysis and retention by the Supreme Court.

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?

Trial lasted three (3) days before plea of guilty.

18. Oral argument. Would you object to submission of this appeal for disposition

without oral argument? [X] Yes [] No.

19. Date district court announced decision, sentence or order appealed from:

March 19, 2019.

20. Date of entry of written judgment or order appealed from: March 27, 2019.

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: N/A

(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:

N/A

23. Date notice of appeal filed: March 28, 2019.

24. Specify statute or rule governing the time limit for filing notice of appeal:

NRAP 4(b)

25. Specify statute, rule or other authority that grants this court jurisdiction to review from: NRS177.015(3).

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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.

Toney Anthony White
Name of Appellant

Terrence M. Jackson, Esq.
Name of Counsel of Record

June 7, 2019
Date

//s// Terrence M. Jackson
Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 7th day of June, 2019, I served a copy of this completed docketing statement upon all counsel of record:

[X] Via Electronic Service (eFlex) to the Nevada Supreme Court;

[X] and by United States first class mail with postage affixed to the Nevada

Attorney General and to the Defendant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyda.com

STEVEN S. OWENS
Chief Deputy D.A. - Criminal
APPELLATE DIVISION
steven.owens@clarkcountyda.com

Toney A. White
ID# 1214172
H.D.S.P. - Box 650
Indian Springs, Nevada
89070-0650

AARON D. FORD, ESQUIRE
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

By: /s/ Ila C. Wills
Assistant to T. M. Jackson, Esq.