

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

John Seka

v.

State of Nevada, et al.

No. 86694

Electronically Filed
Jun 27 2023 11:59 AM

DOCKETING STATEMENT
CRIMINAL APPEALS
Alison 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 Eighth County Clark

Judge Honorable Kathleen E. Delaney District Ct. Case No. A-22-860668-W

2. If the defendant was given a sentence,

(a) what is the sentence?

Life without parole with equal and consecutive life without parole, consecutive to 10 to life with equal and consecutive 10 to life, consecutive to a sentence of 35 to 156 months, consecutive to a sentence of 35 to 156 months.

(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 Shelly Richter Telephone 702-388-6577

Firm Federal Public Defender, District of Nevada

Address: 411 E. Bonneville Ave., Suite 250, Las Vegas NV 89101

Client(s) John Seka

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 Alexander Chen, Taleen Pandukht Telephone 702-671-2500

Firm Clark County District Attorney

Address: 200 Lewis Ave.
Las Vegas, NV 89101

Client(s) State of Nevada

Attorney _____ Telephone _____

Firm _____

Address:

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 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):

Seka v. State, 37907 (direct appeal)

Seka v. State, 44690 (post-conviction)

State v. Seka, 80925 (motion for new trial)

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):

Seka v. McDaniel, 9th Cir. Case No. 08-17120; D. Nev. Case No. 3:05-cv-00409-HDM-VPC
(prior federal habeas corpus)

Seka v. Johnson, 9th Cir. Case No. 22-1795; D. Nev. Case No. 2:22-cv-02184-RFB-BNW
(pending federal habeas corpus)

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

This is an appeal from the denial of Mr. Seka's post-conviction petition for a writ of habeas corpus.

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

Whether the district court erred in dismissing Mr. Seka's post-conviction petition for a writ of habeas corpus. Mr. Seka raised the following claims:

I. Seka's right to due process under the Fifth and Fourteenth Amendments to the United States Constitution was violated when the State suppressed an exonerating and material latent fingerprint report. U.S. Const. Amends. V and XIV.

II. Seka's conviction and sentence are invalid because new evidence, including exonerating DNA evidence, establishes he is actually innocent of first-degree murder, second-degree murder and robbery. U.S. Const. Amends. V, VI, VIII and XIV; Nev. Const. art. 1, §§ 1, 6, and 8.

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:

This case is presumptively retained by the Nevada Supreme Court because it is a post-conviction appeal that involves a challenge to a judgment of conviction or sentence for category A felony offenses. See NRAP 17(b)(3); NRS 200.030 (explaining murder is a category A offense). It also raises as a principal issue a question of first impression involving the United States and Nevada Constitutions, and it raises as a principal issue a question of statewide public importance. See NRAP 17(a)(11)-(12).

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?

0 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 Apr 12, 2023

20. Date of entry of written judgment or order appealed from May 10, 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 May 25, 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); NRS 34.575

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) _____
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.

John Seka

Name of appellant

Shelly Richter

Name of counsel of record

Jun 27, 2023

Date

/s/ Shelly Richter

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 27th 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):

Alexander Chen, Taleen Pandukht
Clark County District Attorney's Office
200 Lewis Avenue, Las Vegas, NV 89101

Dated this 27th day of June , 20 23 .

/s/ Shelly Richter

Signature