

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

THE STATE OF NEVADA,
Plaintiff,

vs.
DAVID CRAIG MORTON,
Defendant.

No. 83884

Electronically Filed
Dec 20 2021 03:22 p.m.

**DOCKETING STATEMENT
CRIMINAL APPEALS**

Elizabeth A. Brown
Clerk of 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 Sixth County Humboldt

Judge Michael Montero District Ct. Case No. CR09-5709

2. If the defendant was given a sentence,

(a) what is the sentence?

25 years in prison with parole eligibility after service of 10 years + a consecutive
20 years in prison with parole eligibility after service of 8 years on the deadly weapon
enhancement sentence.

(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 Law Firm of Karla K. Butko, Ltd.

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

Client(s) David Craig Morton

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 McDonald/ Anthony Gordon Telephone 775 623 6363

Firm Humboldt County District Attorney's Office

Address: P. O. Box 909 Winnemucca, NV 89446

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

David Craig Morton v. State, Docket 60625, Dismissed by court for lack of jurisdiction 6/18/12

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):

Criminal prosecution case State of Nevada v. David Craig Morton, CR09-5709
Postconviction David Craig Morton v. State, CV 18,803

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

Mr. Morton was convicted of second degree murder after jury trial. He was sentenced to 45 years with parole eligibility after 18 years of prison time. Mr. Morton wanted to appeal his case. Mr. Morton filed a first and timely postconviction petition, claiming amongst other issues, that he was deprived of his right to a direct appeal by ineffective assistance of counsel. The postconviction proceeded to a two day evidentiary hearing. At the conclusion, the district court stayed the proceedings and granted a belated appeal under NRAP 4 C. This is that direct appeal.

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

1. The jury was not properly instructed on : The State's burden of proof; the jury was instructed per Kazalyn; jury not advised the State had to prove lack of adequate provocation beyond a reasonable doubt.
2. Judge Wagner berated trial counsel during the trial and should have recused himself. Actions of the Court unconstitutionally interfered with the defense of accidental discharge.
3. Cumulative graphic pictures were improperly admitted by the trial court.
4. The PSI report should have been stricken by the Court as it contained suspect evidence and emotional ramblings which were unsupported by evidence.
5. The sentencing hearing was flawed. Judge Wagner made determinations on evidence that were unsupported by trial evidence and attempted to impose a sentence in excess of that available at law. Judge Wagner refused to honor Mr. Morton's right to maintain his innocence at sentencing in violation of Brake and Griffin.

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 is a very serious appeal. Mr. Morton has waited for 12 years to have his appeal heard. This case should remain at the Nevada Supreme Court. Mr. Morton's trial and sentencing proceeding contained serious constitutional errors which are worthy of retention and decision by the Nevada Supreme Court. This was a jury trial and a conviction for a second degree murder.

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 01/20/2011
20. Date of entry of written judgment or order appealed from 01/20/2011
(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 12/02/21
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
NRAP 4 C: appeal deprivation claim granted by district court after evidentiary hearing on a first and timely postconviction petition. NOA filed by Clerk of Court in compliance with NRAP 4 C.

SUBSTANTIVE APPEALABILITY

25. Specify statute, rule or other authority that grants this court jurisdiction to review from:

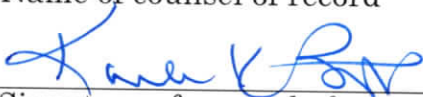
NRS 177.015(1)(b) _____	NRS 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) _____
NRS 177.015(2) _____	NRS 34.560(2) _____
NRS 177.015(3) XXX _____	Other (specify) _____
NRS 177.055 _____	

VERIFICATION

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

David Craig Morton
Name of appellant

December 20, 2021
Date

Karla K. Butko
Name of counsel of record

Signature of counsel of record

CERTIFICATE OF SERVICE


I certify that on the 12/20 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):

Anthony Gordon
Humboldt County District Attorney's Office
P. O. Box 909
Winnemucca, NV 89446

Dated this 20 day of December, 2021.


Signature