

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SHAWN RUSSELL HARTE,

Appellant,

v.

STATE OF NEVADA,

Respondent.

No. 78978

**DOCKETING STATEMENT
CRIMINAL APPEALS**

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

Electronically Filed
Jul 13 2019 01:51 p.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.

1. Judicial District Second County Washoe

Judge Connie J. Steinheimer District Ct. Case No. CR98-0074A

2. If the defendant was given a sentence,

(a) what is the sentence?

Appellant was sentenced to life without the possibility of parole for murder, with a consecutive term for use of a deadly weapon. Appellant was also sentenced to a consecutive term of 72 to 180 months for robbery, with a consecutive term of 72 to 180 months for use of a firearm.

(b) has the sentence been stayed pending appeal?

No

(c) was defendant admitted to bail pending appeal?

N/A

3. Was counsel in the district court appointed ☒ or retained ☐ ?

4. Attorney filling this docketing statement:

Attorney Victoria T. Oldenburg Telephone 775-971-4245

Firm Oldenburg Law Office

Address: P.O. Box 17422
Reno, NV 89511

Client(s) Shawn Russell Harte

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 Jennifer P. Noble, Esq. Telephone 775-337-5750

Firm State of Nevada

Address: P.O. Box 11130
Reno, NV 89502

Client(s) State of Nevada

Attorney Aaron D. Ford Telephone 775-684-1100

Firm Nevada Attorney General

Address: 100 North Carson Street
Carson City, NV 89701

Client(s) State of Nevada

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- | | |
|--|---|
| ☐ Judgment after bench trial | ☐ Grant of pretrial habeas |
| ☐ Judgment after jury verdict | ☐ Grant of motion to suppress evidence |
| ☐ Judgment upon guilty plea | ☒ Post-conviction habeas (NRS ch. 34) |
| ☐ Grant of pretrial motion to dismiss | ☐ grant ☐ denial |
| ☐ Parole/probation revocation | ☐ Other disposition (specify): |
| ☐ Motion for new trial | |
| ☐ grant ☐ denial | |
| ☐ Motion to withdraw guilty plea | |
| ☐ grant ☐ denial | |

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

- | | |
|---|---|
| ☐ 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?

- ☐ 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):

Shawn Russell Harte v. State, Supreme Court Case Nos. 34227, 43877, 67519; State of Nevada and Warden, Ely State Prison, E.K. McDaniel v. Shawn Russell Harte, Supreme Court Case No. 50161; Latisha Babb v. State, Supreme Court Case Nos. 34195, 49929; Weston Sirex v. State, Supreme Court Case No. 34196.

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):

N/A

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

On May 5, 2017 Appellant filed a Petition for Writ of Habeas Corpus (Post-Conviction) ("Petition") and on February 1, 2018 filed a Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) ("Supplemental Petition"). On March 19, 2018 the State filed a Motion to Dismiss the Petition and Supplemental Petition. On August 9, 2018 Appellant filed a Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) specifically as to Ground One of the Petition and Supplemental Petition. On April 13, 2018 Appellant filed a Notice of Voluntary Dismissal of Ground One of the Petition, Supplemental Petition, and Second Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). On May 15, 2019 the district court issued an Order Dismissing Post-Conviction Petitions.

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

Did the district court err (1) in dismissing Appellant's claim the district court erred by admitting evidence of the co-defendants' sentences at the penalty phase hearing and that trial counsel failed to raise and preserve the issue; (2) in dismissing Appellant's claim that the sentence of life without the possibility of parole was excessive and the jury at the penalty phase hearing should have been informed that life without parole should be reserved for only the deadliest and most un-salvageable prisoners and that trial counsel was ineffective for not preserving the issue; (3) in dismissing Appellant's claim that at the penalty phase hearing the State should not have been allowed to present an opening and closing argument; (4) in dismissing Appellant's claim the district court failed to instruct the jury properly during the penalty phase hearing, and; (5) in dismissing Appellant' claim of cumulative error?

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 not presumptively assigned to the Court of Appeals as it involves a post-conviction challenge to a sentence for a category A felony of first-degree murder. NRAP 17(b)(3).

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 May 15, 2019

20. Date of entry of written judgment or order appealed from May 15, 2019

(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 June 10, 2019

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>XX</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.

Shawn Russell Harte

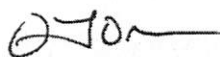
Name of appellant

July 13 2019

Date

Victoria T. Oldenburg

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

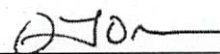
I certify that on the July 13 day of 20 19, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

Jennifer P. Noble, Chief Appellate Deputy, P.O. Box 11130, Reno, NV 89502
Shawn Russell Harte, #61390, Northern Nevada Correctional Center, P.O. Box 7000,
Carson City, NV 89702

Dated this 13th day of July, 20 19.



Signature