

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

Appellant,

VS.

Respondent.

Electronically Filed  
Oct 31 2013 09:43 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Comes Now Appellant JAQUEZ DEJUAN BARBER, by and through Deputy Public Defender SHARON G. DICKINSON, and files this Opposition to the State's Motion to Strike filed on October 30, 2013.

DATED this 30<sup>th</sup> day of October, 2013.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

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

- 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

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

1 In Daron W. v. Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11), the Court  
2 based its holding that once juvenile records are sealed they will not be reopened on  
3 NRS 62H.170. Thus, Daron W. v. Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11)  
4 explains how this Court viewed the sealing of juvenile court records in that  
5 particular case. That is the reason it was included.  
6

7  
8 Moreover, the unpublished decision of Daron W. v. Eighth Jud. Dist. Ct.,  
9 Case No. 57807 (5/10/11) seems contrary to the Court's Order. Because of this,  
10 the case is relevant to show how the Court handled issues involving the sealing of  
11 juvenile court records in the past and to maintain uniformity in the Court's  
12 decisions. Moreover, it is relevant because it is the type of opinion practitioners  
13 rely on when requesting that juvenile court records be sealed.  
14

15  
16 This Court routinely relies on unpublished opinions from other courts. In  
17 *Schuck v. Signature Flight Support of Nevada*, 126 Nev. Adv. Op. No. 42, 245  
18 P.3d 542 (2010), this Court addressed unpublished opinions in a footnote, saying:  
19 "This ban does not extend to federal district court dispositions, which may be cited  
20 for their persuasive, if nonbinding, precedential value. *See Fed. R. App. P. 32.1*  
21 (permitting citation of unpublished federal judicial dispositions issued on or after  
22 January 1, 2007). . . ." *Id.* n. 2. Also, this Court has issued published opinions  
23 referencing unpublished opinions from another state (*Borger v. Eighth Jud. Dist.*  
24 *Ct. ex rel, County of Clark*, 120 Nev. 1021 (2004)) and from the United States  
25  
26  
27  
28

1 Supreme Court (*Naovarath v. State*, 105 Nev. 525, 529 and n. 4. (1989)).  
2 Therefore, it only seems reasonable that the court should review its own past  
3 unpublished decisions even though the order is not legal precedent and not  
4 controlling authority.  
5

6 Although the caption of the State's Motion to Strike only asks this Court to  
7 strike *Daron W. v. Eighth Jud. Dist. Ct.*, Case No. 57807 (5/10/11), footnote 1  
8 lays out a much different argument. In Footnote 1, the State argues that the  
9 Defense failed to cite to any authority allowing the Court to decide a Motion to  
10 Reconsider. If the State is suggesting that the omission of NRAP 27 is grounds for  
11  
12 a reason to strike the Motion to Reconsider than Defense Counsel asks the Court to  
13 allow the refilling of the Motion with the citation to NRAP 27 in the caption.  
14  
15 Better yet, Defense Counsel will file an Amended Motion.  
16

17  
18 In the footnote, the State also seems to argue that Motions for  
19 Reconsideration are not favored citing to *Whitehead v. Nevada Com'n. on Judicial*  
20 *Discipline*, 110 Nev. 380 (1994). However, the State neglects to note that the  
21 *Whitehead* Court considered the request for reconsideration. Instead, the State  
22 suggests that successive requests for reconsideration prolong litigation. Here, we  
23 are dealing with documents being sealed, an issue that does not prolong the  
24  
25 litigation.  
26  
27  
28

1 In the footnote, the State then seems to argue that because there is no  
2 specific rule pertaining to motions to reconsider other motions, Barber is barred  
3 from asking this Court for reconsideration because NRAP 27, 40, and 40A do not  
4 allow for such a motion.  
5

6  
7 In the footnote, the prosecutor discusses NRAP 27. NRAP 27 states: "An  
8 application for an order or other relief is made by motion unless these Rules  
9 prescribe another form." But, the prosecutor does not acknowledge that NRAP 27  
10 allows for any kind of motion seeking relief. Instead, he concludes that a motion  
11 to reconsider can not be based on NRAP 27 because that is the general rule for  
12 motions.  
13

14  
15 The prosecutor then discusses NRAP 40 and concludes NRAP 40A could  
16 not possibly apply. Then he picks NRAP 40. And, because he does not have to  
17 respond to any motions based on NRAP 40 unless ordered to do so by this Court,  
18 he concludes that he will not be responding the Barber's Motion to Reconsider.  
19

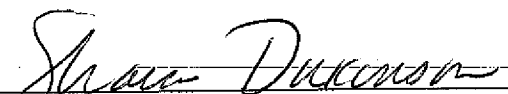
20  
21 NRAP 40 involves a petition for rehearing of a judgment of the case on  
22 appeal. The motion filed is not entitled a Petition for Rehearing and the Court has  
23 not issued a judgment.  
24

25 The prosecutor is simply playing games. He knows the case of Daron W. v.  
26 Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11) is contrary to this Court's ruling.  
27  
28

1           Nonetheless, because the prosecutor seems so confused, Barber is filing an  
2 amended motion to cite to NRAP 27. The Amended Motion will be alternatively  
3  
4 titled "Second Motion seeking to file Juvenile Court Documents contained within  
5 the Appendix based on NRS 62H.030, NRS 62H.140, NRS 62H.170, and NRS  
6 230.010.  
7

8                   DATED this 30th day of October, 2013.

9  
10                   PHILIP J. KOHN  
11                   CLARK COUNTY PUBLIC DEFENDER

12  
13                   By   
14                   SHARON G. DICKINSON, #3710  
15                   Deputy Public Defender  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 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 /s/ Carrie M. Connolly  
Employee, Clark County Public  
Defender's Office