

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Electronically Filed
Sep 20 2021 04:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

ZANE MICHAEL FLOYD,

Petitioner/Appellant,

v.

WILLIAM GITTERE, Warden,
and AARON FORD, Nevada
Attorney General,

Respondents/Appellees.

Supreme Court No. 83436

District Court Case No.

A-21-832952-W

**DOCKETING STATEMENT
CRIMINAL APPEALS**

GENERAL INFORMATION

1. Judicial District: Eighth

Department: XVII

County: Clark

Judge: Hon. Michael Villani

District Ct. Case No. A-21-832952-W

2. If the defendant was given a sentence,

- a. What is the sentence?

Death

- b. Has the sentence been stayed pending appeal?

Yes.

Was defendant admitted to bail pending appeal?

No.

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

Appointed.

4. Attorney filing this docketing statement:

David Anthony

Assistant Federal Public Defender

Federal Public Defender, District of Nevada

411 E. Bonneville Ave., Suite 250
Las Vegas, Nevada, 89101
(702) 388-6577

Client: Zane Michael Floyd

5. Is appellate counsel appointed or retained?

Appointed.

6. Attorneys representing respondents:

Steven Wolfson, Clark County District Attorney
Alexander Chen, Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89115
(702) 671-2500

Client: William Gittere, Warden, Ely State Prison, State of Nevada
and Aaron Ford, Nevada Attorney General.

7. Nature of Disposition below:

Post-conviction habeas (NRS Ch. 34) denial.

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

 X Death Sentence

 Juvenile offender

 Life Sentence

 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?

No.

10. **Pending and prior proceedings in this Court:**

Floyd v. State, Supreme Court of the State of Nevada, Case No. 36752, Opinion (42 P.3d 249 (March 13, 2002)) (per curiam)

Floyd v. State, Supreme Court of the State of Nevada, Case No. 44868, Order of Affirmance (178 P.3d 754 (Feb. 16, 2006))

Floyd v. State, Supreme Court of the State of Nevada, Case No. 51409, Order of Affirmance (367 P.3d 769 (Nov. 17, 2010))

Floyd v. The Eighth Judicial District Court, Supreme Court of the State of Nevada, Case No. 83108

Floyd v. The Eighth Judicial District Court, Supreme Court of the State of Nevada, Case No. 83167

Floyd v. Nevada Department of Corrections, Supreme Court of the State of Nevada, Case No. 83181

Floyd v. The Eighth Judicial District Court, Supreme Court of the State of Nevada, Case No. 83225

11. **Pending and prior proceedings in other courts:**

State v. Floyd, District Court, Clark County, Nevada, Case No. 99C159897, Judgment of Conviction (September 5, 2000)

State v. Floyd, District Court, Clark County, Nevada, Case No. 99C159897, Findings of Fact Conclusions of Law and Order denying Petition for Writ of Habeas Corpus (February 4, 2005)

State v. Floyd, District Court, Clark County, Nevada, Case No. 99C159897, Findings of Fact Conclusions of Law and Order denying Petition for Writ of Habeas Corpus (April 2, 2008)

Floyd v. Baker, United States District Court, Case No. 2:06-cv-00471-RFB-CWH, Order (47 F.Supp.3d 1148 (September 22, 2014))

Floyd v. Baker, United States Court of Appeals for the Ninth Circuit, Case No. 14-99012, Opinion (940 F.3d 1082 (October 11, 2019) and amended 949 F.3d 1128 (February, 2, 2020))

Floyd v. Gittere, et al., United States District Court, Case No. 2:06-cv-00471-RFB-DJA

Floyd v. Daniels, et al., United States District Court, Case No. 3:21-cv-00176-RFB-CLB

Floyd v. NDOC, District Court, Clark County, Nevada, Case No. A-21-833086-C

Floyd v. Daniels, et al., United States Court of Appeals for the Ninth Circuit, Case No. 21-16134, Oral argument set for October 26, 2021

12. Nature of the action:

Mr. Floyd appeals from the order of the district court denying his post-conviction petition for writ of habeas corpus, Eighth Judicial District Court, Clark County, State of Nevada

13. Issues on appeal:

Did the district court err in denying Floyd's claim that he was categorically ineligible for the death penalty due to his Fetal Alcohol Spectrum Disorder;

Did the district court err in denying Floyd's claim that the denial of the opportunity to seek clemency with the Pardon's Board before his execution violates his right to due process;

Did the district court err in denying Floyd's claim that state law prohibits his execution at the Ely State Prison;

Did the district court err in denying Floyd's claim that intervening law allows him to demonstrate cause and prejudice to consideration of his claim that his death sentence is invalid due to improper penalty phase verdict forms.

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?

Not applicable.

15. Assignment to the Court of Appeals or retention in the Supreme Court:

This matter is retained by the Nevada Supreme Court because this is a death penalty case under NRAP 17(a)(1)

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.

Public interest? Yes.

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?

There was no trial or evidentiary hearing.

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

Yes.

TIMELINESS OF NOTICE OF APPEAL

19. Date district court announced decision, sentence or order appealed from:

August 16, 2021

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

August 16, 2021

21. If this appeal is from an order granting or denying a petition for writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the district court:

The written notice of entry of order was served on August 18, 2021

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; and (b) Date of entry of written order resolving the motion.

Not applicable.

23. Date notice of appeal filed: August 26, 2021

24. Specify statute or rule governing the time limit for filing the notice of appeal:

NRAP 4(b); NRS 34.575(1).

SUBSTANTIVE APPEALABILITY

25. Specify statute, or rule or other authority that 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.

DATED this 20th day of September, 2021.

Respectfully submitted
RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender
Nevada Bar No. 7978

411 E. Bonneville Ave., Suite 250
Las Vegas, Nevada 89101
(702) 388-6577

Attorneys for Zane Michael Floyd

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20th day of September 2021, electronic service of the foregoing DOCKETING STATEMENT CRIMINAL APPEALS shall be made in accordance with the Master Service List as follows:

Alexander Chen
Alexander.Chen@clarkcountyda.com

/s/ Sara Jelinek
An Employee of the
Federal Public Defender,
District of Nevada