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Respondent.

Docket 62649 Document 2013-36144

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1 NRS 62H.140 explains that ALL the juvenile court documents Barber
2 submitted to this Court within the appendix were automatically sealed by the
3 Juvenile Court when Barber reached the age of 21 years because his prior cases
4 were nonviolent and were not sex crimes. NRS 62H.150(6). This means the
5 juvenile court cases "are deemed never to have occurred."
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8 While *Clay* involved a case automatically filed in the adult district court,
9 Barber's case was a certification from juvenile court after he was 21 years of age.
10 Within the certification report, the State listed information regarding Barber's
11 prior adjudications within the juvenile court system. Here, as in *Clay*, this
12 information should not be made available to the public or the State.
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15 However, because the police reports contained within the juvenile court
16 records are part of the same case in the adult court and because Barber was
17 certified, the public and the State now have access to these reports through the
18 adult district court. But, that does not mean that the juvenile court records
19 outlining Barber's juvenile history, the police reports attached to the juvenile
20 reports, other documents involving the litigation of this case in juvenile court, and
21 information as to any other juvenile court cases that are now sealed pursuant to
22 NRS 62H.140 should be made available to the public.
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26 Barber's Motion to Reconsider the denial of his Motion Seal his Juvenile
27 Court documents within his appendix noted that because he was over 21 years of
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1 age the analysis would be a bit different. But, under NRS 62H.030, all juvenile
2 court records, no matter the defendant's age, are confidential unless the juvenile
3 court issues an order allowing the information be made open to inspection or the
4 request falls within an enumerated exception. NRS 62H.030(2).¹ Thus, the
5 Nevada Legislature enacted NRS 62H.030 with the intent of formulating a public
6 policy that favors the confidentiality of all juvenile court records and documents.
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9 Once a record is sealed, it is no longer available for access by anyone,
10 including the district attorney or the court. *See Clay*. This Court's decision to
11 allow Barber's juvenile court records to be made available to the public through
12 the Nevada Supreme Court web site and the Nevada Supreme Court Clerk's office,
13 and remain available to the public, is contrary to the legislature's dictates for
14 juvenile court documents as listed within NRS 62H.030, NRS 62H.140, NRS
15 62H.170, and NRS 230.10.
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19 The *Clay* Court ordered the State to destroy the juvenile court records
20 erroneously released by the juvenile district court. But, if the juvenile court
21 documents filed with this Court in *Clay* (or in Barber or in any other adult case
22 that contains juvenile court records) are allowed to remain available to the public
23 in the Nevada Supreme Court then it is as if the State never destroyed the
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28 ¹ There are some limited exceptions to this rule but none of the exceptions
apply in this case.

1 documents as the Court ordered it to do so in *Clay*. Without an order sealing
2 juvenile court records filed in the Nevada Supreme Court in adult cases, no
3 juvenile court records will remain sealed as required within NRS 62H.170 and
4 NRS 62H.140. By giving the public access to juvenile court documents through
5 the Nevada Supreme Court, Barber and Clay and other defendants will not be able
6 to say that “all proceedings recounted in the [juvenile court] records are deemed
7 never to have occurred” as mandated by NRS 62H.170(1).
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11 Although some exceptions to the rule of confidentiality are listed within
12 NRS 62H.030 or NRS 62H.170 or NRS 62H.150, there are no exceptions to the
13 confidentiality rule for juvenile court documents used on appeal from a judgment
14 of conviction. As the *Clay* Court noted when addressing the exceptions within
15 NRS 62H.170, “it is reasonable to conclude that subsection 3 describes the only
16 circumstances allowing such use.” *Clay* at p. 7. Under the rules of statutory
17 construction, when the legislature has the foresight to provide expressed
18 exceptions, “. . . it is not the business of this court to fill in alleged legislative
19 omissions based on conjecture as to what the legislature would or should have
20 done. . .” *Estate of Delmue v. Allstate Ins. Co.* 113 Nev. 414, 418-19 (1997).
21 Thus, under the rules of statutory construction, this Court can not make further
22 exceptions to NRS 62H.030, NRS 62H.140, NRS 62H.150, or 62H.170.
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1 Finally, the *Clay* Court acknowledged that the protections afforded a child
2 are not waived when a child becomes an adult. But, in the order issued by this
3 Court in this case, the Court stated that the policy behind the confidentiality of the
4 juvenile court records is gone when a child is certified as an adult because the
5 child no longer is being protected. Order p. 2, referencing the dissenting opinion in
6 *Hickey v. Eighth Jud. Dist. Ct.*, 105 Nev. 729, 735 (1989). By making this ruling,
7 the Court gave Barber less due process protections than Clay or any criminal adult
8 defendant because presentence reports prepared by the Department of Parole and
9 Probation are confidential and not available for public inspection in federal, state,
10 and juvenile courts. NRS 62H.030; NRS 176.156; LCR 32-2.

11 Based on the above, Barber asks this Court to reconsider its denial of his
12 Motion to Seal his Juvenile Court documents filed within the appendix.

13 DATED this 2nd day of December, 2013.

14
15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

17
18 By /s/ Sharon G. Dickinson
19 SHARON G. DICKINSON, #3710
20 Deputy Public Defender
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CATHERINE CORTEZ MASTO
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

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