

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GERALD LEE WHATLEY, JR.,
Appellant,

v.

THE STATE OF NEVADA
Respondent.

No. 85077

Electronically Filed
Aug 07 2022 09:57 a.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.

Revised December 2015

1. Judicial District Eighth County Clark

Judge Eric Johnson District Ct. Case No. C-21-357412-1

2. If the defendant was given a sentence,

(a) what is the sentence?

(1) 48 to 180 months in NDOC

(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 Leslie A. Park Telephone 702-382-3847

Firm N/A

Address: 633 South Fourth Street, Suite 8
Las Vegas, NV 89101

Client(s) Gerald Lee Whatley, 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 Steven B. Wolfson Telephone 702-671-2500

Firm Clark County District Attorney

Address: 200 Lewis Avenue
Las Vegas, NV 89155

Client(s) The State of Nevada

Attorney Aaron D. Ford Telephone 775-684-1265

Firm Nevada State Attorney General

Address: 100 N. Carson St.
Carson City, NV 89701

Client(s) The State of Nevada

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- | | |
|---|--|
| ☐ Judgment after bench trial | ☐ Grant of pretrial habeas |
| ☒ Judgment after jury verdict | ☐ Grant of motion to suppress evidence |
| ☐ Judgment upon guilty plea | ☐ Post-conviction habeas (NRS ch. 34) |
| ☐ Grant of pretrial motion to dismiss | ☐ grant ☐ denial |
| ☐ Parole/probation revocation | ☐ Other disposition (specify): |
| ☐ Motion for new trial | |
| ☐ grant ☐ denial | |
| ☐ Motion to withdraw guilty plea | |
| ☐ grant ☐ denial | |

8. Does this appeal raise issues concerning any of the following:

- | | |
|---|---|
| ☐ death sentence | ☐ juvenile offender |
| ☐ life sentence | ☐ 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):

N/A

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):

N/A

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

On June 11, 2020, the State of Nevada filed a Criminal Complaint charging Appellant Gerald Lee Whatley, Jr. with DUI of alcohol and/or prohibited substance, with prior felony DUI conviction. On July 14, 2021, Mr. Whatley waived his right to a preliminary hearing, anticipating a negotiation. Negotiations fell through, and the State of Nevada filed its Amended information on May 5, 2022 as to DUI with prior felony conviction. Trial commenced April 25, 2022 and concluded with a verdict of guilty to DUI Felony on April 26, 2022. On May 26, 2022 the Court sentenced Mr. Whatley to 48 to 180 months. This appeal follows.

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

(1) The evidence introduced at trial was insufficient to support a finding of guilty on the charge.

Additional grounds may be presented as counsel requires time to review the transcripts for error.

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:

NRAP 17(b)(2) provides that the Court of Appeals is presumptively assigned appeals for convictions that (A) do not involve a conviction for any offenses that are category A or B felonies; or (B) challenge only the sentence imposed and/or the sufficiency of the evidence. This case involves a conviction for a category B felony, and may raise issues beyond the sufficiency of the evidence. For that reason, Mr. Whatley submits that the Supreme Court should retain this appeal.

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 May 26, 2022

20. Date of entry of written judgment or order appealed from June 1, 2022

(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 July 22, 2022

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)

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) <u>X</u> _____	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.

Gerald Lee Whatley, Jr. _____

Name of appellant

Leslie A. Park _____

Name of counsel of record

August 7, 2022 _____

Date

/s/ Leslie Park _____

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 08/07 day of 20 22, 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):

Clark County District Attorney: 200 Lewis Ave., Las Vegas, NV 89155

Nevada State Attorney General: 100 N. Carson St., Carson City, NV 89701

Dated this 07 day of August, 2022.

/s/ Leslie Park _____

Signature