

SUPREME COURT OF THE STATE OF NEVADA

DAVIN M. TONEY,)

ID #1187296,)

Appellant,)

) Dept.: **XXVIII**

v.)

STATE OF NEVADA,)

) **E-filed**

)

Respondent.)

)

Electronically Filed
Jul 30 2021 03:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No: **83246**

D.C. case no.: **A-20-821088-W**

DOCKETING STATEMENT - CRIMINAL APPEALS

1. Eighth Judicial District, County of Clark, Judge Ronald J. Israel, District Court

Case number: A-20-821088-W.

2. If the Defendant was given a sentence,

(a.) what is the sentence?

Defendant was sentenced to an aggregate sentence of one hundred fifty-six
(156) months to four hundred twenty (420) months.

(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? APPOINTED.

4. Attorney filing this docketing statement:

Attorney: Terrence M. Jackson Telephone: 702.386.0001

Firm: Law Office of Terrence M. Jackson

624 South Ninth Street

Las Vegas, Nevada 89101

Client: Davin M. Toney

5. Is appellate counsel appointed or retained? APPOINTED.

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

Attorney: Steven B. Wolfson Telephone: 702.671.2500

Firm: Clark County District Attorney

200 East Lewis Avenue

Las Vegas, Nevada 89155-2212

Client: State of Nevada

Attorney: Bernard Zadrowski Telephone: 702.671.2673

Firm: Chief Deputy District Attorney

200 East Lewis Avenue

Las Vegas, Nevada 89155-2212

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7. Nature of disposition: Denial of Post-Conviction Petition for habeas corpus.
(NRS ch. 34)

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

☐ 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: 76765, and current 83246

11. Pending and prior proceedings in other courts: None

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

Defendant was convicted by a plea of guilty to an Amended Information with four (4) counts. Count 1: Robbery with Use of a Deadly Weapon, Count 2: Burglary with Use of a Deadly Weapon, Count 3: Robbery with Use of a Deadly Weapon, Count 4: Burglary with Use of a Deadly Weapon. He was sentenced on October 18, 2017, to a sentence of a minimum of one hundred fifty-six months to a maximum of four hundred twenty months. The Judgment of Conviction was then filed on October 30, 2017. On September 14, 2020, the Defendant filed a *Pro Per* Petition for Writ of Habeas Corpus, A-20-821088-W, with four exhibits. After an Evidentiary Hearing on June 21, 2021, the District Court entered Findings of Fact, Conclusions of Law

and Order, denying Defendant's Petition for Post Conviction Relief on July 8, 2021. On July 15, 2021, Defendant filed a Notice of Appeal.

13. Issues on Appeal. State specifically all issues in this appeal:

1. Whether the District Court erred in finding Defendant's Petition for Post Conviction Relief was procedurally barred;

2. Whether the District Court erred when it found that Defendant's sentence was unconstitutionally enhanced;

3. Whether the District Court erred when it found defense counsel was not so ineffective preplea that it led to the Defendant making an invalid plea because it was not knowingly and intelligently entered;

4. Whether the District Court erred when it found defense counsel was not ineffective for failing to Move to Dismiss or Effectively Challenge the Weapon's Enhancement under NRS 193.165, based upon a toy gun;

5. Whether the District Court erred in denying Defendant an Evidentiary Hearing on the claims in his Petition;

6. Whether cumulative error requires reversal of the conviction;

7. Appellant respectfully requests the right to add additional issues to his Opening Brief if warranted by further research.

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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?

[X] N/A

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 pursuant to NRAP 17(b) as it is an appeal from Judgment of Conviction based on a guilty plea. Defendant submits however that because it is a case involving class A felonies with an aggregate sentence of up to 35 years, the case should be retained in the Supreme Court of Nevada pursuant to NRAP 17b(3).

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?

N/A

18. Oral argument. Would you object to submission of this appeal for disposition without oral argument? ☒ Yes ☐ No.

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

June 21, 2021.

20. Date of entry of written judgment or order appealed from: July 8, 2021.

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: N/A

(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:

N/A

23. Date notice of appeal filed: July 15, 2021.

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

NRAP 4(b)

25. Specify statute, rule or other authority that grants this court jurisdiction to review from: NRS 177.015(3).

VERIFICATION

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

Davin Marvell Toney
Name of Appellant

Terrence M. Jackson, Esq.
Name of Counsel of Record

August 2, 2021
Date

//s// Terrence M. Jackson
Signature of counsel of record

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CERTIFICATE OF SERVICE

I certify that on the 30th day of July, 2021, I served a copy of this completed docketing statement upon all counsel of record:

[X] Via Electronic Service (eFlex) to the Nevada Supreme Court;

[X] and by United States first class mail with postage affixed to the Nevada

Attorney General and to the Defendant as follows:

STEVEN B. WOLFSON

Clark County District Attorney

steven.wolfson@clarkcountyda.com

BERNARD ZADROWSKI

Chief Deputy D.A. - Criminal

bernard.zadrowski@clarkcountyda.com

DAVIN M. TONEY

ID # 1187296

S. D. C. C. - P. O. Box 208

Indian Springs, NV 89070-0208

AARON D. FORD

Nevada Attorney General

100 North Carson Street

Carson City, Nevada 89701

By: /s/ Ila C. Wills

Assistant to T. M. Jackson, Esq.