

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

ANTHONY CHRIS ROBERT MARTINEZ,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 83754

Electronically Filed
Nov 23 2021 04:19 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CRIMINAL APPEALS**

(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 Fourth

County Elko

Judge Alvin R. Kacin

District Ct. Case No. CR-FP-16-9651

2. If the defendant was given a sentence,

(a) what is the sentence?

For Count 8, Mr. Martinez was sentenced to a minimum of ninety-six (96) months and a maximum of two-hundred-and-forty (240) months with a deadly weapon enhancement for a minimum of ninety-six (96) months and a maximum of two-hundred-and-forty (240) months. For Count 10, Mr. Martinez was sentenced to a minimum of seventy-two (72) months and a maximum of one-hundred-and-eighty (180) months with a deadly weapon enhancement for a minimum of seventy-two (72) months and a maximum of one-hundred-and-eighty (180). For a total of a minimum of three-hundred-and-thirty-six (336) months and a maximum of eight-hundred-and-forty (840) months imprisonment in the Nevada Department of Corrections with credit for one-thousand-two-hundred-and-eight (1208) days served as of October 1, 2021.

(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 Matthew Pennell

Telephone (775)738-2521

Firm Elko County Public Defender's Office

Address: 569 Court Street (Physical Address)

571 Idaho Street (Mailing Address)

Elko, Nevada 89801

Client(s) Anthony Chris Robert Martinez

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 Tyler J. Ingram

Telephone (775) 738-3101

Firm Elko County District Attorney's Office

Address: 540 Court Street
Elko, Nevada 89801

Client(s) The State of Nevada

Attorney Aaron D. Ford

Telephone (775) 684-1100

Firm Nevada Attorney General's Office

Address: 100 North Carson Street
Carson City, Nevada 89701

Client(s) The State of Nevada

(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 checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant of motion to suppress evidence |
| <input 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 checked="" 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):

State v. Fourth Judicial Dist. Court of Nev., 481 P.3d 848 (2021). Docket Number: 80093

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):

None.

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

Mr. Martinez appeals his conviction resulting from the jury trial for one count of Attempted Murder with the use of a Deadly Weapon, a Category B Felony; one count of Eluding a Police Officer in a Manner Posing Danger to Persons or Property, a Category B Felony; and one count of Kidnapping in the Second Degree with the use of a Deadly Weapon, a Category B Felony.

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

- (1) Did the District Court error in denying a challenge of a juror?
- (2) Did the District Court error in allowing Mr. Martinez to be unfairly prejudiced?
- (3) Did the District Court error in denying a motion to dismiss for failure to gather evidence or in the alternative require jury instructions favorable to the defense?
- (4) Did the District Court error in determining there was sufficient evidence to convict?
- (5) Did the District Court error in allowing the State to shift its burden in its closing argument?
- (6) Did the District Court error by using an acquitted claim to determine a sentence for Mr. Martinez?

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:

Mr. Martinez was convicted of Category B Felonies after a jury trial, therefore pursuant to NRAP 17(b)(2)(A), his case is exempt from presumptive assignment to the Nevada Court of Appeals. Additionally, Mr. Martinez's appeal involves an issue other than a challenge to the sentence imposed or sufficiency of the evidence, hence Mr. Martinez's appeal is not presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(2)(B). There is no strict retention to the Supreme Court or presumptive assignment to the Court of Appeals in this case.

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?

4 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 Oct. 1, 2021

20. Date of entry of written judgment or order appealed from Oct. 7, 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 Oct. 22, 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)(1)(A) governs the time limit for filing the notice of appeal on the instant case.

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) This statute applies. _____	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.

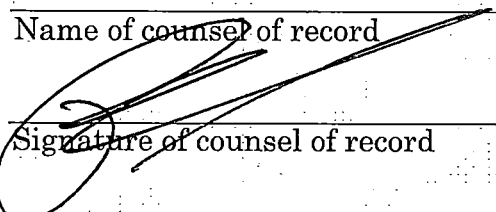
Anthony Chris Robert Martinez

Name of appellant

November 23, 2021

Date

Matthew Pennell

Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

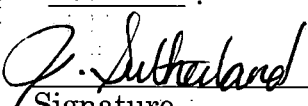
I certify that on the 23 day of 21, I served a copy of this completed docketing statement upon all counsel of record:

☒ By personally serving it upon him/her; or

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

* Via this Court's Master Service List (E-flex Filing)

Dated this 23rd day of November, 20 21.



Signature