



ORIGINAL

FILED

In the Supreme Court of the State of Nevada

JAN 06 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

INDICATE FULL CAPTION:

Dale Edward Flanagan,

Appellant(s),
vs.
The State of Nevada and
E.K. McDaniel,

Respondent(s).

No. 40232

DOCKETING STATEMENT
CRIMINAL APPEALS

(Including pretrial and post-conviction habeas corpus, and petitions for post-conviction relief)

GENERAL INFORMATION

- Judicial District Eighth Judicial Dist. County Clark
Judge Hon. Mark Gibbons District Ct. Docket No. 85-C-069269-C
- If the defendant was given a sentence,
(a) what is the sentence? two death sentences: 1 year; two 6-year sentences;
10 years; and two 15-year sentences.

(b) has the sentence been stayed pending appeal? only the death sentence
(c) was defendant admitted to bail pending appeal? NO
- Was trial or post-conviction counsel appointed X or retained _____?
- Attorney filing this docketing statement: (see attached sheet)
Attorney Cal Potter III, Nevada Bar #001988 Telephone 702-385-1954
Firm Potter Law Offices
Address 1125 Shadow Lane
Las Vegas NV 89102
Client(s) Dale E. Flanagan, Appellant

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.

5. Attorney(s) representing respondent(s):

Attorney James Tufteland Telephone 702-455-4937
Firm District Attorney's Office
Address 200 South Third Street, 7th Floor
Las Vegas NV 89155
Client(s) State of Nevada and E.K. McDaniel

Attorney _____ Telephone _____
Firm _____
Address _____
Client(s) _____

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(List additional counsel on separate sheet if necessary)

03-00201

4. Attorney Filing this docketing statement(additional):

Robert D. Newell Telephone: 503-778-5234
Davis Wright Tremaine LLP
1300 SW 5th Ave, Suite 2300
Portland OR 97201

Client: Dale E. Flanagan

6. Nature of disposition below:

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Judgment upon guilty plea
- ☐ Grant of pretrial motion to dismiss
- ☐ Parole/Probation revocation
- ☐ Motion for new trial
 - ☐ grant ☐ denial
- ☐ Motion to withdraw guilty plea
 - ☐ grant ☐ denial

- ☐ Grant of pretrial habeas
- ☐ Grant of motion to suppress evidence
- ☐ Post-conviction relief (NRS ch. 177)
 - ☐ grant ☐ denial
- ☒ Post-conviction habeas (NRS ch. 34)
 - ☐ grant ☒ denial
- ☐ Other disposition (specify).....
.....
.....

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

- ☒ death sentence
- ☒ life sentence
- ☐ juvenile offender
- ☒ pretrial proceedings

8. 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...X.....

9. 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):

Flanagan v. Nevada; 27104, 27118, 20383, 20483, 27320.

Moore v. Nevada; 17900.

10. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

U.S. Supreme Court:

Flanagan v. Nevada; 91-5293, 97-7986.

Moore v. Nevada; 91-432, 97-8014.

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

This is a post-conviction petition for a writ of habeas corpus. The petition was denied after a brief evidentiary hearing on one narrow issue. Discovery was denied below.

12. No Merit Appeal. If appellant was the defendant below, does counsel intend to file an affidavit of no merit appeal pursuant to Anders v. California, 386 U.S. 738 (1967) and Sanchez v. State, 85 Nev. 95, 450 P.2d 793 (1969)?

Yes.....No...X.....

13. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

Whether the district court properly denied discovery and an evidentiary hearing on the issues of actual innocence, prosecutorial misconduct, ineffective assistance of counsel, and other significant claims set forth in the Supplemental Petition filed below.

Whether the district court properly denied discovery and relief on the narrow issue of ineffective assistance of counsel arising out of a conflict between co-counsel for Petitioner during his third penalty hearing.

14. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, 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.....X.....

If not, explain. The State is a party (NRAP 44)

15. **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.....X.....No.....

Public interest: Yes.....X.....No.....

16. **Length of trial.** If this action proceeded to trial in the district court, how many days did the trial last?

1.....days

17. **Oral argument.** Would you object to submission of this appeal for disposition without oral argument?

Yes.....X.....No.....

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from..... August 9, 2002.....

19. Date of entry of written judgment or order appeal from..... August 16, 2002.....

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

20. 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. August 16, 2002

(a) Was service by delivery or by mail mail (specify).

21. If the time for filing the notice of appeal was tolled by a post-judgment motion, N/A

(a) Specify the type of motion, and the date of filing of the motion:

Arrest judgment.....Date filed.....

New trial.....Date filed.....

(newly discovered evidence)

New trial.....Date filed.....

(other grounds)

(b) Date of entry of written order resolving motion.....

22. Date notice of appeal filed Sept. 12, 2002

23. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.710, NRS 34.815, NRS 177.015(2), or other. NRAP 4(a) (this is technically a civil case)
or NRAP 4(b).

SUBSTANTIVE APPEALABILITY

24. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from:

NRS 177.015(1)(b).....

NRS 34.710(3).....

NRS 177.015(2).....

NRS 34.710(4).....

NRS 177.055.....

NRS 34.815

NRS 177.385.....

Other (specify) NRS 34.575

VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

Dale Edward Flanagan

Name of appellant

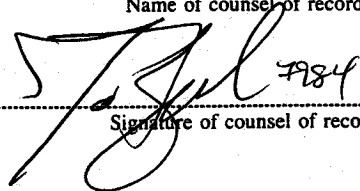
1/3/03

Date

Cal J. Potter III

Robert D. Newell

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 3 day of January, ~~19~~2003, 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):

James Tuftland
District Attorney's Office
200 South Third Street, 7th Floor
Las Vegas, Nevada 89155

Dated this 3 day of January, ~~19~~2003

Rebecca Rigg
Signature