

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Respondent.

**APPELLANT’S MOTION TO RECONSIDER THE DENIAL OF HIS
MOTION TO FILE JUVENILE COURT DOCUMENTS UNDER SEAL
IN THE APPENDIX**

Comes Now Appellant JAQUEZ DEJUAN BARBER, by and through Deputy Public Defender SHARON G. DICKINSON, and moves this Court to reconsider his motion to file under seal the Appellant's Appendix Volume IV:652-710. Barber is already over the age of 21 years and thus all the documents are to be sealed by the juvenile court pursuant to NRS 62H.140. This Motion to Reconsider is based upon the attached points and authorities and the Declaration of counsel.

DATED this 29th day of October, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Sharon Dickinson
SHARON G. DICKINSON, #3710
Deputy Public Defender

POINTS AND AUTHORITIES

In the Order denying Barber's Motion to Seal his Juvenile Court documents within his appendix, brought pursuant to NRS 62H.030, this Court held that: (1) NRS 62H.030 does not specifically apply to the Nevada Supreme Court and (2) even if it did, based on *Howard v. State*, 128 Nev. ___, 291 P.3d 137 (2012) the juvenile court documents are no longer confidential because Barber was certified to the adult court. The Court based its decision on the type of notice of appeal filed, holding that only juvenile court documents within an appendix from a juvenile court notice of appeal would remain confidential. Because Barber's notice of appeal stems from a judgment of conviction in adult court, the Court found that none of his juvenile court documents are protected by NRS 62H.030.

There are five reasons why this Court should reconsider this decision.

First, under NRS 62H.140, ALL the juvenile court documents Barber submitted to this Court were automatically sealed by the Juvenile Court when Barber reached the age of 21 years. Barber was born on 07/05/1991 and because he is now over the age of 21 years the legislature mandated that all of his juvenile Court records be sealed. See NRS 62H.140.

Second, the Court's decision not to seal the juvenile court records/documents is contrary to NRS 62H.030, NRS 62H.140, NRS 62H.170, and NRS 239.010. Under NRS 62H.030, juvenile court records are confidential.

1 The public is denied access to inspect, copy, or review juvenile records unless the
2 juvenile court issues an order allowing the information be made open to inspection
3 or the request falls within an enumerated exception. NRS 62H.030(2).¹ Thus, the
4 Nevada Legislature enacted NRS 62H.030 with the intent of formulating a public
5 policy that favors the confidentiality of all juvenile court records and documents.
6
7

8 Further evidence of the Legislature's concern for the confidentiality of
9 juvenile court documents is found within NRS 62H.140. NRS 62H.140 mandates
10 that "when a child reaches 21 years of age, all records relating to the child (in
11 juvenile court) MUST be sealed automatically."² NRS 62H.140.
12
13

14 Once a record is sealed, it is no longer available for access by anyone,
15 including the district attorney or the court. See unpublished opinion of Daron W.
16 v. Eighth Jud. Dist. Ct, Case no. 57807 (5/10/11). Under NRS 62H.170, a juvenile
17 record that is sealed is not allowed to be unsealed except in limited circumstances.
18 If the records are sealed "all proceedings recounted in the records are deemed
19 never to have occurred." NRS 62H.170(1)(a). Thus, this Court's decision to allow
20 Barber's juvenile court records to be made available to the public through the
21 Nevada Supreme Court web site and the Nevada Supreme Court Clerk's office,
22 and remain available to the public, is contrary to the legislature's dictates for
23
24
25
26

27 ¹ There are some limited exceptions to this rule but none of the exceptions
28 apply in this case.

² None of the exceptions apply in this case.

1 juvenile court documents as listed within NRS 62H.030, NRS 62H.140, and NRS
2 62H.170.

3
4 The Court's decision is also contrary to NRS 230.010. "Under the Nevada
5 Public Records act, all public records generated by government entities are public
6 information . . .unless otherwise declared to be confidential." NRS 239.010; *Reno*
7 *Newspapers v. Sheriff*, 126 Nev. Adv. Op. No. 23, 234 P.3d 922 (2010). Juvenile
8 Court records and documents are records generated by a governmental entity.
9
10 Because NRS 62H.030 and NRS 62H.140 mandate that juvenile court
11 records/documents be kept confidential and sealed after a child becomes 21 years
12 of age, under NRS 239.010, the juvenile court documents must also be sealed with
13
14 the Nevada Supreme Court.
15

16
17 Third, the rules of statutory construction mandate that all juvenile court
18 records be sealed in the Nevada Supreme Court. Under the rules of statutory
19 construction, this Court must give the words found in NRS 62H.140, NRS
20 62H.030, NRS 62H.170, and NRS 239.010 their literal plain meaning because the
21 statutes are not ambiguous. See *Ebling v. State*, 120 Nev. 401, 91 P.3d 599 (2004)
22 *citing Diamond v. Swick*, 117 Nev. 671, 674, 28 P.3d 1087, 1089 (2001)(stating
23 that if a statute is not ambiguous, the Court must give effect to the plain meaning
24 of the words).
25
26
27

28 NRS 62H.140 states:

1 1. The juvenile court shall make and keep records of all cases brought
2 before the juvenile court.

3 2. Except as otherwise provided in this section and NRS 217.110,
4 records of any case brought before the juvenile court may be
5 opened to inspection only by court order to persons who have a
6 legitimate interest in the records.

7 All the documents Barber seeks to seal are records kept and filed with the juvenile
8 court. The State never obtained a court order allowing the documents to be made a
9 matter of public record. Yet, this Court made them open to the public despite the
10 fact that under NRS 62H.140, all the juvenile court documents were automatically
11 sealed in juvenile court when Barber reached the age of 21 years – he is over the
12 age of 21 years now. The court did not consider NRS 62H.140 or NRS 62H.170
13 when reaching this decision.

14 Although some exceptions to the rule of confidentiality are listed within
15 NRS 62H.030, there are no exceptions to the rule for juvenile court documents
16 used on appeal from a judgment of conviction. Yet, the Court suggests that NRS
17 62H.030 does not apply because: “The statute [NRS 62H.030] does not expressly
18 address the confidentiality of documents and records filed with this court.”

19 Under the rules of statutory construction, when the legislature has the
20 foresight to provide expressed exceptions, “. . . it is not the business of this court to
21 fill in alleged legislative omissions based on conjecture as to what the legislature
22 would or should have done. . .” *Estate of Delmue v. Allstate Ins. Co.* 113 Nev.
23 28

1 414, 418-19 (1997). Thus, under the rules of statutory construction, this Court can
2 not make further exceptions to NRS 62H.030. Moreover, the fact that NRS
3 62H.030 lists several exceptions to the confidentiality rule but does not list the
4 Nevada Supreme Court Clerk's office or web site as an exception shows that the
5 legislature intended to keep juvenile court records and documents confidential in
6 the Nevada Supreme Court and sealed even if the notice of appeal stems from a
7 judgment of conviction.
8

9
10
11 Fourth, in the order, the Court seems to misunderstand the facts. The Court
12 stated: "the incident giving rise to the case brought in juvenile court is part of the
13 public record by virtue of the criminal proceedings." This is the same argument
14 the State made when opposing Barber's Motion to Seal.³ But this is factually
15 incorrect.
16

17
18 All the juvenile court documents that Barber placed in his appendix were
19 filed in juvenile court. Both parties agreed that the only juvenile court document
20 made available to the public was the certification order that was sent from the
21 juvenile court to the justice court. The State claimed this removed its
22
23

24
25 ³ See Reply: "The State opposes Barber's Motion to seal his juvenile court
26 records, contending that once the juvenile court certified Barber to the adult
27 district court for criminal proceedings, "any records associated with the offense
28 [that was certified are]. . .no longer subject to the protections afforded by NRS
62H.030." Opp. at p. 3 lines 3-8. The State cites to NO portion of NRS
62H.030 to support this alleged legal principle."

1 confidentiality status. Barber claimed it was a mistake. Thus, all of the other
2 juvenile court documents/records are not part of the public record by virtue of the
3 criminal proceedings. And pursuant to NRS 62H.140, all these documents should
4 now be sealed in juvenile court.
5

6 Finally, the Court states that the policy behind the confidentiality of the
7 juvenile court records is gone when a child is certified as an adult because the
8 child no longer is being protected. Order p. 2, referencing the dissenting opinion in
9 *Hickey v. Eighth Jud. Dist. Ct.*, 105 Nev. 729, 735 (1989). But the juvenile court
10 confidentiality policy is two-fold. One purpose for confidentiality of juvenile
11 court records/documents is to protect and rehabilitate the child. The second
12 purpose is to protect an adult from suffering public scorn, ridicule due to a juvenile
13 record, or problems obtaining a job due to his/her juvenile criminal history. Thus,
14 ALL juvenile court records/documents are sealed when a child reaches the age of
15 21 years EVEN if his case was ultimately certified to adult court.⁴ This means that
16 the juvenile court records/documents that this Court decided to give the public
17 access to are now permanently sealed in juvenile court per legislative dictates - but
18 remain open to the public in the Nevada Supreme Court.
19
20
21
22
23
24

25 By making this ruling, the Court gave Barber less due process protections
26 than he would have had as an adult because presentence reports prepared by the
27

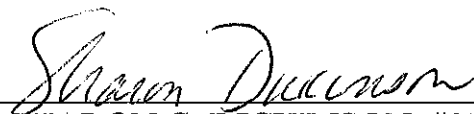
28 ⁴ The exceptions to this do not apply in this case.

1 Department of Parole and Probation are confidential and not available for public
2 inspection in federal, state, and juvenile courts. NRS 62H.030; NRS 176.156;
3 LCR 32-2. Under this Order, Barber's complete juvenile criminal history is
4 available to the public. Thus, this ruling infringes on his right to privacy and gives
5 Barber less due process rights than he is given by the legislature under NRS
6 62H.030, NRS 62H.140, NRS 62H.170, and NRS 239.010.
7

8
9 Based on the above, Barber asks this Court to reconsider its order. Barber
10 seeks to have the documents sealed because under NRS 62H.140 these documents
11 were automatically sealed in juvenile court when he reached the age of 21 years
12 and because NRS 62H.030, NRS 62H.140, NRS 62H.170, and NRS 239.010
13 require the documents be kept confidential.
14
15

16 DATED this 29th day of October, 2013.

17
18 PHILIP J. KOHN
19 CLARK COUNTY PUBLIC DEFENDER

20
21 By 
22 SHARON G. DICKINSON, #3710
23 Deputy Public Defender
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5

6
7
8
9

0
1
2

3
4
5
6

7
8
9
10

1
2
3

4

6

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

CATHERINE CORTEZ MASTO
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

BY _____
Employee, Clark County Public
Defender's Office