

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

TOMMY FROST,

Appellant,
vs.

THE STATE OF NEVADA,

Respondent.

No. 83065 Electronically Filed
Jun 16 2021 12:54 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 Third County Lyon

Judge John P. Schlegelmilch District Ct. Case No. 20-CV-00635

2. If the defendant was given a sentence,

(a) what is the sentence?

Aggregate sentence of life in prison with parole eligibility after service of 20 years; each count was life in prison with parole eligibility after service of 10 years, to run consecutively.

(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 Karla K. Butko, Ltd.

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

Client(s) TOMMY FROST

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 Stephen B. Rye Telephone 775 463 6511

Firm Lyon County District Attorney's Office

Address: 31 S. Main Street
Yerington, NV 89447

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 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 | |
| <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 checked="" 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):

None.

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):

Trial case: 18-CR-01197, State v. Tommy Frost, Third Judicial District Court

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

Mr. Frost entered a plea of guilty to two counts of lewdness with a minor under the age of 14, a Category A felony, in violation of NRS 201.230(2). The case proceeded to sentencing and consecutive life sentences with parole eligibility after service of 10 years were imposed by the court. There was no direct appeal. Mr. Frost filed a petition for writ of habeas corpus. Counsel was appointed and the petition was amended. The case proceeded to evidentiary hearing. The District Court denied postconviction relief. This appeal follows.

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

1. The District Court abused its discretion when it refused to grant postconviction relief.
2. Trial counsel was ineffective under the 6th & 14th Amendments to the United States Constitution. The guilty plea was not knowingly and voluntarily entered due to counsel's actions that coerced the plea.
3. Trial counsel was ineffective under the 6th & 14th Amendments when counsel failed to file a pretrial motion to dismiss the charges because of the State's gross negligence in retaining the telephone in question as evidence, available to the defense investigation.
4. Mr. Frost was deprived of a direct appeal when counsel failed to perfect the appeal, in violation of due process and the 5th Amendment to the United States Constitution.

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 case involves a first and timely postconviction on two Category A felony counts. The matter is not presumptively assigned to the Court of Appeals and may be retained by the Nevada Supreme Court. The aggregate sentence is as high as a term imposed for first degree murder. This Case should remain at the Nevada Supreme Court, even though the trial case involved a guilty plea and not a jury trial. The sanctions imposed warrant review by the Supreme Court.

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?

1/2 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 05/19/2021

20. Date of entry of written judgment or order appealed from 06/03/2021

(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 06/10/2021

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
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) XXX _____
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.

TOMMY FROST

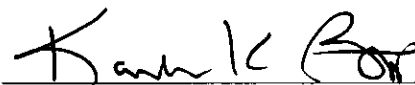
Name of appellant

06/16/2021

Date

KARLA K. BUTKO

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

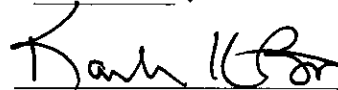
I certify that on the 06/16 day of 20 21, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

Stephen B. Rye, District Attorney
Lyon County District Attorney's Office
31 S. Main Street
Yerington, NV 89447

Dated this 16th day of June, 2021.



Signature