#### IN THE SUPREME COURT OF THE STATE OF NEVADA 1 2 3 JAOUEZ DEJUAN BARBER, Appellant, **Electronically Filed** 4 Case N**Oct234**92013 09:53 a.m. Tracie K. Lindeman 5 VS. Clerk of Supreme Court THE STATE OF NEVADA. 6 7 Respondent. 8 9 APPELLANT'S AMENDED MOTION TO RECONSIDER THE DENIAL OF HIS MOTION TO FILE JUVENILE COURT 10 DOCUMENTS UNDER SEAL IN THE APPENDIX 11 ALTERNATIVELY SECOND MOTION TO FILE JUVENILE 12 **DOCUMENTS UNDER SEAL IN THE APPENDIX** 1-3 Comes Now Appellant JAQUEZ DEJUAN BARBER, by and 14 through Deputy Public Defender SHARON G. DICKINSON, and moves this 15 16 Court to reconsider his motion to file under seal the Appellant's Appendix Volume 17 IV:652-710 under NRAP 27. Barber is already over the age of 21 years and thus 18 19 all the documents are to be sealed by the juvenile court pursuant to NRS 62H.140. 20 This Motion to Reconsider is based upon the attached points and authorities and 21 the Declaration of counsel. 22 23 DATED this 30<sup>th</sup> day of October, 2013. 24 PHILIP J. KOHN 25 CLARK COUNTY PUBLIC DEFENDER 26 WKIMOM 27 SHARON G. DICKINSON, #3710 28

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

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.

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

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

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 See unpublished opinion of Daron W. v. Eighth Jud.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

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

None of the exceptions apply in this case.

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

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

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

NRS 62H.140 states:

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

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

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

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

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

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

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

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

See Reply: "The State opposes Barbar's Motion to seal his juvenile court records, contending that once the juvenile court certified Barber to the adult district court for criminal proceedings, "any records associated with the offense [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."

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

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

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

The exceptions to this do not apply in this case.

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

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

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

PHILIP J. KOHN CLARK COUNTY PUBLIC DEFENDER

By Main Ducinon
SHARON G. DICKINSON, #3710
Deputy Public Defender

Deputy Public Defender

### **DECLARATION OF SHARON G. DICKINSON**

- 1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.
- 2. The documents within Volume IV at pages 652-710 are juvenile court records. Because they are juvenile records, under NRS 62H.030 they must be kept confidential.
- 3. Pages 711 to 721 within Volume IV are not juvenile court records and therefore do not need to be sealed.
- 4. The Certification to Adult Status Order issued by the Juvenile Court on 09/27/10 indicates Barber was born on 07/05/1991. Therefore, Barber is currently over the age of 21 years.
- 5. Because NRS 62H.140 requires the Juvenile Court to seal all juvenile court records/documents when a child reaches the age of 21 years, all the documents that Barber submitted are currently under seal in Juvenile Court.
- I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 30<sup>th</sup> day of October, 2013.

SHARON G. DICKINSON

## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 30th day of October, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO STEVEN S. OWENS

SHARON G. DICKINSON HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to: JAQUEZ DEJUAN BARBER, NDOC No: 1039024, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070.

BY

Employee, Clark County Public Defender's Office

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