

State of New Hampshire
Supreme Court

NO. 04-_____

STATE OF NEW HAMPSHIRE

v.

DOMINIC ROLANDO

NOTICE OF MANDATORY APPEAL OF DOMINIC ROLANDO
Pursuant to Supreme Court Rule 7(1)(A)

By: Joshua L. Gordon, Esq.
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State of New Hampshire Supreme Court

NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; or (6) a probation revocation proceeding.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

State of New Hampshire v. Dominic Rolando
Rock. Cnty. Super Ct. Nos. 02-S-825, 02-S-826

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Rockingham County Superior Court (*Nadeau, T., J.*)

3A. NAME & ADDRESS OF APPEALING PARTY

Dominic Rolando
% Frederic Rolando
34 Canaan Rd.
Barrington, NH 03825

3B. NAME, FIRM, ADDRESS & TELEPHONE
NUMBER OF APPELLANT'S COUNSEL

Joshua L. Gordon
Law Office of Joshua Gordon
26 S. Main St., #175
Concord, N.H. 03301
(603) 226-4225
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4A. NAME & ADDRESS OF OPPOSING PARTY

State of New Hampshire

4B. NAME, FIRM, ADDRESS, & TELEPHONE
NUMBER OF OPPOSING COUNSEL

Office of the Attorney General
Capital St.
Concord, NH 03301
(603) 271-3675

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

n/a

6. DATE OF CLERK'S NOTICE OF DECISION
OR SENTENCING

Sentencing:

June 7, 2003

Clerk's Notice of Sentence:

June 8, 2004

DATE OF CLERK'S NOTICE OF
DECISION ON POST-TRIAL MOTION

n/a

7. CRIMINAL CASES: DEFENDANT'S
SENTENCE AND BAIL STATUS

Negligent Homicide: 12 months house
of corrections committed commencing June
16, 2004, 5-year revocation of license,
\$6,140 restitution.

Reckless Conduct: 2-4 years state
prison, consecutive with above, minimum
and maximum suspended for 10 years upon
conditions of good behavior, restitution,
counseling, and 100 hours community
service.

8. APPELLATE DEFENDER REQUESTED?

No.

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

There no known basis for confidentiality.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES.

No Party is a Corporation.

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes.

IF YES, COMPLETE TRANSCRIPT ORDER FORM

A Transcript Order Form is attached, but not completed because counsel has not finished acquiring transcript information. A completed form will be submitted shortly.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.
- I. Was there insufficient evidence that Mr. Rolando acted recklessly, or was “aware” of a known risk, when he passed a vehicle in a spot on the road that, unknown to him, made it impossible to see on-coming traffic?
 - II. Was there insufficient evidence that Mr. Rolando’s vehicle was a “deadly weapon”?
 - III. Was Mr. Rolando improperly charged with the general crime of Reckless *Conduct*, RSA 631:3, when the crime of Reckless *Driving*, RSA 265:79, is contained in the motor vehicle code, is specifically applicable to motor vehicles, and specifically punishes the conduct of which Mr. Rolando was accused?
 - IV. Was there insufficient evidence that Mr. Rolando acted negligently, and that the resulting death was an accident and not homicide?
 - V. Did the court err in applying discovery deadlines and therefore err in disallowing the introduction as evidence a short DVD movie made by the defense documenting the scene of the accident so that the jury could understand that foliage and a dip in the road made it impossible for Mr. Rolando to see on-coming traffic?
 - VI. Did Mr. Rolando’s trial lawyer provide him ineffective assistance upon requesting the introduction of the short movie too soon before the commencement of trial so that its introduction was barred by discovery deadlines?
 - VII. Mr. Rolando may add questions upon his attorney’s further review of the record.

14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

Joshua L. Gordon, Esq.

I hereby certify that on or before the date below copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

June 16, 2004

Joshua L. Gordon, Esq.

ATTACHMENTS

- (1) CLERK’S NOTICE OF DECISION (June 8, 2004) 7
- (2) RETURN FROM SUPERIOR COURT & MITTIMUS (Negligent Homicide) (June 7, 2004) 8
- (3) RETURN FROM SUPERIOR COURT & MITTIMUS (Reckless Conduct (June 7, 2004) 9

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Superior Court Administrative Rule 3-1), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the trial court. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.

LIST EACH PORTION OF CASE PROCEEDINGS TO BE TRANSCRIBED						
Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Steno/Recorded	Previously Prepared?*	Deposit
						\$
DO NOT SEND DEPOSIT AT THIS TIME						TOTAL DEPOSIT: \$

SCHEDULE OF DEPOSITS

Length of Proceeding

Deposit Amount

Hearing or trial of one hour or less	\$ 175
Hearing or trial up to ½ day	\$ 450
Hearing or trial of more than ½ day	\$ 900/day
Previously prepared portions	Number of pages x \$.50 per page per copy if additional copies are needed

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you may be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

* For portions of the transcript that have been previously prepared, indicate number of copies that were prepared.