

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BARRY RASHAD HARRIS

Appellant

v.

William Gittere, Warden,

Respondent

No. 86209

Electronically Filed
Mar 20 2023 02:42 PM

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 Eight County Clark

Judge CHRISTY CRAID District Ct. Case No. A-20-813935-W

2. If the defendant was given a sentence,

(a) what is the sentence?

Count 2- Life with the eligibility of Parole after serving a minimum of 15 years; Count 3- 6 months in the Clark County Detention Center Concurrent with Count 2; Count 4- 6 months in Clark County Detention Center Concurrent with Count 3; Count 6- a Maximum of 60 months with a minimum parole eligibility of 24 Months in Nevada Department of Corrections; concurrent with count 2 and 351 days credit time served.

(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 Dustin R. Marcello, Esq. Telephone 702-474-7554

Firm Pitaro and Fumo, Chtd.

Address: 601 S. Las Vegas Blvd.
Las Vegas, Nevada 89101

Client(s) Barry Harris

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 Wolfson Telephone 702-671-2501

Firm Clark County District Attorney

Address: 200 Lewis Ave., Las Vegas, Nevada 89101

Client(s) William Gittere

Attorney Jonathan Vanboskerck Telephone 702-671-2501

Firm Clark County Department of Public Safety - Warden

Address: 200 Lewis Avenue, Las Vegas Nevada 89101

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 checked="" 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):

Defendant filed a direct appeal to this Court under Dckt No.: 76774 that was denied.

Defendant appears to have filed a pro per appeal in this Court under Dckt No. 80578 that was also denied. After appointment, Counsel filed an appeal under Dkt No. 83516 that was transferred to COA then dismissed based on "jurisdictional defect" of an incomplete order (Doc. #22-27038). After an amended order was filed in District Court, this appeal followed.

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):

Defendant had a jury trial under Case No.: C-17-326569-1. Defendant filed a pro per post conviction writ under A-20-813935-W that was supplemented after appointment of counsel. This writ was denied and current counsel appointed to the appeal. Appeal was filed then dismissed by COA because the District Court order "did not address all of the claims raised in Harris's pleadings below. The order was thus not a final order: (See Doc #22-27038, Dkt #83516)



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

Denial of Post Conviction Writ of Habeas Corpus under NRS 34.100, et al

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

Whether the District Court abused its discretion in denying Defendant's grounds for relief raised in his Petition.

Was Harris denied his right to be present at a Critical stage of the proceeding when his counsel Waived his right to be present at the evidentiary hearing

Was trial counsel ineffective for failing to Challenge denial of a writ of mandamus or Otherwise pursuing a writ of mandamus to the Nevada supreme court Was appellate counsel ineffective for failing to Raise the issues of error related to the justice Court proceedings contrary to the direction of Harris, or otherwise ineffective for failing to Raise other legal issues on direct appeal

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. Harris is serving a life tail sentence under an "A" Class Felony, therefore the case is presumptively exempt from the jurisdiction of the Court of Appeals under NRAP 17(b)(3).

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?

5 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 9/28/2018

20. Date of entry of written judgment or order appealed from 1/4/2023

(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 1/27/2023

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) and NRS 34.575 (1)

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) <u>X</u>
NRS 177.015(2) _____	NRS 34.560(2) _____
NRS 177.015(3) _____	Other (specify) <u>NRAP 3A(b)(l)</u>
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.

Barry Rashad Harris

Name of appellant

Dustin R. Marcello, Esq.

Name of counsel of record

3/17/2023

Date

/s/ Dustin R. Marcello

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 3/17 day of 20 23 , 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):

Dated this 20th day of March , 20 23 .

Dustin R. Marcello, Esq.

Signature