

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Evaristo Jonathan Garcia
Appellant

vs.

James Dzurenda, et al.,

No. 80255

Electronically Filed
Jan 09 2020 01:59 p.m.

**DOCKETING STATEMENT
CRIMINAL APPEALS**
Elizabeth 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 Judicial District County Clark County

Judge Hon. David M. Jones District Ct. Case No. A-19-791171-W

2. If the defendant was given a sentence,

(a) what is the sentence?

10 years to life plus an equal and consecutive term of 10 years to life (20 years to life total), plus \$38,000 in restitution.

(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 S. Alex Spelman Telephone 702-388-6577

Firm Federal Public Defender, District of Nevada

Address: 411 E. Bonneville Ave., Ste. 250
Las Vegas, NV 89101

Client(s) Evaristo Jonathan Garcia

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 Karen Mishler Telephone 702-671-2500

Firm Clark County District Attorney

Address: 200 Lewis Avenue
Las Vegas, NV 89155

Client(s) James Dzurenda, et al., Appellee/Respondent

Attorney _____ Telephone _____

Firm _____

Address: _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Judgment upon guilty plea
- ☐ Grant of pretrial motion to dismiss
- ☐ Parole/probation revocation
- ☐ Motion for new trial
 - ☐ grant ☐ denial
- ☐ Motion to withdraw guilty plea
 - ☐ grant ☐ denial

- ☐ Grant of pretrial habeas
- ☐ Grant of motion to suppress evidence
- ☒ Post-conviction habeas (NRS ch. 34)
 - ☐ grant ☒ denial
- ☒ Other disposition (specify):

(Pending) ruling on Nev. R. Civ. P. 59(e) motion.

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

- ☐ death sentence
- ☒ life sentence
- ☒ juvenile offender
- ☐ 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):

Garcia (Evaristo) v. State:

64221 (direct appeal, Nevada Supreme Court)

71525 (appeal from denial of petition for writ of habeas corpus, Nevada Court of Appeals)

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):

Garcia v. Dzurenda, et al., A-19-791171-W (Eighth Judicial District Court) - Still awaiting resolution of a Nev. R. Civ. P. 59(e) motion to alter or amend the judgment.

Garcia. v. State, 10C262966-1 (post-conviction proceedings)

State v. Garcia, C262966-1 (trial proceedings)

Garcia v. NDOC, 2:17-cv-03095-JCM-CWH (D. Nev.) - federal habeas petition, stayed

Garcia v. State of Nevada. 3:17-cv-00378-MMD-WGC (D. Nev) - federal petition. dismissed +

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

This is an appeal from the denial of Mr. Garcia's counseled post-conviction petition for a writ of habeas corpus.

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

This was a factually complex homicide trial against a juvenile, Evaristo Garcia, who was 16 at the time of the offense. The primary dispute at trial was the identity of the shooter. In the post-conviction habeas corpus action below, the Federal Public Defender presented newly discovered evidence that the State had failed to disclose material and exculpatory police reports from the Clark County School District Police Department. Evaristo argues there's a reasonable possibility that these reports would have raised a reasonable doubt at trial as to whether he was the true shooter and thus that the State's nondisclosure was a violation of due process.

The central question presented will be whether this evidence was exculpatory and, due to its materiality, whether the State's nondisclosure therefore constituted a denial of due process in violation of the Nevada and United States Constitutions. See *Brady v. Maryland*, 373 U.S. 83 (1963).

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 is best retained by the Nevada Supreme Court to resolve the following principle issue of statewide public importance: Whether trial counsel's actions are relevant to the determination of whether evidence is exculpatory under *Brady v. Maryland*, 373 U.S. 83 (1963).

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?

6 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 Nov 12, 2019

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

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

For question 21: The district court electronically delivered a written order on petition for writ of habeas corpus (post-conviction) on November 15, 2019. On the online docket, a notice of entry of order filed by the court on November 18, 2019, also appears. However, as of the date of this writing, counsel cannot download it and has not seen it.

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 Nev. R. Civ. P. 59(e) Date filed 11/27/2019

New trial (newly discovered evidence) _____ Date filed _____

New trial (other grounds) _____ Date filed _____

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

23. Date notice of appeal filed Dec 11, 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); 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>X</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.

Evaristo Jonathan Garcia

Name of appellant

S. Alex Spelman

Name of counsel of record

Jan 9, 2020

Date

/s/ S. Alex Spelman

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the Jan. 9 day of 20 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):

Karen Mishler, Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, NV 89155-2212

Dated this 9th day of January, 2020.

/s/ S. Alex Spelman

Signature