

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JACK PAUL BANKA,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 80181

Electronically Filed
Dec 18 2019 10:44 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 Carolyn Ellsworth District Ct. Case No. C333254

2. If the defendant was given a sentence,

(a) what is the sentence?

" a MAXIMUM of ONE HUNDRED TWENTY (120) months WITH A MINIMUM parole eligibility of FORTY EIGHT (48) MONTHS in the Nevada Department of Corrections and a \$2,000 fine; with SIX (6) DAYS credit for time served.

(b) has the sentence been stayed pending appeal?

No

(c) was defendant admitted to bail pending appeal?

Not at this time - Motion still pending.

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

4. **Attorney filling this docketing statement:**

Attorney Michael Pariente, Esquire. Telephone 702-966-5310

Firm ParienteLaw Firm P.C. with John Glenn Watkins, Esquire., Of Counsel.

Address: 3960 Howard Hughes Parkway, Suit 615
Las Vegas, Nevada 89169

Client(s) Jack Paul Banka

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 Wolfson, District Attorney Telephone 702-671-2700

Firm Clark County District Attorney

Address: 200 Lewis Street
Las Vegas, Nevada 89101

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 checked="" type="checkbox"/> Other disposition (specify): |
| <input type="checkbox"/> Motion for new trial | Motion in Arrest of Judgment which was Denied. |
| <input type="checkbox"/> grant <input type="checkbox"/> denial | |
| <input checked="" type="checkbox"/> Motion to withdraw guilty plea | |
| <input type="checkbox"/> grant <input checked="" 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):

Jack Banka v. The Eights Judicial District Court of the State of Nevada, in and for the County of Clark: and the Honorable Carolyn Ellsworth, District Judge, (Respondents) and The State of Nevada, (Real Party in Interest).

Docket No.: 79014.

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:

The instant appeal is a legal challenge to (1) the district court's denial of Appellant Banka's Motion in Arrest of Judgment filed because the Amended Information failed to charge an offence and as a result did not confer subject matter jurisdiction on the district court, and (2) the district court's refusal to allow Appellant Banka to withdraw his *Alford* plea of Guilty which was entered while he was being represented by his prior counsel, Thomas Boley, Esquire after the district court refused Appellant Banka's request and desire to substitute John Glenn Watkins, Esquire and Michael D. Pariente, Esquire as his new counsel.

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

1. The district court's denial of Appellant Banka's Motion in Arrest of Judgment was error because the State's Second Amended Information did not charge an offense and as a result did not confer subject matter jurisdiction on the district court.
2. The district court's refusal to allow Banka to withdraw his previously entered plea of guilty (*Alford*) was an abuse of discretion.

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:

The instant appeal is presumptively assigned to the Court of Appeals under NRAP 17(b) (1). However, appellant Banka believes that issue raised in his Motion in Arrest of Judgment is of statewide public importance. Also, this issue appears to be one of first impression i.e. commingling the misdemeanor DUI statute (NRS 484C.110) with the felony DUI statute (NRS 484C.430) to prosecute appellant Banka.

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?

 N/A days

18. Oral argument. Would you object to submission of this appeal for disposition without oral argument?

☒ Yes ☐ No

TIMELINESS OF NOTICE OF APPEAL

11/18/2019
and
12/4/2019

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

20. Date of entry of written judgment or order appealed from No Written Orders

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

The District Judge denied orally the Motion in Arrest of Judgment on 11/18/2019 and the Motion to Withdraw Plea on 12/4/2019.

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

(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 12/4/2019

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

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) ^x _____	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.

Jack Paul Banka

Michael Pariente, Esquire

Name of appellant

Name of counsel of record

12/16/19

/s/ Michael Pariente, Esquire

Date

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the _____ day of 20_____, 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):

200 Lewis St
Las Vegas, Nevada 89101

Dated this _____ day of _____, 20 19_____.

s/ Christopher Barden

Signature