

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 23 2013 10:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

JAQUEZ DEJUAN BARBER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 62649

**MOTION TO STRIKE PORTIONS OF APPELLANT'S BRIEF FOR LACK
OF JURISDICTION AND MOTION TO HOLDING BRIEFING IN
ABEYANCE**

**Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County**

PHILIP J. KOHN
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Counsel for Appellant

Counsel for Respondent

1 IN THE SUPREME COURT OF THE STATE OF NEVADA
2
3

4 JAQUEZ DEJUAN BARBER,

5 Appellant,

6 v.

7 THE STATE OF NEVADA,

8 Respondent.
9

Case No. 62649

10 **MOTION TO STRIKE PORTIONS OF APPELLANT'S BRIEF FOR LACK**
11 **OF JURISDICTION AND MOTION TO HOLDING BRIEFING IN**
12 **ABEYANCE**

13 COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County
14 District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and
15 files this Motion to Strike Portions of Appellant's Brief for Lack of Jurisdiction and
16 Motion to Hold Briefing in Abeyance. This motion is filed pursuant to NRAP Rule
17 27 and is based on the following memorandum and all papers and pleadings on file
18 herein.
19

20 Dated this 20th day of September, 2013.
21

22 Respectfully submitted,

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

26 BY /s/ Jonathan E. VanBoskerck

27 Jonathan E. VanBoskerck
28 Chief Deputy District Attorney
 Nevada Bar #006528
 Office of the Clark County District Attorney

1 **ARGUMENT**

2 Arguments I and II of Appellant's Opening Brief challenge the manner in
3 which the Juvenile Division of the Eighth Judicial District Court (Juvenile Court)
4 disposed of the juvenile matter before it. However, the juvenile case was a separate
5 proceeding that Appellant failed to appeal and as such this Court lacks jurisdiction
6 over the issues raised by Appellant.
7

8
9 "Appeals from the orders of the juvenile court may be taken to the Supreme
10 Court in the same manner as appeals in civil cases are taken." NRS 62D.500(1).
11 "[A]n appeal ... from a district court to the Supreme Court may be taken only by
12 filing a notice of appeal with the district court clerk[.]" NRAP 3(a)(1). A notice of
13 appeal must be filed "no later than 30 days after the date that written notice of entry of
14 the judgment or order appealed from is served." NRAP 4(a)(1). This Court strictly
15 construes the obligation to file a timely notice of appeal:
16
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18
19 A timely direct appeal is one in which the notice of appeal is filed with
20 the district court within the time period prescribed by statute. *See, e.g.,*
21 NRAP 4. The filing of a timely notice of appeal is a fundamental
22 jurisdictional requirement; without it, this court never obtains jurisdiction
23 over an appeal and has no power to consider the issues raised, no matter
24 how much merit they may have.

25 Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

26 The jurisdiction of Juvenile Court is statutory and extends only so far as the
27 Legislature's grant of authority. Kell v. State, 96 Nev. 791, 792-93, 618 P.2d 350,
28 351 (1980) ("the juvenile court system is a creature of statute, and it possesses only

1 the jurisdiction expressly provided for it in the statute”). The Legislature has vested
2 jurisdiction over certified juveniles with the court to which they are certified: “If a
3 child has been certified for criminal proceedings as an adult ... [t]he court to which the
4 child’s case has been transferred has original jurisdiction over the child.” NRS
5 62B.390(5)(a). As such this Court has recognized that the jurisdiction of Juvenile
6 Court ends once Juvenile Court certifies a case for prosecution in the criminal system
7 and that a certification order is a final order ending a civil proceeding:
8

9
10 *The order of the juvenile court transferring a child to the adult court is*
11 *the final order of the juvenile court in the civil proceedings pending*
12 *before it. After the juvenile is transferred, the juvenile court loses*
13 *jurisdiction over the juvenile. Thus, the order of certification is properly*
14 *appealable as a final judgment in a civil matter.*

15 Castillo v. State, 106 Nev. 349, 351, 792 P.2d 1133, 1134 (1990) (emphasis added).

16 Accord, Anthony Lee R., 113 Nev. 1406, 1409, 952 P.2d 1, 3 (1997).

17
18 The Certification Order was filed on September 27, 2010. (Exhibit 1, p. 2).
19 Notice of Entry of Order was served on Appellant and filed on September 28, 2010.
20 (Exhibit 1, p. 1, 6). The Certification Order specifically placed Appellant on notice of
21 his obligation to file a notice of appeal:
22

23 The COURT FURTHER ADVISES that subject minor has the right to
24 appeal this decision to the Supreme Court and that a notice of appeal
25 must be filed after entry of this written order and no later than 30 days
26 after the date of service of written notice of the entry of this Order.

27 (Exhibit 1, p. 5).
28

1 Appellant had actual notice of the requirement to file a timely notice of appeal.
2 Appellant ignored his obligation to provide this Court with the jurisdiction necessary
3 to address his arguments regarding the juvenile proceedings. Appellant never
4 appealed from the certification order and instead only filed a Notice of Appeal from
5 the proceedings before criminal court. Appellant's Appendix (AA) Vol. 1, p. 114-17.
6 The Notice of Appeal is silent as to the proceedings before Juvenile Court and refers
7 only to the criminal prosecution. 1 AA 114-16.
8

9
10 Appellant's failure to vest this Court with the jurisdiction necessary to address
11 Arguments I and II of the Opening Brief leaves this Court no choice but to strike those
12 arguments. Appellant's failure also renders his Motion to File Juvenile Court
13 Documents Under Seal in the Appendix, filed September 17, 2013, moot since the
14 documents relate to the arguments challenging the proceedings before Juvenile Court.
15 Lastly, the briefing schedule should be held in abeyance until such time as this Court
16 determines that it lacks jurisdiction to address Arguments I and II of Appellant's
17 Opening Brief.
18
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21 CONCLUSION

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23 WHEREFORE, the State respectfully requests that this Court hold the briefing
24 schedule in abeyance until such time as it strikes Arguments I and II from Appellant's
25 Opening Brief for lack of jurisdiction and denies Appellant's Motion to File Juvenile
26 Court Documents Under Seal in the Appendix, filed September 17, 2013, as moot.
27
28

1 Dated this 20th day of September, 2013.

2 Respectfully submitted,

3 STEVEN B. WOLFSON
4 Clark County District Attorney
Nevada Bar # 1565

5 BY */s/ Jonathan E. VanBoskerck*

6 JONATHAN E. VANBOSKERCK
7 Chief Deputy District Attorney
8 Nevada Bar #6528
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify and affirm that this document was filed electronically with the
3 Nevada Supreme Court on 20th day of September, 2013. Electronic Service of the
4 foregoing document shall be made in accordance with the Master Service List as
5 follows:

6
7 CATHERINE CORTEZ MASTO
Nevada Attorney General

8 SHARON G. DICKINSON
9 Deputy Public Defender

10 JONATHAN E. VANBOSKERCK
11 Chief Deputy District Attorney

12
13
14 BY /s/ j. garcia
15 Employee, District Attorney's Office

16
17
18
19
20
21
22 JEV/jg


CLERK OF THE COURT

1 DAVID ROGER
2 DISTRICT ATTORNEY
3 NEVADA STATE BAR NO. 002781
4 PHILIP BROWN
5 Deputy District Attorney
6 Nevada State Bar No. 6240
7 601 North Pecos Road
8 Las Vegas, NV 89101-2408
9 (702) 455-5320
10 Attorney for the State of Nevada

7 DISTRICT COURT
8 JUVENILE DIVISION
9 CLARK COUNTY, NEVADA

10 In the Matter of:

11 **JAQUEZ BARBER**

12 Date of Birth: 07/05/1991

13 19 Years of Age.

CASE NO. 08J309689

DEPT NO. A

COURTROOM NO. 18

14
15 **NOTICE OF ENTRY OF ORDER**

16 TO: KERRI MAXEY, Esq., Public Defender

17 **PLEASE TAKE NOTICE** that a Certification to Adult Status Order was entered in
18 the above-entitled matter, a copy of which is attached hereto.

19 DATED this 27th day of September, 2010.

20 DAVID ROGER
21 DISTRICT ATTORNEY

22 By: 
23 PHILIP BROWN
24 Deputy District Attorney

25 PB/hsa
26
27
28


CLERK OF THE COURT

1 DAVID ROGER
2 DISTRICT ATTORNEY
3 NEVADA STATE BAR NO. 002781.
4 PHILIP BROWN
5 Deputy District Attorney
6 Nevada State Bar No. 6240
7 601 North Pecos Road
8 Las Vegas, NV 89101-2408
9 (702) 455-5320
10 Attorney for the State of Nevada

DISTRICT COURT
JUVENILE DIVISION
CLARK COUNTY, NEVADA

11 In the Matter of:

12 **JAQUEZ BARBER**

13 Date of Birth: 07/05/1991

14 19 Years of Age.

15 JUVI ID# 112379 03

CASE NO. 08J309689

DEPT NO. A

COURTROOM NO. 18

CERTIFICATION TO ADULT STATUS ORDER

17 The above-entitled matter having come on for hearing on 27th day of September,
18 2010, in the above-entitled Court to determine whether the subject minor, **JAQUEZ**
19 **BARBER**, should be certified to be tried as an adult under the provisions of NRS 62B.390;
20 and

21 The court being duly advised that the Subject Minor, **JAQUEZ BARBER**, of this
22 Petition is 19 years of age, having been born on the 5th day of July, 1991; and

23 The court being fully advised that the subject of this Petition is charged with the
24 offenses of Petition Number 4, Count 1- BURGLARY, a felony under N.R.S. 205.060, if
25 committed by an adult; and Count 2- GRAND LARCENY, a felony under N.R.S. 205.220, if
26 committed by an adult; said offenses having allegedly been committed on January 21, 2009.

27 The court having heard argument in open court and being fully advised in the
28 premises;

1 NOW, THEREFORE, IT IS HEREBY ORDERED that **JAQUEZ BARBER** be and
2 hereby is Certified to the Eighth Judicial District Court of the State of Nevada in and for the
3 County of Clark for proper criminal proceedings as an adult for the following reasons:

4 **1. Nature and Seriousness of Charged Offense(s):**

5 The Declaration of Arrest signed by Detective J. NORDSTROM P#8254, of the Las
6 Vegas Metropolitan Police Department (LVMPD) as well as the other reports and statements
7 contained in the record are sufficient to set forth establish prosecutive merit. The
8 Declaration of Arrest clearly establishes the heinous nature of the offense:

9 On February 5, 2009, I Det. J. Nordstrom P#8254, was assigned a
10 burglary case under event number 090121-1550. The details of the case
11 stated that the victim Aldegunda Mendoza, DOB 11-28-76, had filed a
12 police report stating that her residence located at 1873 Star Sapphire Ct.
13 Las Vegas, NV 89106 had been broken into, and she was the victim of a
14 burglary. She called the police on February 21, 2009 around 1030 hours
15 when she returned home to find her back door open and her check book
16 on the floor. She ran out of the house and called the police and waited
17 outside until they arrived. Once she went back into the house she found
18 that her items were moved around and her sock drawer in her bedroom
19 was open. Mendoza stated that she had \$5000.00 dollars in cash hidden
20 in her sock drawer. She stated that she also had two black wallets that
21 contained \$2000.00 dollars inside of them. These wallets were also
22 hidden in her sock drawer.

23 Officer C. Shevlin P# 13411 responded to the call and filled out the
24 police report as well as calling out ID Specialist R. Dahn P# 5947. ID
25 Specialist R. Dahn P# 5947 processed the residence for latent prints as
26 well as photographing the residence. He lifted prints off of the entry
27 point which was a bathroom window at the rear of the residence. The
28 prints were on the lower corner of the exterior window, near the edge of
the window. This is the common location to place your hand and push
the window open. ID Specialist R. Dahn P# 5947 also took photographs
of the water faucet that was damaged while the suspect climbed up the
wall and went through the bathroom window.

On March 17, 2009 I was informed by Las Vegas Metropolitan Police
Department Forensic Laboratory that ID Specialist R. Dahn P# 5947 had
processed the latent prints recovered on the rear window of the victim's
residence located at 1873 Star Sapphire Ct., Las Vegas, NV 89106,
which had been determined to be the suspect's entry point. The latent

1 finger prints that had been processed returned to a Jaquez Barber ID
2 number 2705160. Barber had been arrest for attempted murder on
3 March 3, 2009 and his latent finger prints were entered into AFIS data
4 base. Once his latent finger prints were in the system a match returned
from the latent prints recovered on the 1873 Star Sapphire Ct. Las Vegas,
NV 89106 case.

5 On April 2, 2009 I went over to the victim's house with a Spanish
6 speaking translator, Ada Wilson P# 9114. Wilson P# 9114 asked
7 Mendoza if she knew a Jaquez Barber, in which Mendoza stated "no". I
8 showed Mendoza a picture of Barber to make sure that she did not know
9 him and she once again stated that she did not know him. She stated that
he did not have permission to enter her residence as well as being in her
backyard.

10 Jaquez Barber is being charged with burglary due to the evidence
11 recovered on January 21, 2009 in which the suspect's latent finger prints
12 were recovered on the entry window. This was the bathroom window at
13 the rear of the victim's residence. This window was pushed open and the
14 suspect broke the water faucet that was directly under the window when
he climbed in through the window.

15 (Declaration of Arrest attached to State's Memorandum of Points and Authorities in
16 Support of Certification Petition).

17 **2. Persistency and Seriousness of Past Adjudicated or Admitted Offenses(s):**

18 Offense	Date
19 Malicious Destruction of Property	05/06/2008
20 Possession of Firearm	07/11/2008

21 WHEREFORE, THE COURT FINDS the records supports Prosecutive Merit for
22 Petition Number 4, Counts 1 and 2.

23 The COURT FURTHER FINDS that under NRS 62B.390 and the Court's authority
24 to order certification pursuant In Re Seven Minors, 99 Nev.427, 437, 664 P2d 947, 953
25 (1983), discretionary certification is warranted based on the fact that the offenses are serious,
26 that Subject Minor has serious prior adjudications, and that the subjective factors, including
27 Subject Minor's age and current prison sentence, show that public safety will be best
28 serviced by transferring this case to the adult system. The Court has considered the Subject

1 Minor's role in the offense.

2 Accordingly, the Court grants the State's motion to certify **JAQUEZ BARBER** to
3 adult status on Petition Number 4, Counts 1 and 2, on discretionary grounds pursuant to In
4 Re Seven Minors, 99 Nev.427, 437, 664 P2d 947, 953 (1983).

5 The COURT FURTHER ADVISES that subject minor has the right to appeal this
6 decision to the Supreme Court and that a notice of appeal must be filed after the entry of this
7 written Order and no later than 30 days after the date of service of written notice of the entry
8 of this Order.


9 The COURT FURTHER ADVISES that subject minor may petition the adult court
10 for transfer of the case back to the juvenile court only upon a showing of exceptional
11 circumstances. If the case is transferred back to juvenile court the judge of this court shall
12 determine whether the exceptional circumstances warrant accepting jurisdiction.

13 The Director of the Department of Juvenile Justice Services of Clark County is
14 charged with the execution of this Order.

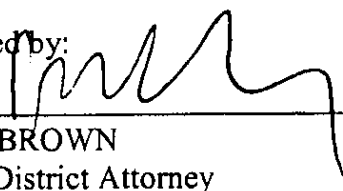
15 This matter is continued to the 5th day of October, 2010 at the hour of 7:30 a.m., for
16 the purpose of arraignment in the Las Vegas Justice Court. The court having heard argument
17 orders subject minor's bail set in the amount of Count 1-\$3,000.00 and Count 2-\$3,000.00,
18 for a grand total amount of \$6,000.00.

19 **JAQUEZ BARBER** is hereby remanded to the custody of the Sheriff.

20 Dated this 27th day of September, 2010.

21
22 
23 _____
24 WILLIAM O. VOY
25 DISTRICT COURT JUDGE
26 FAMILY DIVISION

27 Submitted by:

28 

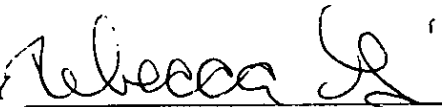
29 PHILIP BROWN
30 Deputy District Attorney
31 Nevada State Bar No. 6240

PB/hsa

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice of Entry of Order for
Certification to Adult Status Order regarding JAQUEZ BARBER is hereby acknowledged
this 26 day of September, 2010.

PHILIP J. KOHN
PUBLIC DEFENDER

BY 
KERRI MAXEY, Deputy PD
Or Employee for:
Public Defender Office - Juvenile