

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID CRAIG MORTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 83884
Electronically Filed
Mar 25 2022 10:14 a.m.
Dist. Ct. Case No. CR69-5709
Elizabeth A. Brown
Clerk of Supreme Court

CASE APPEAL STATEMENT (CRIMINAL)

1. Name of appellant filing this case disclosure statement:

DAVID CRAIG MORTON.

2. Name of Judge issuing the decision:

RICHARD WAGNER, Sixth Judicial District Court,
Humboldt County, Nevada. Note: Judge Michael Montero
granted a belated appeal under NRAP 4 (C).

3. Counsel for Appellant: DAVID CRAIG MORTON:

Name/ associations of KARLA K. BUTKO, ESQ.

Appellant: DAVID CRAIG MORTON, Attorney:

KARLA K. BUTKO, ESQ., is an employee of KARLA K. BUTKO, LTD.

KARLA K. BUTKO, LTD. is a Nevada professional corporation duly licensed
to conduct business in the State of Nevada and is owned entirely by Karla K.

Butko. At this point in time, there is no reasonable belief that other counsel will
appear on behalf of Mr. Morton in this appellate litigation.

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Former counsel for Mr. Morton:

RICHARD MOLEZZO, court appointed by the Humboldt County Indigent Contract represented Mr. Morton at the trial stage and remained counsel of record throughout time for perfecting the direct appeal; DEL HARDY appeared in the jury trial.

Karla K. Butko, Esq., was retained by Mr. Morton to represent Mr. Morton on the post-conviction litigation and remains counsel of record on this belated appeal granted under NRAP 4 (C).

4. Identity of Respondent and Respondent's Counsel:

Respondent: The State of Nevada

Counsel: Michael McDonald, District Attorney for Humboldt County:

31 S. Main Street, Yerington, NV 89447

(775) 463-6511

has represented the State of Nevada by and through Anthony Gordon, Esq., Deputy District Attorney, represented the State and he remains counsel of record through the appellate stage; This trial was in 2009 so the District Attorney was Russell Smith and the trial Deputy District Attorney was Brian Williams.

5. All attorneys are licensed in Nevada to practice law.

6. Appellant has been represented by retained counsel throughout the postconviction stage but was represented by court appointed counsel at the trial stage.
7. Appellant is represented by retained counsel on this appeal.
8. Appellant was granted leave to proceed in forma pauperis in 2009.
9. The Judgment of Conviction entered on January 20, 2011. A timely petition for writ of habeas corpus (postconviction) was filed on December 29, 2011. After conclusion of the evidentiary hearing, the appeal deprivation claim was granted by the district court on November 30, 2021. The notice of appeal was timely filed on December 2, 2021. Mr. Morton previously filed an appeal in the Nevada Supreme Court in Docket 60625. This Court ruled that it did not have jurisdiction and dismissed the appeal.
10. This is a belated direct appeal from a 2009 judgment of conviction. The jury convicted Mr. Morton of second degree murder, enhanced by the deadly weapon, for his actions in this case. Factually, Mr. Morton fired one gunshot from an antique 1918 .303 firearm that struck his wife, Cynthia, and she died later in the hospital.

There was no immediate direct appeal. The appeal deprivation claim was granted by Judge Montero after a two day evidentiary hearing on the postconviction claims. The remaining postconviction claims, including a *Laffler/Cooper* claim, remain under submission at the District Court.

The conviction is a Category A felony and Mr. Morton's aggregate sentence is 18-45 years in prison. Mr. Morton has remained in prison since his

conviction.

This case was delayed unreasonably by former appointed counsel who did not file a supplement or move the case to evidentiary hearing in a timely manner. There are serious issues for appellate review including:


Failing to advise the jury that the State had to prove beyond a reasonable doubt that Mr. Morton did not act under adequate provocation to reduce a murder charge to manslaughter reduced the State's burden of proof; Judge Wagner's act of denigrating defense counsel in front of the jury added to the error and prejudiced Mr. Morton's defense case; Admission of cumulative and graphic photographs without a limiting instruction from the court; Admission of Mr. Morton's statement to police when his blood alcohol was 0.276 and when that statement was not recorded by the police violated *Miranda* and the Fifth Amendment; Failing to advise the jury how to properly evaluate and utilize bad act evidence contributed to the jury verdict of second degree murder; admission of bad act evidence which was not proven by clear and convincing evidence was error and serious sentencing errors which occurred at the sentencing.

11. Docket 60625 was dismissed by this Court for lack of jurisdiction.

12. The appeal does not involve child custody or visitation.

13. N/A

Dated this 25 day of March, 2022.


KARLA K. BUTKO, ESQ.
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(775) 786-7118

CERTIFICATE OF SERVICE

I, Karla K. Butko, Esq., hereby certify that on this date I caused to be personally delivered by First Class Postage, United States Postal Service, the foregoing document, addressed to the following:

Michael MacDonald
District Attorney for Humboldt County
P. O. Box 909
Winnemucca, NV 89446

ATTN: Anthony Gordon, Esq.

DATED this 25 day of March, 2022.



KARLA K. BUTKO, ESQ.