

IN THE SUPREME COURT OF THE STATE OF NEVADA

Donte Johnson,

Petitioner/Appellant,

vs.

William A. Gittere, *et al.*,

Respondents/Appellees.

Supreme Court No. 87706

District Court Case No. A-19-789336-W

**DOCKETING STATEMENT
CRIMINAL APPEALS**

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

Electronically Filed
Dec 08 2021 12:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

1. Judicial District: Eighth County: Clark

Judge: Hon. Jacqueline Bluth District Ct. Case No. A-19-789336-W

2. If the defendant was given a sentence,

(a) what is the sentence? Death

(b) has the sentence been stayed pending appeal? No; no death
warrant has been issued.

(c) was defendant admitted to bail pending appeal? No

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

4. Attorney filing this docketing statement:

Attorney: Randolph M. Fiedler Telephone: (702) 388-6577

Firm: Federal Public Defender, District of Nevada

Address: 411 E. Bonneville Ave., Suite 250, Las Vegas, Nevada 89101

Client: Donte Johnson

5. Is appellate counsel appointed ☒ or retained _____?

6. Attorney(s) representing respondent(s):

Attorney: Alexander G. Chen Telephone: (702) 671-2500

Firm: Clark County District Attorney

Address: 200 Lewis Ave., Las Vegas, Nevada 89155

Client(s): William A. Gittere, Warden, Ely State Prison, State of Nevada

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 | |

☐ Motion to withdraw guilty plea

☐ grant ☐ denial

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

☒ 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?

☐ 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 before this court which are related to this appeal (e.g., separate appeals by co-defendants, appeal after post-conviction proceedings):

Kohn v. Eighth Jud. Dist. Ct., No. 36093 (writ petition)

Kohn v. Eighth Jud. Dist. Ct., No. 36461 (writ petition)

Johnson v. State, No. 36991 (direct appeal)

State v. Eighth Jud. Dist. Ct., No. 45059 (writ petition)

Johnson v. State, No. 45456 (direct appeal)

Johnson v. State, No. 51306 (pro se extraordinary writ)

Johnson v. State, No. 65168 (post-conviction)

Johnson v. State, No. 67492 (post-conviction)

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):

Johnson v. Gittere, et al., Petition for Writ of Habeas Corpus (Post-Conviction), filed February 13, 2019, in the Eighth Judicial District Court, Case No. A-19-789336-W (the subject of the instant appeal)

Johnson v. Gittere, et al., 2:18-cv-00740-JAD-NJK, United States District Court, District of Nevada (federal habeas proceedings)

Johnson v. State, C153154, Eighth Judicial District Court (trial proceedings)

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

Petitioner's appeal from order dismissing post-conviction petition for writ of habeas corpus, Eighth Judicial District Court, Clark County.

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

Did the district court err in denying the claims presented in Mr. Johnson's post-conviction petition for writ of habeas corpus on procedural grounds?

Did the district court err in determining that Mr. Johnson failed to demonstrate good cause and prejudice to excuse the application of procedural bars to his claim?

Did the district court's refusal to address the merits of Mr. Johnson's petition result in a fundamental miscarriage of justice?

Do the substantive constitutional claims in Mr. Johnson's petition require the reversal of his convictions and death sentence?

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

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 heard by this Court because it is a death penalty case. *See* 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 ☒ 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? 7 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: May 15, 2020

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

October 11, 2021

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

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 October 11, 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:
N/A

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 N/A

23. Date notice of appeal filed: November 10, 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), 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.

Donte Johnson

Name of appellant

Randolph M. Fiedler

Name of counsel of record

December 8, 2021

Date

/s/ Randolph M. Fiedler

Signature of counsel of record

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 8th day of December, 2021 electronic service of the foregoing DOCKETING STATEMENT CRIMINAL APPEALS shall be made in accordance with the Master Service List as follows:

Alexander G. Chen
Chief Deputy District Attorney
motions@clarkcountyda.com
Eileen.davis@clarkcountyda.com

/s/ Celina Moore

An Employee of the
Federal Public Defender,
District of Nevada