

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

RAUL GARCIA,
Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 83021
DOCKETING STATEMENT
CRIMINAL APPEALS

Electronically Filed
Jun 29 2021 05:25 p.m.
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 Second County Washoe

Judge Scott Freeman District Ct. Case No. 9

2. If the defendant was given a sentence,

(a) what is the sentence?

Defendant/Appellant was sentenced to life with the possibility of parole after twenty years on Count I; life with possibility of parole after ten years on Count II, to be served consecutively to Count I; life with the possibility of parole after ten years to be served consecutively to Counts I and II.

(b) has the sentence been stayed pending appeal?

N/A

(c) was defendant admitted to bail pending appeal?

N/A

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

4. Attorney filling this docketing statement:

Attorney Lyn E. Beggs, Esq. Telephone 775-4323-1918

Firm Law Offices of Lyn E. Beggs, PLLC

Address: 316 California Ave. #863
Reno, NV 89509

Client(s) Raul Garcia

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 Kevin Naughton Telephone 775-328-3200

Firm Washoe County District Attorney, Appellate Division

Address: PO Box 11130
Reno, NV 89520

Client(s) 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 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 checked="" type="checkbox"/> Other disposition (specify): |
| <input type="checkbox"/> Motion for new trial | |
| <input type="checkbox"/> grant <input type="checkbox"/> denial | Dismissal of Motion to Modify or Correct Sent. |
| <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):

Direct Appeal: Garcia v State, 37816

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):

CR00P1849: Petition for Writ of Habeas Corpus - dismissed

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

This is an appeal from an Order dismissing a Motion to Modify or Correct Sentence from a conviction entered on March 29, 2001 for one count sexual assault on a child under 14 years of age and two counts of lewdness with a child under 14. A direct appeal was timely filed; conviction was affirmed. A Petition for Writ of Habeas Corpus in July 2012 but was dismissed as untimely. A First Amended Petition for Writ of Habeas Corpus was filed in September 2012, again denied as untimely. Appellant filed a Motion to Correct Illegal Sentence and Vacate Judgment and/or Modify Sentence on December 30, 2019 which was treated as a habeas petition by the Court and which was ultimately dismissed without a hearing on April 30, 2021 with the Notice of Entry of Order filed May 3, 2021.

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

Whether the District Court erred in dismissing Appellant's Motion/Petition without a hearing on the merits of the Motion/Petition finding that it was procedurally barred.

Whether the District Court erred in finding that Appellant's trial counsel was not ineffective without holding a hearing on the Motion/Petition.

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 matter is not presumptively assigned to the Court of Appeals as it involves a post conviction appeal related to offenses that are category A felonies.

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?

0 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 Apr 30, 2021

20. Date of entry of written judgment or order appealed from May 3, 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 Jun 1, 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

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.

Raul Garcia

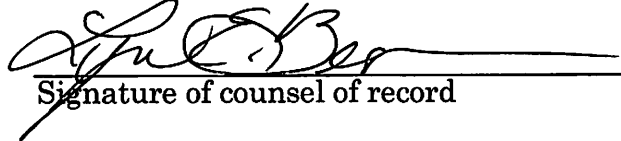
Name of appellant

Jun 29, 2021

Date

Lyn E. Beggs

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

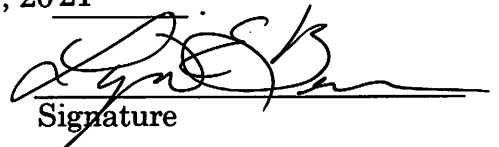
I certify that on the 6/29 day of 20 21, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Served electronically.

Dated this 29th day of June, 2021



Signature