

Nebraska Casetracker – as of May 2015

**ELLIS, ROY**

GENERAL INFORMATION

DOB: January 25, 1954

Race: Black

Gender: Male

CRIME AND TRIAL

County of conviction: Douglas

Number of counts: 1

Race of victim: Black

Gender of victim: Female

Date of crime: November 29, 2005

Date of sentencing: February 6, 2009

TRIAL COUNSEL

Patrick Dunn and Jerry Hug

LEGAL STATUS

Post-conviction proceedings pending in Douglas County

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Conviction and sentence affirmed on direct appeal by *State v. Ellis*, 799 N.W.2d 267 (Neb.), *cert. denied*, 132 S.Ct. 463 (2011)

CURRENT PROCEEDINGS

Post-conviction proceedings pending in Douglas County

CURRENT COUNSEL

James Regan  
6035 Binney Street  
Omaha, NE 68104  
402-341-2020  
jr@jreganlaw.com

## REPORTED OPINIONS

—Conviction and sentence affirmed on direct appeal by *State v. Ellis*, 799 N.W.2d 267 (Neb.), *cert. denied*, 132 S.Ct. 463 (2011)

## SIGNIFICANT LEGAL ISSUES

—Erroneous admission of evidence that Mr. Ellis committed previous sexual assaults against his step-daughters (deemed harmless on direct appeal)

—Improper submission of “mental anguish” aggravating factor

—Ability of Nebraska to execute Mr. Ellis by lethal injection, when electrocution was the only statutorily authorized method of execution at the time of the offense (and was later declared unconstitutional)

—Constitutionality of bifurcated sentencing scheme (jury finds existence of aggravating circumstances; panel of judges weighs circumstances and chooses sentence)

**GALES, ARTHUR LEE, JR.**

GENERAL INFORMATION

DOB: May 1, 1965

Race: Black

Gender: Male

CRIME AND TRIAL

County of conviction: Douglas

Number of counts: 2

Race of victim: Black (both)

Gender of victim: 1 male, 1 female

Date of crime: November 17, 2000

Date of sentencing: November 6, 2001 (first sentencing)  
December 9, 2003 (second sentencing)

TRIAL COUNSEL

Mark Weber (first trial)

Susan Bazis (on re-sentencing)

LEGAL STATUS

On post-conviction review in Douglas County District Court

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Denial of certiorari following affirmance of sentence on direct appeal

CURRENT PROCEEDINGS

Post-conviction action pending in Douglas County

CURRENT COUNSEL

Jerry Hug

1823 Harney Street, #1004

Omaha, NE 68102

402-346-1733

[jmhug@cox.net](mailto:jmhug@cox.net)

## REPORTED OPINIONS

—Death sentences affirmed on direct appeal after resentencing. *See State v. Gales*, 694 N.W.2d 124 (Neb.), *cert. denied*, 546 U.S. 947 (2005)

—Convictions affirmed, sentences reversed on direct appeal by *State v. Gales*, 658 N.W.2d 604 (Neb. 2003)

## SIGNIFICANT LEGAL ISSUES

—Retroactive application of Nebraska's post-*Ring* sentencing statute, enacted in 2003

—Constitutionality of post-*Ring* sentencing statute, which requires jury to find aggravating circumstances, but assigns weighing and sentencing functions to judges

—Eligibility for DNA testing under Nebraska statute

## **GALINDO, JORGE**

### GENERAL INFORMATION

DOB: May 18, 1981

Race: Latino

Gender: Male

### CRIME AND TRIAL

County of conviction: Madison

Number of counts: 5

Race of victim: 4 white, 1 Asian

Gender of victim: 4 female, 1 male

Date of crime: September 26, 2002

Date of sentencing: November 10, 2004

### TRIAL COUNSEL

Douglas J. Stratton

### LEGAL STATUS

Post-conviction proceedings pending in Madison County District Court

### LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Denial of certiorari on direct appeal

### CURRENT PROCEEDINGS

Post-conviction proceedings pending in Madison County District Court

### CURRENT COUNSEL

Adam Sipple  
307 North Oakland Avenue  
Oakland, NE 68045  
402-685-5647

### REPORTED OPINIONS

—Convictions and sentences affirmed on direct appeal by *State v. Galindo*, 774 N.W.2d 190 (Neb. 2009), *cert. denied*, 559 U.S. 101 (2010)

## SIGNIFICANT LEGAL ISSUES

—Retroactive application of Nebraska’s post-*Ring* sentencing statute, enacted in 2003

—Constitutionality of post-*Ring* sentencing statute, which requires jury to find aggravating circumstances, but assigns weighing and sentencing functions to judges

—Eligibility for the death penalty under *Enmund/Tison*

—Trial counsel’s failure to investigate the non-charged homicide that the state used in aggravation of punishment, Mr. Galindo’s history of mental illness and childhood abuse and neglect in Mexico, possible intellectual disability, his impairment from methamphetamine at the time of the crime, his influence under coercion from co-defendant Jose Sandoval, and his possible incompetence to stand trial

## HESSLER, JEFFREY

### GENERAL INFORMATION

DOB: October 23, 1978

Race: White

Gender: Male

### CRIME AND TRIAL

County of conviction: Scotts Bluff

Number of counts: 1

Race of victim: Latina

Gender of victim: Female

Date of crime: February 11, 2003

Date of sentencing: May 18, 2005

### TRIAL COUNSEL

James R. Mowbray and Jeffery A. Pickens

### LEGAL STATUS

Federal habeas pending, Case No. 8:14-cv-00357-RGK (D. Neb.); stayed pending post-conviction petition in Scotts Bluff County, Case No. CR03-40

### LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Denial of successive petition for post-conviction relief affirmed by *State v. Hessler*, 850 N.W.2d 777 (Neb. 2014)

### CURRENT PROCEEDINGS

Petition for post-conviction relief pending in Scotts Bluff County; federal habeas petition stayed pending the state court litigation

## CURRENT COUNSEL

Alan G. Stoler  
1823 Harney Street, Suite 10054  
Omaha, NE 68102  
402-346-1733  
astoler@ix.netcom.com

Scott W. Braden  
Arkansas Federal Public Defender Office  
1401 West Capitol, Suite 490  
Little Rock, AR 72201  
501-324-6114  
scott\_braden@fd.org

## REPORTED OPINIONS

—Denial of successive petition for post-conviction relief affirmed by *State v. Hessler*, 850 N.W.2d 777 (Neb. 2014)

—Denial of post-conviction relief affirmed by *State v. Hessler*, 807 N.W.2d 504 (Neb. 2011)

—Conviction and sentence affirmed on direct appeal by *State v. Hessler*, 741 N.W.2d 406 (Neb. 2007)

## SIGNIFICANT LEGAL ISSUES

—Competence at trial, including competence to waive counsel for sentencing phase

—*Miranda* claim regarding admission of Mr. Hessler's statements to police

—Numerous IAC claims concerning trial counsels' failure to preserve and properly litigate issues, including right to be present at trial, juror misconduct, prosecutorial misconduct, and change of venue

## **LOTTER, JOHN**

### GENERAL INFORMATION

DOB: May 31, 1971

Race: White

Gender: Male

### CRIME AND TRIAL

County of conviction: Richardson

Number of counts: 3

Race of victim: 2 white, 1 black

Gender of victim: 2 female, 1 male

Date of crime: December 31, 1993

Date of sentencing: February 21, 1996

### TRIAL COUNSEL

Mike Fabian

### LEGAL STATUS

Remedies in process

### LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Denial of certiorari following federal habeas review

### CURRENT PROCEEDINGS

Remedies in process

### CURRENT COUNSEL

Rebecca E. Woodman

Carol R. Camp

Death Penalty Litigation Clinic

6155 Oak Street, Suite C

Kansas City, MO 64113

816-363-2795

rwoodman@dplclinic.com

ccampb@dplclinic.com

## REPORTED OPINIONS

—Habeas corpus denied by *Lotter v. Houston*, 771 F. Supp. 2d 1074 (D. Neb. 2011), appeal dismissed and certificate of appealability denied by *Lotter v. Houston*, No. 11-2223 (8th Cir. Aug. 23, 2011), *cert. denied*, 132 S. Ct. 1760 (2012)

—Denial of post-conviction relief affirmed by *State v. Lotter*, 771 N.W.2d 551 (Neb. 2009), *cert. denied*, 559 U.S. 1014 (2010)

—Denial of post-conviction relief affirmed by *State v. Lotter*, 664 N.W.2d 892 (Neb. 2003), *cert. denied*, 542 U.S. 939 (2004)

—Convictions and sentences affirmed on direct appeal by *State v. Lotter*, 586 N.W.2d 591 (Neb. 1998), *modified on denial of rehearing*, 587 N.W.2d 673 (Neb. 1999), *cert. denied*, 526 U.S. 1162 (1999)

## SIGNIFICANT LEGAL ISSUES

—Co-defendant’s recantation of certain trial testimony against Mr. Lotter, admissibility of co-defendant’s cellmate’s account of recantation in post-conviction proceedings, and propriety of co-defendant’s refusal to testify at PCR hearing under Fifth Amendment

—Due process claim stemming from trial judge’s ex parte communications with prosecutor (who sought judge’s assurance that Mr. Lotter’s accomplice would receive a life sentence in exchange for his testimony against Mr. Lotter)

—Trial counsel’s failure to discover, develop, and present complete evidence of Mr. Lotter’s history of neglect and physical abuse during childhood, sexual abuse, mental illness, and possible intellectual disability

**MATA, RAYMOND JR.**

GENERAL INFORMATION

DOB: February 7, 1973  
Race: Latino  
Gender: Male

CRIME AND TRIAL

County of conviction: Keith, on transfer from Scotts Bluff County  
Number of counts: 1  
Race of victim: Latino  
Gender of victim: Male  
Date of crime: On or about March 15, 1999  
Date of sentencing: June 1, 2000 (first trial)  
September 29, 2005 (second trial)

TRIAL COUNSEL

Jeffery Pickens and Jerry Soucie (first trial)  
Jerry Soucie (second trial)

LEGAL STATUS

Post-conviction proceedings pending in Scotts Bluff County

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Denial of post-conviction relief reversed and remanded for further proceedings by *State v. Mata*, 790 N.W.2d 716 (Neb. 2010)

CURRENT PROCEEDINGS

Post-conviction proceedings pending following remand from Nebraska Supreme Court

CURRENT COUNSEL

Brian J. Lockwood  
Deputy Public Defender  
Scotts Bluff County Courthouse  
1725 10th Street  
Gering, Nebraska 69341  
(308) 436-6678  
blockwood@scottsbuffcounty.org

## REPORTED OPINIONS

—Denial of post-conviction relief reversed and remanded by *State v. Mata*, 790 N.W.2d 716 (Neb. 2010)

—Death sentence affirmed but stayed on direct appeal after re-sentencing. *See State v. Mata*, 745 N.W.2d 229 (Neb.), *cert. denied*, 555 U.S. 901 (2008).

—Conviction affirmed, sentence reversed on direct appeal by *State v. Mata*, 668 N.W.2d 448 (Neb. 2003), *cert denied*, 543 U.S. 1128 (2005)

## SIGNIFICANT LEGAL ISSUES

—District court's initial refusal to allow Mr. Mata to amend his post-conviction pleading in order to assert various claims of trial counsels' ineffectiveness

—Voluntariness of statements to the police, given without *Miranda* warnings and after Mr. Mata was handcuffed

—Double jeopardy claim stemming from dual submission to jury on first degree murder and felony murder (trial court entered conviction and sentence on first degree murder only, even though jury convicted on both)

## **MOORE, CAREY DEAN**

### GENERAL INFORMATION

DOB: October 26, 1957

Race: White

Gender: Male

### CRIME AND TRIAL

County of conviction: Douglas

Number of counts: 2

Race of victim: White (both)

Gender of victim: Male (both)

Date of crime: August 22-27, 1979

Date of sentencing: June 20, 1980

### TRIAL COUNSEL

Lawrence Corrigan (first trial)

Tom Riley (on resentencing)

### LEGAL STATUS

Execution date in 2011 canceled due to unavailability of suitable lethal injection drugs

### LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Denial of post-conviction relief by Douglas County District Court (ruling that claims regarding execution method were not cognizable)

### CURRENT PROCEEDINGS

Execution date in 2011 canceled due to unavailability of suitable lethal injection drugs

### CURRENT COUNSEL

Jerry Soucie

1141 H Street

Lincoln, NE 68508

402-476-2847

[jerdog16163@windstream.net](mailto:jerdog16163@windstream.net)

Alan E. Peterson

Cline & Williams

233 S. 13th Street  
1900 U.S. Bank Building  
Lincoln, NE 68508  
402-474-6900  
alanepeterson@gmail.com

Daniel E. Klaus  
Rembolt & Ludtke  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508  
402-475-5087  
dklaus@remboltlawfirm.com

## REPORTED OPINIONS

—Execution stayed by *State v. Moore*, 730 N.W.2d 563 (May 2, 2007)

—Denial of post-conviction relief affirmed by *State v. Moore*, 718 N.W.2d 537 (Neb. 2006)

—Denial of habeas corpus affirmed by *Moore v. Kinney*, 320 F.3d 767 (8th Cir), *cert. denied*, 539 U.S. 930 (2003)

—Denial of post-conviction relief affirmed by *State v. Moore*, 591 N.W.2d 86 (Neb.), *cert. denied*, 528 U.S. 990 (1999)

—Death sentences affirmed on direct appeal following grant of federal habeas relief. *See State v. Moore*, 553 N.W.2d 120 (Neb. 1996), *cert. denied*, 520 U.S. 1176 (1997)

—Grant of habeas affirmed (sentencing only) by *Moore v. Clarke*, 904 F.2d 1226 (8th Cir. 1990), *cert. denied*, 504 U.S. 930 (1992)

—Convictions and sentences affirmed on direct appeal by *State v. Moore*, 316 N.W.2d 33 (Neb.), *cert. denied*, 456 U.S. 984 (1982)

## SIGNIFICANT LEGAL ISSUES

—Vagueness of the state’s “exceptional depravity” aggravating factor, where state court’s definition of the factor was not crafted until Moore’s appeal

—Retroactivity of *Ring v. Arizona*, in light of the fact that Mr. Moore’s aggravating circumstances, were found, and sentence imposed, by a panel of judges

—*Lackey* claim surrounding length of confinement on death row

## **SANDOVAL, JOSE**

### GENERAL INFORMATION

DOB: May 8, 1979

Race: Latino

Gender: Male

### CRIME AND TRIAL

County of conviction: Madison

Number of counts: 5

Race of victim: 4 white, 1 Asian

Gender of victim: 4 female, 1 male

Date of crime: September 26, 2002

Date of sentencing: January 14, 2005

### TRIAL COUNSEL

Harry Moore

### LEGAL STATUS

### LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Affirmance of convictions and sentences by Nebraska Supreme Court on direct appeal

### CURRENT PROCEEDINGS:

### CURRENT COUNSEL

### REPORTED OPINIONS:

—Convictions and sentences affirmed on direct appeal by *State v. Sandoval*, 788 N.W.2d 172 (Neb. 2010), *cert. denied*, 131 S. Ct. 2912 (2011)

## SIGNIFICANT LEGAL ISSUES

—Erroneous “mental anguish” instruction underlying finding of “exceptional depravity” aggravating circumstance

—Trial court’s order requiring that jurors be anonymous and be referred to by number-only

—Conflict of interest and related claims stemming from dispute between the public defender’s office and the Madison County Board of Commissioners, leaving the defense without funds to retain the appropriate experts and mitigation specialist

**TORRES, MARCO ENRIQUE JR.**

GENERAL INFORMATION

DOB: March 21, 1975

Race: Latino

Gender: Male

CRIME AND TRIAL

County of conviction: Hall

Number of counts: 2

Race of victim: 1 white, 1 Latino

Gender of victim: Male (both)

Date of crime: November 5-7, 2007

Date of sentencing: January 29, 2010

TRIAL COUNSEL

Kirk Naylor

LEGAL STATUS

Post-conviction proceedings pending in Hall County District Court

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Denial of certiorari following direct appeal

CURRENT PROCEEDINGS

Post-conviction proceedings pending in Hall County District Court

CURRENT COUNSEL

John H. Marsh

1323 Central Avenue

P.O. Box 10

Kearney, NE 68848

308-236-6441

[jhmarsh@frontiernet.net](mailto:jhmarsh@frontiernet.net)

## REPORTED OPINIONS

—Convictions and sentences affirmed on direct appeal by *State v. Torres*, 812 N.W.2d 213 (Neb.), *cert. denied*, 133 S.Ct. 244 (2012)

## SIGNIFICANT LEGAL ISSUES

—Trial counsel’s failure to retain a mitigation specialist

—Improper consideration of invalid “mental anguish” aggravating factor

—Admission during guilt phase of Mr. Torres’s previous kidnapping and robbery at same residence where murders occurred

**VELA, ERICK**

GENERAL INFORMATION

DOB: October 10, 1980

Race: Latino

Gender: Male

CRIME AND TRIAL

County of conviction: Madison

Number of counts: 5

Race of victim: 4 white, 1 Asian

Gender of victim: 4 female, 1 male

Date of crime: September 26, 2002

Date of sentencing: January 12, 2007

TRIAL COUNSEL

Jeffery A. Pickens, Mark Albin, James R. Mowbray

LEGAL STATUS

Post-conviction proceedings pending in Madison County

LAST JUDICIAL DECISION RELATING TO CONVICTION OR SENTENCE

Affirmance of convictions and sentences by Nebraska Supreme Court on direct appeal

CURRENT PROCEEDINGS

Post-conviction proceedings pending in Madison County

CURRENT COUNSEL

Patrick P. Carney  
109 South 5th Street  
Norfolk, NE 68701  
402-379-5600

## REPORTED OPINIONS

—Convictions and sentences affirmed on direct appeal by *State v. Vela*, 777 N.W.2d 266 (Neb.), *cert. denied*, 560 U.S. 945 (2010)

—Appeal of denial of motion to preclude death penalty on account of mental retardation dismissed by *State v. Vela*, 721 N.W.2d 631 (Neb. 2006)

## SIGNIFICANT LEGAL ISSUES

—Claim of intellectual disability under *Atkins v Virginia*, and Nebraska Supreme Court’s requirement of “significant limitations” in adaptive functioning

—Retroactive applicability of post-*Ring* statute requiring jurors to find aggravating circumstances but leaving the weighing of circumstances and choice of sentence to judges