1	IN THE SUPREME COURT OF TH	HE STATE OF	NEVADA		
2					
3			Electronically Filed		
4	WILLIAM JOSEPH McCAFFREY,	No. 54873	Mar 29 2010 04:09 p.m. Tracie K. Lindeman		
5	Appellant,		ridolo IX. Ellidollidii		
6	v.				
7	THE STATE OF NEVADA,				
8	Respondent.				
9	/				
10	RESPONDENT'S ANSW	RESPONDENT'S ANSWERING BRIEF			
11	JEREMY T. BOSLER Public Defender	RICHARD A District Atto	A. GAMMICK orney		
12	JOHN REESE PETTY	GARY H. HA	ATLESTAD		
13	Chief Appellate Deputy P.O. Box 30083	Chief Appell P.O. Box 300	083		
14	Reno, Nevada 89520-3083		la 89520-3083		
15	ATTORNEYS FOR APPELLANT	ATTORNEY	S FOR RESPONDENT		
16					
17					
18					
19					
20					
21 22					
23					
24					
25					
26					
- 3					

Docket 54873 Document 2010-08174

1		TABLE OF CONTENTS
2		<u>Page</u>
3	I.	INTRODUCTION
4	II.	ISSUE ON APPEAL 2
5	III.	ARGUMENT 2
6	IV.	CONCLUSION
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		

1	TABLE OF AUTHORITIES
2	<u>Page</u>
3	Lloyd v. State 94 Nev. 167, 576 P.2d 740 (1978)
4	
5	92 Nev. 91, 545 P.2d 1159 (1976)
6	Sims v. State 107 Nev. 438, 814 P.2d 63 (1991)
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
<ul><li>25</li><li>26</li></ul>	
20	

## IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JOSEPH McCAFFREY,

No. 54873

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

#### RESPONDENT'S ANSWERING BRIEF

## I. INTRODUCTION

Appellant entered a negotiated plea to one count of promotion of sexual performance of a minor. Pursuant to the plea bargain, the State, in exchange for Appellant's plea, agreed not to pursue other charges, but would remain "free to argue" for the appropriate sentence. Appellant would be eligible for probation if a psychosexual evaluation certified he was not a high risk to reoffend.

Prior to sentencing, Steven Ing submitted his report, which indicated McCaffrey was not a high risk to re-offend. JA, pp. 27, 29. The Department recommenced a prison term of life with parole after five years. *Id.*, p. 39. Defense counsel, citing a variety of mitigating circumstances, argued for probation. The prosecutor argued in accord with the Department's recommendation. *Id.*, p. 39. In salient part, the prosecutor argued that, because the police had little trouble accessing child porn from McCaffrey's computer, his innocent acquisition of porn claim was not worthy of belief; he also pointed to McCaffrey's lack of empathy, the uncharged offenses, his concessions to photographing children at play, and finally, his caviler admission that "[he] really cannot predict the future" when the police questioned him about escalating his behavior from porn to touching children. *Id.*, pp. 36-40.

Following the sentencing hearing, the District Judge imposed the life with parole after five years sentence, plus assessments, fees and lifetime supervision. This appeal follows.

## II. <u>ISSUE ON APPEAL</u>

Did the District Court err in imposing a sentence within the statutory range, not based on suspect or highly impalpable evidence, and does not shock the conscience?

## III. ARGUMENT

Appellant contends that the District Judge erred or otherwise abused his discretion in imposing a prison sentence. This contention lacks merit.

The sentence imposed here is within the statutory range allowed for this offense. Moreover, the sentence does not rest on suspect or highly impalpable evidence. *Silks v. State*, 92 Nev. 91, 545 P.2d 1159 (1976). In addition, Appellant's sentence does not shock the conscience. *Lloyd v. State*, 94 Nev. 167, 576 P.2d 740 (1978). Instead, the sentence imposed is in keeping with the District Judge's perception of Appellant's just deserts, his prospects for rehabilitation, and the facts of this case. *Sims v. State*, 107 Nev. 438, 814 P.2d 63 (1991). Accordingly, the present sentence should be upheld.

## IV. CONCLUSION

Based on the above arguments and points and authorities, the State respectfully urges the Court to uphold McCaffrey's sentence.

DATED: March 29, 2010.

RICHARD A. GAMMICK DISTRICT ATTORNEY

By: GARY H. HATLESTAD Chief Appellate Deputy

### CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the page and volume number, if any, of the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: March 29, 2010.

By: GARY H. HATLESTAD Chief Appellate Deputy Nevada Bar No. 1525 P. O. Box 30083 Reno, Nevada 89520-3083 (775) 328-3200

# **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 29, 2010. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

JOHN REESE PETTY Chief Appellate Deputy Washoe County Public Defender's Office

> Shelly Muckel Washoe County District Attorney's Office