IN THE SUPREME COURT OF THE STATE OF NEVADA 1 2 3 JAQUEZ DEJUAN BARBER, **Electronically Filed** Appellant, Dec 03 2013 08:48 a.m. 5 Case No. 2648. Lindeman Clerk of Supreme Court VS. 6 7 THE STATE OF NEVADA, 8 Respondent. 9 10 APPELLANT'S MOTION SUPPLEMENTING THE AUTHORITY PRESENTED IN HIS MOTION TO RECONSIDER THE DENIAL OF HIS 11 MOTION TO FILE JUVENILE COURT DOCUMENTS 12 UNDER SEAL IN THE APPENDIX 13 Comes Now Appellant JAQUEZ DEJUAN BARBER, by and 14 through Deputy Public Defender SHARON G. DICKINSON, and moves this 15 16 Court to review the recently published opinion of Clay v. State, 129 Nev. Adv. Op. 17 No. 91 (11/22/13) when deciding his motion to reconsider his motion to file 18 19 iuvenile court documents under seal in Appellant's Appendix at Volume IV:652-20 710. Barber is already over the age of 21 years and thus all the documents are to 21 be sealed by the juvenile court pursuant to NRS 62H.140. 22 23 DATED this 2nd day of December, 2013. 24 PHILIP J. KOHN 25 CLARK COUNTY PUBLIC DEFENDER 26

By <u>/s/Sharon G. Dickinson</u> SHARON G. DICKINSON, #3710 Deputy Public Defender

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POINTS AND AUTHORITIES

2	In Clay v. Eighth Judicial Dist. Ct., 129 Nev. Adv. Op. No. 91 (11/27/13
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4	this Court held that the State may not inspect or obtain a copy of a defendant
5	juvenile court records in a subsequent case when he is tried in the adult systen
6	The Clay Court noted that NRS 62H.170(3) and NRS 62H.170(2)(c) do n
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8	authorize the unsealing of juvenile court records for inspection by the State an
9	ordered the State to immediately destroy the juvenile records in its possession
10	The state of the s
11	NRS 62H.170(1) explains the effect of the sealing of a juvenile documents.
12	1. Except as otherwise provided in this section, if the records of a
13	person are sealed:

- person are sealed:
- (a) All proceedings recounted in the records are deemed never to have occurred; and
- (b) The person may reply accordingly to any inquiry concerning the proceedings and the acts which brought about the proceedings.

Thus, once sealed, all records in juvenile court are deemed to not exist, except for instances identified within NRS 62H.150.

Here, like in *Clay* defendant, Barber is currently over the age of 21 years. Here, as in Clay, even though Barber's notice of appeal stems from a case and judgment of conviction in adult court, he retains the protections afforded him by the legislature regarding the confidentiality of his juvenile court records and juvenile court documents.

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NRS 62H,140 explains that ALL the juvenile court documents Barber submitted to this Court within the appendix were automatically sealed by the Juvenile Court when Barber reached the age of 21 years because his prior cases were nonviolent and were not sex crimes. NRS 62H.150(6). This means the juvenile court cases "are deemed never to have occurred."

While Clay involved a case automatically filed in the adult district court, Barber's case was a certification from juvenile court after he was 21 years of age. Within the certification report, the State listed information regarding Barber's prior adjudications within the juvenile court system. Here, as in Clay, this information should not be made available to the public or the State.

However, because the police reports contained within the juvenile court records are part of the same case in the adult court and because Barber was certified, the public and the State now have access to these reports through the adult district court. But, that does not mean that the juvenile court records outlining Barber's juvenile history, the police reports attached to the juvenile reports, other documents involving the litigation of this case in juvenile court, and information as to any other juvenile court cases that are now sealed pursuant to NRS 62H.140 should be made available to the public.

Barber's Motion to Reconsider the denial of his Motion Seal his Juvenile Court documents within his appendix noted that because he was over 21 years of

court records, no matter the defendant's age, are confidential <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). 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.

age the analysis would be a bit different. But, under NRS 62H.030, all juvenile

Once a record is sealed, it is no longer available for access by anyone, including the district attorney or the court. *See Clay*. 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 juvenile court documents as listed within NRS 62H.030, NRS 62H.140, NRS 62H.170, and NRS 230.10.

The *Clay* Court ordered the State to destroy the juvenile court records erroneously released by the juvenile district court. But, if the juvenile court documents filed with this Court in *Clay* (or in Barber or in any other adult case that contains juvenile court records) are allowed to remain available to the public in the Nevada Supreme Court then it is as if the State never destroyed the

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

documents as the Court ordered it to do so in *Clay*. Without an order sealing juvenile court records filed in the Nevada Supreme Court in adult cases, no juvenile court records will remain sealed as required within NRS 62H.170 and NRS 62H.140. By giving the public access to juvenile court documents through the Nevada Supreme Court, Barber and Clay and other defendants will not be able to say that "all proceedings recounted in the [juvenile court] records are deemed never to have occurred" as mandated by NRS 62H.170(1).

Although some exceptions to the rule of confidentiality are listed within NRS 62H.030 or NRS 62H.170 or NRS 62H.150, there are no exceptions to the confidentiality rule for juvenile court documents used on appeal from a judgment of conviction. As the *Clay* Court noted when addressing the exceptions within NRS 62H.170, "it is reasonable to conclude that subsection 3 describes the only circumstances allowing such use." *Clay* at p. 7. 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, NRS 62H.140, NRS 62H.150, or 62H.170.

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Finally, the *Clay* Court acknowledged that the protections afforded a child are not waived when a child becomes an adult. But, in the order issued by this Court in this case, the Court stated 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). By making this ruling, the Court gave Barber less due process protections than Clay or any criminal adult defendant because presentence reports prepared by the 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.

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

DATED this 2nd day of December, 2013.

PHILIP J. KOHN CLARK COUNTY PUBLIC DEFENDER

By <u>/s/Sharon G. Dickinson</u>
SHARON G. DICKINSON, #3710
Deputy Public Defender

CERTIFICATE OF SERVICE I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2nd day of December, 2013. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: SHARON G. DICKINSON CATHERINE CORTEZ MASTO **HOWARD S. BROOKS** STEVEN S. OWENS 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 /s/ Carrie M. Connolly Employee, Clark County Public Defender's Office