IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SAMUEL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. **81278, 81279**

Electronically Filed
Jun 10 2020 07:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CRIMINAL APPEALS

(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.

Docket 81279 Document 2020-21720

1. Judicial District Eighth County Clark

Judge Villani District Ct. Case No. A-18-780434-W; 81C053867

2. If the defendant was given a sentence,

(a) what is the sentence?

Death

(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 [X] or retained [ ] ?

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

Attorney Jonah J. Horwitz Telephone 208-331-5530

Firm Federal Defender Services of Idaho

Address: 702 W. Idaho St., Ste. 900
Boise, Idaho 83702

Client(s) Samuel Howard

5. Is appellate counsel appointed [X] 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 Jonathan VanBoskerck Telephone 702-671-2500

Firm Clark County District Attorney's Office

Address: 200 Lewis Ave.
Las Vegas, NV 89155

Client(s) The State

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):

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):

***Howard v. State*, No. 15113; *Howard v. State*, No. 20368; *Howard v. State*, No. 23386; *Howard v. State*, No. 42593; *Howard v. State*, No. 57469; *Howard v. State*, No. 73223; *Armeni v. Eighth Jud. Dist. Ct.*, No. 73462.**

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):

Howard v. State, Nos. A-18-780434-W and 81C053867, Clark County, Nevada District Court; *Howard v. Gittere*, No. 2:19-cv-247, U.S. District Court for the District of Nevada (USDC NV); *Howard v. Gittere*, No. 2:93-cv-1204, USDC NV; *Howard v. Godinez*, No. CV-N-91-196, USDC NV; *Howard v. Whitley*, No. CV-N-88-264, USDC NV; *Howard v. Gittere*, No. 19-70384, U.S. Court of Appeals for the Ninth Circuit (9th Cir.); *Howard v. Baker*, No. 10-99003, 9th Cir.; *Howard v. Nevada*, No. 14-8546, Supreme Court of the United States (Supreme Court); *Howard v. Nevada*, No. 92-8909, Supreme Court; *Howard v. Nevada*, No. 86-6937, Supreme Court; *Howard v. Nevada*, No. 19-7680, Supreme Court.

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

This is a capital post-conviction appeal. The petitioner challenged his death sentence on the basis that the final aggravating circumstance supporting it was invalidated. The district court denied the petition as procedurally barred.

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

The issue on appeal is whether the petitioner's death sentence should be vacated because there are no longer any aggravating circumstances supporting it.

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?

- [X] 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 appeal is presumptively retained by the Supreme Court under NRAP 17(a)(1) because it involves the death penalty.

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 **5/18/2020**

20. Date of entry of written judgment or order appealed from **5/21/2020**

(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 ☒ **5/21/2020**

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 **5/29/2020**

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(1)

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)	X
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.

Samuel Howard	**Jonah J. Horwitz**
Name of appellant	Name of counsel of record
June 10, 2020	
Date	Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the **10th** 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):

Jonathan VanBoskerck
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212
Jonathan.VanBoskerck@clarkcountyda.com

Dated this **10th** day of **June** , 20 **20** .

Signature