

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IN THE MATTER OF THE APPLICATION OF
BRECK WARDEN SMITH FOR A WRIT OF
HABEAS CORPUS

THE STATE OF NEVADA,
Appellant,
vs.
BRECK WARDEN SMITH,
Respondent.

No. 82696

**DOCKETING STATEMENT
CRIMINAL APPEALS**

(Including appeals from pretrial and post-conviction
rulings and other requests for post-conviction relief)

Electronically Filed
Apr 20 2021 03:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 Hon. Kathleen E. Delaney District Ct. Case No. C-19-337302-1

2. If the defendant was given a sentence,

(a) what is the sentence? N/A

(b) has the sentence been stayed pending appeal? N/A

(c) was defendant admitted to bail pending appeal? N/A

3. Was counsel in the district court appointed ☐ or retained ☐ ? N/A

4. Attorney filling this docketing statement:

Attorney Katrina A. Samuels Telephone 702-486-3770

Firm State of Nevada-Office of the Attorney General

Address: 555 E. Washington Avenue Ste. 3900
Las Vegas, NV 89101

Client(s) Appellant, the State of Nevada

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 Michael J. McAvoy Telephone 702-685-0879

Firm McAvoy Amaya & Revero Attorneys

Address: 400 S. 4th Street, Ste. 500
Las Vegas, NV 89101

Client(s) Breck Smith

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 type="checkbox"/> Judgment upon guilty plea | <input checked="" type="checkbox"/> Post-conviction habeas (NRS ch. 34) |
| <input type="checkbox"/> Grant of pretrial motion to dismiss | <input checked="" 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 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 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):

N/A

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:

This action is a time-credits habeas action challenging the district court's statutory interpretation of NRS 213.1517(4) and how it applies to the calculation of respondent's parole violation hearing date and the calculation of his parole eligibility date based on the adjudication of his new criminal charge arising from his parole violation. The district court granted respondent's habeas petition and ordered the Nevada Department of Corrections (NDOC) to recalculate respondent's sentence in order that respondent would start receiving credit on the new charge from the time he was returned to NDOC's custody for his parole violation instead of after the adjudication of his new charge.

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

Whether the district court erred in its statutory interpretation of NRS 213.1517 (4) by granting respondent's petition for writ of habeas corpus and ordering the Nevada Department of Corrections (NDOC) to recalculate his sentence in order that he would start receiving credit on the new charge from the time he was returned to NDOC's custody for his parole violation instead of after the adjudication of his new charge.

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:

Although this case may be assigned to the Court of Appeals (NRAP 17(b)(4)), this Court should retain the case because it involves an issue which the Court has never resolved in a published opinion and which will likely arise in future cases, i.e. the application of credits during the pendency of a parole violation hearing and the pending adjudication of a new criminal case. The issue is also one of statutory interpretation as to how NRS 213.1517(4) applies to the timeframe of holding a parole revocation hearing while an inmate's new criminal case has yet to be adjudicated. *Sportsco Enterprises v. Morris*, 112 Nev. 625, 629 (1996) ("interpretation of statutory provisions are reviewed de novo by this court").

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

19. Date district court announced decision, sentence or order appealed from January 27, 2021

20. Date of entry of written judgment or order appealed from February 17, 2021

(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 2/24/21

(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 March 26, 2021

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) _____	Other (specify) NRS 34.575(2) _____
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.

The State of Nevada
Name of appellant

Katrina A. Samuels
Name of counsel of record

4/20/2021
Date

/s/ Katrina A. Samuels
Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 20th day of 20 April 2021, 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):

McAvoy Amaya & Revero Attorneys
Michael J. McAvoy
400 S. 4th Street, Ste. 500
Las Vegas, NV 89101

Dated this 20th day of April, 20 21.

/s/ M. Landreth
Signature