

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DANIEL CHARLES COOKE, Petitioner,
vs.
TIM GARRETT, Warden of Lovelock
Correctional Center; and CHARLES
DANIELS, Director of Nevada Department of
Corrections, Respondents.

No. 86152

Electronically Filed
Feb 24 2023 03:47 PM
Elizabeth A. Brown
Clerk of the 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 Mason Simons District Ct. Case No. CV-HC-18-194

2. If the defendant was given a sentence,

(a) what is the sentence?

The sentence was ninety-six to two hundred forty (96-240) months in the Nevada Department of Corrections.

(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 Benjamin Christian Gaumond Telephone 775-388-4875

Firm Ben Gaumond Law Firm, PLLC

Address: 495 Idaho Street, Suite 209, Elko, NV 89801

Client(s) Daniel Charles Cooke

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 and Chad B. Thompson Telephone 775-738-3101

Firm Elko County District Attorney's Office

Address: 540 Court Street, Second Floor, Elko, NV 89801

Client(s) Tim Garrett and Charles Daniels

Attorney Aaron D. Ford Telephone 775-684-1100

Firm Nevada Attorney General's Office

Address: 100 North Carson Street, Carson City, NV 89701

Client(s) Tim Garrett and Charles Daniels

(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 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 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 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):

Case Number 83578 was the case number assigned to the first appeal from the denial of habeas corpus relief. The case was subsequently reassigned to the Court of Appeals with case number 83578-COA.

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):

The original petition for post-conviction habeas corpus relief was filed in the Fourth Judicial District Court of the State of Nevada in case number CV-HC-18-194. The underlying case in the Fourth Judicial District Court was assigned case number CR-FP-16-7293.

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

In case number 83578-COA in the Court of Appeals, that court entered its "ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING" on August 5, 2022. The purpose of the remand was for the district court to hold an evidentiary hearing on the limited issue of ascertaining if a demand for a direct appeal was made upon defense counsel Brian Green. An evidentiary hearing was held in the Fourth Judicial District Court on December 19, 2022. Subsequently, District Court Judge Mason Simons entered an order denying post-conviction habeas corpus relief as to the limited issue of the demand for a direct appeal.

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

Did the district court commit reversible error by denying habeas corpus relief to Petitioner Daniel Charles Cooke as to the limited issue of the demand for a 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:

Under NRAP 17(b)(3), matters that are presumptively assigned to the Court of Appeals include "Postconviction appeals that involve a challenge to a judgment of conviction or sentence for offenses that are not category A felonies." Since the underlying conviction was for the category B felony of Attempted Sexual Assault of a Child Who is Less than 16 Years of Age, this matter is presumptively assigned to the Court of Appeals.

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?

1 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 31 Jan. 2023

20. Date of entry of written judgment or order appealed from 2 Feb. 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 22 Feb. 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

NRS 34.575 prescribes the time limit.

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>This statute applies.</u>
NRS 177.015(2) _____	NRS 34.560(2) _____
NRS 177.015(3) _____	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.

Daniel Charles Cooke

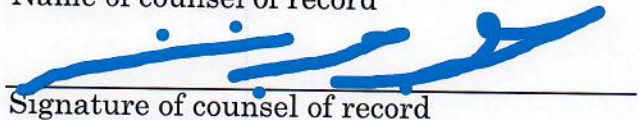
Name of appellant

Benjamin Christian Gaumond

Name of counsel of record

24 February 2023

Date



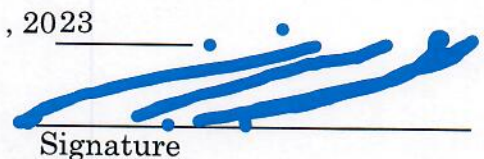
Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 24 Feb. 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 24th day of February, 2023


Signature