

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DAVID EDWARD ELLISTON, JR.,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 83217 Electronically Filed
Aug 30 2021 12:42 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 First County Carson City

Judge James T. Russell District Ct. Case No. 20 CR 00121 1B

2. If the defendant was given a sentence,

(a) what is the sentence?

Count I: 2-15 years in prison

Count II: 2-15 years in prison consecutive to Count I

Count III: 2-6 years in prison consecutive to Count I & II

Aggregate sentence: 6-36 years in prison.

(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) David Edward Elliston, Jr.

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 Jason Woodbury/ Melanie Brantingham Telephone 775 887 2072

Firm Carson City District Attorney's Office

Address: 885 E. Musser, #2030
Carson City, NV 89701

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 checked="" 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):

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: 20 CR 00121 1B, State v. David Edward Elliston, Jr.

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

Mr. Elliston was arrested for various drug trafficking charges and being an ex felon in possession of a firearm. The case proceeded to preliminary hearing. After being bound over to face the charges, the court held an evidentiary hearing on the motion to suppress. The District Court denied the motion to suppress. The case proceeded to two days of jury trial. The officer testified differently at the trial testimony than at the motion to suppress hearing. Judge Russell indicated that he was conflicted as he may have granted the motion to suppress if the testimony was as it came out at trial. Day two of the trial ended. Mr. Elliston was offered a plea bargain and accepted that during the trial. Mr. Elliston was sentenced to consecutive prison terms. This appeal follows.

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

1. This conviction is manifest injustice due to the conflicting testimony and denial of the motion to suppress on evidence that was not credible.
2. The State violated discovery rules under Brady v. Maryland.
3. The confidential informant was unreliable and the conviction based upon the unreliable informant should be vacated.

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 appeal is properly docketed in the Court of Appeals under NRAP 17.

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?

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 06/14/2021

20. Date of entry of written judgment or order appealed from 6/15/2021

(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 07/12/2021

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) _____	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 Edward Elliston, Jr.
Name of appellant

August 30, 2021
Date

Karla K. Butko
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 8/30 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):

+ e f l e x delivery of Supreme Court

Melanie Brantingham
Carson City District Attorney's Office
885 E. Musser, #2030
Carson City, NV 89701

Dated this 30th day of August, 2021.


Signature