

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

KODY HARLAN,
Appellant,

v.

STATE OF NEVADA,
Respondent,

No. 80318

Electronically Filed
Jan 15 2020 06:18 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.

Revised December 2015

1. Judicial District Eighth County Clark

Judge Douglas Herndon District Ct. Case No. C-18-333318-2

2. If the defendant was given a sentence,

(a) what is the sentence?

Count 1: Life with the possibility of parole after 20 years plus a consecutive sentence of 48 months to 120 months for the Deadly Weapon Enhancement.

Count 2: 48 months to 120 months plus a consecutive sentence of a 48 months to 120 months for the Deadly Weapon Enhancement, concurrent to Count 1.

Count 3: 18 months to 60 months, concurrent with Count 1.

(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 K. Ryan Helmick Telephone 702-333-3333

Firm The Defenders (Richard Harris Law Firm)

Address: 830 S.4th St. Las Vegas, NV 89101.

Client(s) Kody Harlan

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 District Attorney

Telephone 702-671-2500

Firm N/A

Address: 200 Lewis Ave. Las Vegas, NV 89101.

Client(s) State of Nevada

Attorney N/A

Telephone N/A

Firm N/A

Address: N/A

Client(s) N/A

(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 checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant of motion to suppress evidence |
| <input 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 type="checkbox"/> Other disposition (specify): |
| <input type="checkbox"/> Motion for new trial | |
| <input type="checkbox"/> grant <input checked="" type="checkbox"/> denial | |
| <input type="checkbox"/> Motion to withdraw guilty plea | |
| <input type="checkbox"/> grant <input 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 checked="" 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):

None.

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):

None.

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

Mr. Harlan was charged by way of Information with one count of 1st Degree Murder With Use of a Deadly Weapon (under the Felony Murder theory); one count of Robbery With Use of a Deadly Weapon and one count of Accessory to Murder With Use of a Deadly Weapon.

The case went to trial and Mr. Harlan was convicted of all counts with the first degree murder being under the Felony Murder Rule. Shortly after the verdict Defense Counsel became aware of juror misconduct and filed a Motion for a New Trial. Ultimately after a limited evidentiary hearing, the motion was denied. Mr. Harlan was then sentenced to the above on December 10, 2019.

The Defense's position, which was uncontested at trial was that Mr. Harlan was asleep on the couch when the killing occurred and that there was no planned robbery. Additionally, after the verdict Defense Counsel was given an affidavit signed by one of the jurors alleging numerous instances of juror misconduct, one of which specifically affected her verdict.

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

1. The limiting of the scope of the evidentiary hearing given on Appellant's Motion for New Trial based off of juror misconduct. Appellant was only allowed to question jurors about one particular fact that was discussed during deliberations, which was a prior bad act that was excluded from the trial upon the granting of Appellant's pre-trial Motion in Limine. Appellant had other facts of juror misconduct that were unable to be testified to or made a part of the record because of the District Court judge's ruling to exclude such facts.
2. Denying of Appellant's Motion for New Trial after multiple jurors testified under oath that the prior bad act, which was excluded from trial but brought up by the lead detective on the case during cross examinations, was talked about amongst the juror's during deliberations. Additionally, it was testified to that this prior bad act that was to be excluded, affected the verdict of at least one juror.
3. Denying of Appellants Motion for a Mistrial that was argued for during the trial itself, after the State's witness improperly testified about the prior bad act.
4. Double Jeopardy and/or Redundancy for being convicted and/or sentenced for 1st Degree Murder and Accessory to that Murder. Additionally, for a Deadly Weapon Enhancement on a Robbery Charge as well as the 1st Degree Murder Charge when the theory for the Murder was under the Felony Murder Rule. But for the alleged Robbery there would be no Murder conviction for the Appellant as he committed no killing.

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:

Supreme Court because it involves Category "A" and "B" felonies. NRAP 17(b)(2)(a).

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?

7 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 _____

20. Date of entry of written judgment or order appealed from _____

(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 9-26-19 _____

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.

Kody Harlan

Name of appellant

1-15-20

Date

K. Ryan Helmick

Name of counsel of record

K. Ryan Helmick

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 15 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):

SUPREME COURT CLERK
201 S. Carson St.
Carson City, NV 89701

Dated this 15 day of January, 2020.

K. Ryan Helmick

Signature