

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MICHAEL ALLEN MACK,

Appellant,

THE STATE OF NEVADA

Respondent.

No. 83165

Electronically Filed
Jul 19 2021 10:07 a.m.

DOCKETING STATEMENT
CRIMINAL APPEALS
STATE OF NEVADA. Brown
APPEALS 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 Fifth County Nye

Judge Kimberly Wanker District Ct. Case No. PC-7444A

2. If the defendant was given a sentence,

(a) what is the sentence?

The District Court sentenced the Appellant to a maximum 240 months and a minimum 96 months in the Nevada Department of Corrections with 345 days Credit Time Served.

(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 David H. Neely III Telephone 702-565-0716

Firm Law Office of David H. Neely III, Esq.

Address: 3520 E. Tropicana Ave., Suite D-1
Las Vegas, Nevada 89121

Client(s) MICHAEL ALLEN MACK

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 Chris Arabia Telephone 702-482-8166

Firm Nye County District Attorney

Address: P.O. Box 39, Pahrump, NV 89041

Client(s) State of Nevada

Attorney _____ Telephone _____

Firm _____

Address: _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- | | |
|--|---|
| ☐ Judgment after bench trial | ☐ Grant of pretrial habeas |
| ☐ Judgment after jury verdict | ☐ Grant of motion to suppress evidence |
| ☐ Judgment upon guilty plea | ☒ Post-conviction habeas (NRS ch. 34) |
| ☐ Grant of pretrial motion to dismiss | ☐ grant ☒ denial |
| ☐ Parole/probation revocation | ☐ Other disposition (specify): |
| ☐ Motion for new trial | |
| ☐ grant ☐ 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 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:

Order denying Writ of Habeas Corpus (Post-Conviction)

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

1. Whether the Trial Court erred when it failed to find that Trial Counsel caused his client to enter a guilty plea while suffering the effects of a stroke was ineffective assistance of counsel pursuant to Strickland. 2. Whether the Trial Court erred when it failed to find that Trial Counsel's failure to conduct an effective investigation prior to the entry of the guilty plea was ineffective assistance of counsel pursuant to Strickland. 3. Whether the Trial Court erred when it failed to find that Trial Counsel's failure to inform his client of the consequences of being a Tier III sex offender prior to entry of his guilty plea was ineffective assistance of counsel pursuant to Strickland, 4. Whether the Trial Court erred when it failed to find that Trial Counsel's failure to review the facts of the case with his client and discuss any defenses with him was ineffective assistance of counsel pursuant to Strickland. 5. Whether The Trial Court erred when it failed to find that Trial Counsel's failure to inform his client of the consequences of pleading guilty to sexual assault was ineffective assistance of counsel

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:

The matter is to be assigned to the Court of Appeals pursuant to NRAP 17(b)(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?

1 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 6/24/2021

20. Date of entry of written judgment or order appealed from 6/24/2021

(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

(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 7/2/2021

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) <u>X</u>	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 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.

Michael Allen Mack

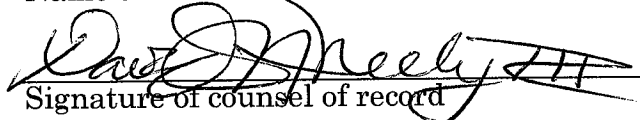
Name of appellant

7/19/2021

Date

David H. Neely III

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the July 19 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):

Chris Arabia, Esq., Nye County District Attorney, P.O. Box 39, Pahrump, NV 89041

Dated this 19 day of July, 2021



Signature

13. Issues on appeal. Continued:

5. pursuant to Strickland.

6. Whether the Trial Court erred when it failed to find that Trial Counsel had a conflict of interest during his representation of his client which he never disclosed to his client was ineffective assistance of counsel pursuant to Strickland.