

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALISHA BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent

CASE NO. 82686

D.C. CASE NO: 03C191253

Electronically Filed  
May 12 2021 09:10 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT**

1. Judicial District Eighth Department Clark County Judge HON. TIERRA JONES Department X, District Court Docket No. C191253.

2. If the defendant was given a sentence,

(a) what is the sentence? SECOND DEGREE MURDER-LIFE WITH PAROLE, Judgment of Conviction filed June 10, 2003.

(b) has the sentence been stayed pending appeal? NO

(c) was defendant admitted to bail pending appeal? NO, however Appellant has now been released on parole.

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

4. Attorney filing this docketing statement:

Anthony L. Abbatangelo, Esq. Tel. No. 702-707-7000

Firm: Tony L. Abbatangelo., email: [tony@thevegaslawyers.com](mailto:tony@thevegaslawyers.com)

1 Address: 4560 S. Decatur, Ste. 300, Las Vegas, NV 89103

2 Client: ALISHA BURNS

3 5. Is counsel appointed or retained on appeal: Appointed

4 6. Attorney representing Respondents:

5 Steve Wolfson, Esq. Tel. No. 702-671-2500

6 Firm: Clark County District Attorney's Office

7 Address: 200 Lewis Avenue, Las Vegas, NV 89801

8 Client: The State of Nevada

9 Aaron Ford, Esq. Tel. No. 775-684-1100

10 Firm: Attorney General's Office

11 Address: 100 N. Carson Avenue, Carson City, NV 89701

12 Client: The State of Nevada

13 7. Nature of Disposition Below

14 Judgment after guilty plea

15 8. Does this raise issues concerning any of the following?

16 It does involve **a life sentence**, a pretrial proceeding, or a **juvenile offender,**  
17 **who was certified as an adult**

18 9. Expedited appeals. This court may decide to expedite this appeal. Are you  
19 in favor of proceeding in such a manner? yes

20 10. Pending and prior proceedings in this court:

21 NONE

1 11. Pending and prior proceedings in other courts:

2 There are no pending or prior proceedings in other courts, other than the  
3 original District Court case.  
4

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

7 This case involves denial of post-conviction relief, said Order entered on  
8 March 10, 2021. The Petitioner, Alisha, 15 years old at the time of the incident,  
9 plead guilty to Second Degree Murder, and was originally convicted on June 10,  
10 2003 in the Eighth Judicial District Court of Clark County, County, of Second-  
11 Degree Murder. She was given a life sentence with possibility of parole. Appellant  
12 had been in 32 different foster homes until she, at 15 years old, was  
13 charmed/groomed/kidnapped by one Steven Kaczmarek.  
14  
15  
16

17 Mr. Steven Kaczmarek went to trial, was convicted, and given the death  
18 penalty. His sentence which was later reduced to Life without the possibility of  
19 parole. Alisha was the child referred to in Count 4 of Kaczmarek's conviction,  
20 Murder with the Assistance of a Child.  
21

22 Alisha was clearly a victim of sex trafficking, nullifying her culpable mental  
23 state. If the facts of this case could be fast forwarded to the present, she would  
24 have never been charged, due to the forensic evolution of victims of sex trafficking  
25 and what is now revealed by the forensic science.  
26  
27

28 In this case Alisha would not testify against Kaczmarek, thus she was

1 defaulted to becoming a defendant. Alisha was never considered a victim of sex  
2 trafficking with its attendant overwhelming undue influence on a 15-year-old  
3 victim, this concept was never raised, completely overlooked.  
4

5 Alisha's rights were not upheld by the State. In fact, she was trashed and  
6 abused by the State. When she was brought to Clark County to testify, she  
7 languished in solitary confinement for months on end. Just to obtain her presence,  
8 the District Attorney's office fooled the juvenile court in Ohio, by promising that  
9 she would be immune from any criminal process, and that she would be  
10 immediately returned to the State of Ohio once she testified against Kaczmarek.  
11 While she was languishing in months of solitary confinement, however, she was  
12 able to receive Machiavellian letters from Kaczmarek, said letters were a  
13 successful ploy to con her into writing a statement to the investigator, whereby she  
14 would take responsibility. Kaczmarek assured her that she would be handled as a  
15 minor, and this way they would both get light sentences, after which the "couple"  
16 would ride into the sunset, living happily ever after.  
17  
18  
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21

22 It is very troubling that the authorities would allow these letters to be received  
23 by this 15-year-old girl in solitary confinement. The State knowingly let these  
24 letters pass to Alisha, and knew, or should have known, that Alisha was under  
25 extreme and undue influence at the time she sent her statement to the Metro  
26 Detective. The State knew or should have known that this undue and extreme  
27  
28

1 influence likely rendered any statement she made involuntary, and not the product  
2 of Alisha's free will, thus constituting a Brady violation.  
3

4 Further, Alisha was held in solitary confinement, and not immediately sent  
5 back to the State of Ohio as promised. Her prolonged detention was unlawful, and  
6 any resulting statements she gave was the product of her unlawful detention. This  
7 includes a highly suspect statement she allegedly gave to a correction officer,  
8 Teresa Daka.  
9  
10

11 The case progressed, and after much wavering, her attorney could not break  
12 Kaczmarek's spell, and she ended up pleading to Second Degree Murder. Alisha  
13 filed a Petition for Habeas Corpus relief on November 21, 2003. Alisha suffered  
14 from failing blood pressure, her health was at a critical level, and the decision was  
15 made to forego the Petition and focus on her emancipation in order that her health  
16 concerns could be addressed properly.  
17  
18

19 Alisha filed this second Petition on May 14, 2019. Undersigned was appointed  
20 on July 30, 2019. The Court granted an evidentiary hearing to address the issues of  
21 timeliness and her actual innocence claim.  
22  
23

24 The incident that formed the basis of prosecution occurred on September 25,  
25 2002. On September 27, 2002, there was activity inside the premises of the  
26 deceased as evidenced by the door being chain locked from the inside. This was  
27 the day that the deceased was found.  
28

1 Alisha's prints were not found at the scene, but there were other unidentified  
2 prints found at the scene. Because of the unexplained presence of others at the  
3 scene two days after the incident, a robbery of the deceased on September 25,  
4 2002, Alisha filed a request for limited discovery, specifically, to have the  
5 fingerprints found at the scene to be re-run. The Court did not grant the Motion to  
6 order new fingerprint testing of the scene. After the evidentiary hearing was held,  
7 March 10, 2021, the Court denied the Petition. Notice of appeal was filed on  
8 March 22, 2021.

12 13. Issues on Appeal:

14 A. The Petitioner's due process rights were violated resulting in an unjust  
15 conviction, and her Petition is timely.

16 B. The Petitioner's received ineffective assistance of counsel at the trial level.

17 C. The Petitioner is factually innocent.

18 D. There is new evidence that was not available at the time her case was  
19 pending. New evidence, notwithstanding the fingerprint issue, is the  
20 advancement of forensic science and social norms bearing on the issue of  
21 Alisha being a victim of extreme sex trafficking. She was 15 years at the  
22 time of this incident; Kaczmarek was 33 years; unbeknownst to Alisha, was  
23 a violent felon. Kaczmarek convinced her to leave Ohio, brought her to Las  
24 Vegas, where he forced her to commit acts of prostitution for the two to  
25 simply survive.

26 We now know that this is a classic, textbook, illustration of sex

1 trafficking of a minor. Her status as a victim of child sex trafficking was not  
2 a concept used in 2003 as it related 15 year old child-victims. With this new  
3 evidence, no reasonable jury would convict her. She is in essence his tool,  
4 his pawn, his slave, his humanoid robot.

5  
6 14. Constitutional Issues.

7 A. The Petitioner received ineffective assistance of Counsel.

8 B. Petitioner's statement to the Detective was unlawfully obtained, it was  
9 the direct result of her unlawful detention and known undue influence  
10 exerted by Mr. Kaczmarek.

11  
12 C. The State violated her Brady rights by not disclosing the voluminous  
13 letters written to Petitioner by Kaczmarek to Petitioner in his quest to  
14 induce her to provide a statement for Kaczmarek's benefit. The State  
15 knew Petitioner was a mere child and know or should have known that  
16 she was vulnerable to Kaczmarek, 17 years her senior, and knew that he  
17 was trying to coerce a statement for her to send to the detective.

18 D. The Petitioner's Due Process rights were violated by not allowing a re-  
19 run of the fingerprints found at the scene. It is highly probable that after  
20 18 years, unidentifiable prints in 2002 may be able to be identified, and  
21 this new evidence could demonstrate the identities of other persons inside  
22 the premises after the Petitioner left the scene and before the deceased  
23 was found.

24  
25 E. Petitioner's conviction constitutes a fundamental miscarriage of justice.  
26 Based on evolution and advances of relating to victims of sex trafficking,  
27 it is abundantly evident that Petitioner should have never been charged,  
28 much less convicted.

1 15. Assignment to the Court of Appeals or retention by the Supreme Court.

2 This case is presumptively assignable to the Nevada Supreme Court because  
3  
4 involves a Class A felony, pursuant to NRAP 17 (b) (3)

5 16. Issues of first impression or public interest. The issue is the evolution of  
6 the forensic science regarding victims of sex trafficking, of which  
7 Petitioner was the victim.  
8

9 17. Length of trial. If this case proceeded to trial or evidentiary hearing, what  
10 was the length of trial? The evidentiary hearing spanned three days.  
11

12 18. Oral Argument: Would you object to submission of this appeal without oral  
13 argument?

14 Appellant asks for oral argument

15 **TIMELINESS OF NOTICE OF APPEAL**

16  
17 19. Date district court announced its decision: March 10, 2021

18 20. Date of written entry of judgment or order appealed from: March 22, 2021

19  
20 21. If this is an appeal from an order denying or granting habeas corpus relief,  
21 indicate the date the written order was served by the district court. March  
22 10, 2021.

23 22. Were there any post judgment motions which may toll the time for filing  
24 notice of appeal? There were no post judgment motions.

25 23. Date notice of appeal was filed. March 22, 2021

26  
27 24. Specify the state or rule governing the time limit for notice of appeal. NRS  
28 34.575 (1).



25. State statute or rule which grants this court jurisdiction to review from:

NRS 34.575 (1).

### **VERIFICATION**

**I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information, and belief.**

ALISHA BURNS

Name of appellant

MAY 12, 2021

Date

TONY L. ABBATANGELO, ESQ.

Name of counsel of record

/s/ Tony L. Abbatangelo, Esq.

Signature of counsel of record

### **CERTIFICATE OF SERVICE**

I certify that on the 12<sup>th</sup> day of May, 2021, I electronically served a copy of this docketing statement upon all counsel of record:

STEVE WOLFSON, ESQ. 200 S. Lewis Avenue Las Vegas NV 89101, and

AARON FORD, ESQ. 100 N. Carson Avenue, Carson City, NV 89710

/s/ Tony L. Abbatangelo, Esq.