

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

TENNILLE WHITAKER,
Appellant,

vs.
WARDEN JERRY HOWELL &
THE STATE OF NEVADA,
Respondents.

No. 83049

Electronically Filed
Jun 24 2021 02:13 p.m.

DOCKETING STATEMENT
CRIMINAL APPEALS
Tahara Brown
Chiefs 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 Fourth County Elko

Judge KRISTON HILL District Ct. Case No. DC-CV-20-69

2. If the defendant was given a sentence,

(a) what is the sentence?

Aggregate sentence of 240 months in prison with parole eligibility after service of 96 months; Four counts running consecutive of 60 months in prison with parole eligibility after service of 24 months in prison.

(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 Karla K. Butko Telephone 775 786 7118

Firm Karla K. Butko, Ltd.

Address: P. O. Box 1249
Verdi, NV 89439

Client(s) Tennille Rae Whitaker

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 Tyler Ingram Telephone 775 738 3101

Firm Elko County District Attorney's Office

Address: 540 Court Street, Second Floor
Elko, NV 89801

Client(s) The State of Nevada

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 type="checkbox"/> grant <input checked="" 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):

Docket 77294: Tennille Whitaker v. State, direct appeal from judgment of conviction on District Court case number CR-FP-17-3893

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):

District Court Case number: CR-FP-17-3893

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

Ms. Whitaker was charged by the State with four counts of violating NRS 201.540, a category C felony, for sexual conduct between a school employee and a student. Ms. Whitaker entered a no contest plea. The plea bargain included the fact that the State would not seek a sentence greater than a prison term of 4-12 years in prison. The District Court did not follow the plea bargain. Defense counsel was unprepared for the heated sentencing matter and failed to object to a petition against Ms. Whitaker being utilized at the sentencing hearing, which included about 71 anonymous citizen signatures. Ms. Whitaker appealed her sentence in Docket 77294. The Court of Appeals affirmed the conviction. Ms. Whitaker filed a petition for writ of habeas corpus (postconviction) alleging that trial counsel was ineffective under the 6th & 14th Amendments, which was summarily denied by the District Court without access to an evidentiary hearing. This appeal follows.

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

1. The District Court abused its discretion when it summarily dismissed the petition for writ of habeas corpus (postconviction).
2. The District Court violated due process rights under the 5th & 14th Amendments when the court failed to grant Ms. Whitaker an evidentiary hearing at which she could prove her claims of ineffective assistance of counsel.
3. Trial counsel was ineffective under the 6th & 14th Amendments when trial counsel failed to mitigate sentence, failed to gain access to a proper psychosexual evaluation, failed to object to a community petition against Ms. Whitaker being filed as sentencing evidence; and failed to argue in support of the plea bargain, if the court did not deem probation appropriate.

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 case is presumptively assigned to the Court of Appeals but should not be heard by that Court. The District Court cited to NRS 34.810(1)(a) to limit postconviction review on the case because Ms. Whitaker entered a no contest plea. This attorney has several pending appeals which await this Court's determination of the application of NRS 34.810(1)(a) on postconviction claims which involve cases in which the defendant entered a plea. Additionally, this Case involves the same legal arguments found in cases that attack Marsy's Law found in Aparicio v. State, Docket 80072 on improperly admitted victim impact evidence and due process rights of a defendant. This Case should remain at the Nevada Supreme 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?

0 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 04/27/21

20. Date of entry of written judgment or order appealed from 04/28/21

(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 05/27/21

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

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) XXX _____ |
| 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.

TENNILLE RAE WHITAKER

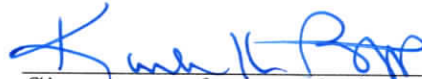
Name of appellant

06/24/2021

Date

KARLA K. BUTKO

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the June 24 day of 20 21, 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):

Tyler Ingram
Elko County District Attorney's Office
540 Court Street, Second Floor
Elko, NV 89801

Dated this 24th day of June, 20 21.



Signature