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Electronically Filed
Case No. 02-2492 2013 09:53 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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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.
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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 See unpublished opinion of Daron W.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
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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 239.010. "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
13 of age, under NRS 239.010, the juvenile court documents must also be sealed with
14 the Nevada Supreme Court.

15
16 Third, the rules of statutory construction mandate that all juvenile court
17 records be sealed in the Nevada Supreme Court. Under the rules of statutory
18 construction, this Court must give the words found in NRS 62H.140, NRS
19 62H.030, NRS 62H.170, and NRS 239.010 their literal plain meaning because the
20 statutes are not ambiguous. See *Ebling v. State*, 120 Nev. 401, 91 P.3d 599 (2004)
21 *citing Diamond v. Swick*, 117 Nev. 671, 674, 28 P.3d 1087, 1089 (2001)(stating
22 that if a statute is not ambiguous, the Court must give effect to the plain meaning
23 of the words).

24
25 NRS 62H.140 states:
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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

15
16 Although some exceptions to the rule of confidentiality are listed within
17 NRS 62H.030, there are no exceptions to the rule for juvenile court documents
18 used on appeal from a judgment of conviction. Yet, the Court suggests that NRS
19 62H.030 does not apply because: “The statute [NRS 62H.030] does not expressly
20 address the confidentiality of documents and records filed with this court.”
21

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

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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
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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
7 Finally, the Court states that the policy behind the confidentiality of the
8 juvenile court records is gone when a child is certified as an adult because the
9 child no longer is being protected. Order p. 2, referencing the dissenting opinion in
10 *Hickey v. Eighth Jud. Dist. Ct.*, 105 Nev. 729, 735 (1989). But the juvenile court
11 confidentiality policy is two-fold. One purpose for confidentiality of juvenile
12 court records/documents is to protect and rehabilitate the child. The second
13 purpose is to protect an adult from suffering public scorn, ridicule due to a juvenile
14 record, or problems obtaining a job due to his/her juvenile criminal history. Thus,
15 ALL juvenile court records/documents are sealed when a child reaches the age of
16 21 years EVEN if his case was ultimately certified to adult court.⁴ This means that
17 the juvenile court records/documents that this Court decided to give the public
18 access to are now permanently sealed in juvenile court per legislative dictates - but
19 remain open to the public in the Nevada Supreme Court.
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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
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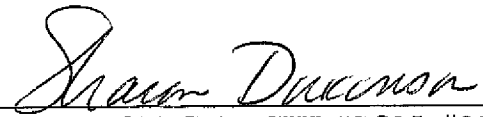
⁴ The exceptions to this do not apply in this case.

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
4 LCR 32-2. Under this Order, Barber's complete juvenile criminal history is
5 available to the public. Thus, this ruling infringes on his right to privacy and gives
6 Barber less due process rights than he is given by the legislature under NRS
7
8 62H.030, NRS 62H.140, NRS 62H.170, and NRS 239.010.

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

16 DATED this 30th 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
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CATHERINE CORTEZ MASTO
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

BY [Signature]
Employee, Clark County Public
Defender's Office