

IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF: D. T., A MINOR  
D.R.T.,  
Appellant,  
v.  
THE STATE OF NEVADA,  
Respondent.

Electronically Filed  
Feb 15 2017 10:30 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 62009

**MOTION TO PUBLISH FEBRUARY 10, 2017, ORDER OF AFFIRMANCE**

**Appeal from Order of Juvenile Certification  
Eighth Judicial District Court, Clark County, Nevada**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Motion to Publish February 10, 2017, Order of Affirmance. This motion is filed pursuant to NRAP Rules 27 and 36 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 15<sup>th</sup> day of February, 2017.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar # 001565

BY /s/ Jonathan E. VanBoskerck

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
Office of the Clark County District Attorney

## ARGUMENT

This Court's Order of Affirmance, filed February 10, 2017, disposes of an issue of law that has arisen in multiple pending cases and is likely to be litigated again without a published opinion. Publication is warranted to provide guidance to the juvenile courts of Nevada and to prevent inconsistent rulings on the same legal issue.

Rule 36(c)(1)-(3) of the Nevada Rules of Appellate Procedure (NRAP) indicates that a decision of this Court is suitable for publication where it “[p]resents an issue of first impression[,]” alters or clarifies a previously announced rule of law, or “[i]nvolves an issue of public importance that has application beyond the parties.” Further, a motion to publish “must be based on one or more of the criteria for publication set forth in Rule 36(c)(1)-(3).” NRAP Rule 36(f)(3). This Court will upgrade a dispositional order to published authority where appropriate. Sullivan v. State, 120 Nev. 537, 538, 96 P.3d 761, 762 (2004) (“Cause appearing, we grant the State’s motion to publish. Accordingly we issue this opinion in place of our prior unpublished order.”); Rupley v. State, 93 Nev. 60, 61, footnote 1, 560 P.2d 146, 147, footnote 1 (1977) (an unpublished disposition may be elevated to precedent “[b]ecause of the paucity of published authority on the issues[.]”). However, “[p]ublication is disfavored if revisions to the text of the

unpublished disposition will result in discussion of additional issues not included in the original decision.” NRAP Rule 36(f)(4).

The Order of Affirmance conclusively adjudicated the issue of whether the “certification of cognitively impaired juveniles for adult proceedings is unconstitutional” in light of Graham v. Florida, 560 U.S. 48, 130 S.Ct. 210 (2010), Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1182 (2005), and Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242 (2002). (Order of Affirmance, p. 4-5). The first NRAP Rule 36(c)(1)-(3) factor warrants publication. This case appears to be the first instance where this Court has authoritatively held that Graham, Roper and Atkins do not preclude the certification of a juvenile delinquent for prosecution as an adult criminal. (Order of Affirmance, p. 4-5). The third NRAP Rule 36 factor also supports publication since the applicability of Graham, Roper and Atkins to juvenile certification proceedings is “an issue of public importance that has application beyond the parties.” NRAP 36(c)(3). This is an issue that repeatedly arises in juvenile certification proceedings and is frequently raised on appeal. As such, publication will prevent re-litigation of the same issue in the future in different cases in different judicial districts. Further, publication would not require textual revisions in order to analyze issues not included in the unpublished orders. As such the concern expressed by NRAP Rule 36(f)(4) is not relevant.

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## **CONCLUSION**

Conversion of the Order of Affirmance, filed February 10, 2016, to a published opinion will be helpful in efficiently and consistently adjudicating arguments that Graham, Roper and Atkins preclude the certification of juvenile delinquents for prosecution as adult criminals. Additionally, publication will prevent re-litigation of the same issue in the future or in different judicial districts.

WHEREFORE, the State respectfully requests that this Court convert the Order of Affirmance, filed February 10, 2017, into a published opinion.

Dated this 15<sup>th</sup> day of February, 2017.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*

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JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
Office of the Clark County Distirct Attorney  
Regional Justice Center  
200 Lewis Avenue  
Post Office Box 552212  
Las Vegas, Nevada 89155  
(702) 671-2750

## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 15, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

KERRY MAXEY  
Deputy Public Defender

JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney

BY /s/ E.Davis  
Employee, District Attorney's Office

JEV//ed