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Respondent.

Docket 66697 Document 2015-05421

1 **DECLARATION OF SHARON G. DICKINSON**

2 1. I am an attorney duly licensed to practice law in the State of
3 Nevada and I am the Deputy Public Defender assigned to represent STEVE DELL
4 MCNEILL on appeal before this Honorable Court.
5

6 2. On 11/25/14, I filed my first request for an extension due to
7 missing transcripts. At the time, I had received 1 of 7 requested transcripts.
8

9 3. Court granted my request for an extension by allowing fast track
10 statement to be filed on 01/09/15. Court further noted that court reporter listed on
11 the transcript request for the hearing on 07/09/14 was incorrect. Our secretary
12 corrected the error as ordered.
13
14

15 4. Shortly thereafter one of the court reporter's submitted a request
16 for an extension.
17

18 5. On 12/10/14, Court granted court reporter's request for an
19 extension and order the fast track statement be filed on 02/19/15, today.
20

21 6. Odyssey shows the final volume of the trial transcript was filed on
22 01/06/15.
23

24 7. On 12/29/14 and 01/13/15, court reporters filed separate notices
25 with this Court noting requested transcripts were delivered and filed.
26

27 8. On or about 02/02/15, I asked our clerk to check on/gather/print all
28 the transcripts and documents needed for the preparation of several appendices on

1 my upcoming cases. This case was one that I spoke to her about. Our clerk works
2 part time and prepares all the appendices for almost all our attorneys.
3

4 9. Our clerk planned on preparing the appendix in this case during
5 the week of 02/09/15. On or about 02/09/15, she came down with pink eye. She
6 did not return to work until 02/17/15.
7

8 10. Between 02/17/15 and today, she needed to complete other
9 appendices, one of which is the appendix in Ahearn v. State, Case No. 66123,
10 another of my cases which needs to be sent to the attorneys for co-defendants. She
11 is still working on that appendix. Thus, I am unable to begin working on the brief
12 in this case at this time.
13
14

15 11. Additionally, I need to speak with Mr. McNeill. In January of
16 2015, Mr. McNeill began filing fugitive documents with this Court. The
17 documents filed appear to be his own notice of appeal or a brief containing a
18 statement on his case. After receiving notice of the filing of these documents on
19 01/27/15, I asked his trial counsel (who has some telephonic contact with him) to
20 ask him to call me so that I could discuss the documents and his case with him.
21 He has not called me.
22
23
24

25 12. Because of the above, I asked an investigator in our office to set
26 up a visit for me in the prison so I could talk to Mr. McNeill in person. I also need
27 to give him a copy of his appendix which is not yet prepared. The investigator
28

1 informed me that the first visit he is able to schedule is for 03/04/15. However,
2 because I received jury duty notice for that week, I am not sure if that will be
3 possible to see Mr. McNeill until the following week.
4

5 13. Based on a conversation with trial counsel and upon review of a
6 post-trial motion, it is my understanding that his case involves at least one issue of
7 first impression requiring interpretation of NRS 213.1243. This case asks this
8 Court to determine whether NRS 213.1243 allows the district court to sentence a
9 defendant to prison based on an alleged violation of Lifetime Supervision if
10 defendant violates a rule in place by the Probation and Parole Department – a rule
11 not listed within NRS 213.1243. Thus, this case may be worthy of full briefing.
12
13
14

15 14. This is my first request for an extension AFTER all the
16 transcripts were filed.
17

18 15. Based on the above, I am asking for an additional 35 days to file
19 a full brief or a fast track statement.
20

21 16. This motion is made in good faith and not for purposes of delay.

22 I declare under penalty of perjury that the foregoing is true and
23 correct.
24

25 EXECUTED on the 19th day of February, 2015.
26

27 /s/ Sharon G. Dickinson
28 SHARON G. DICKINSON

POINTS AND AUTHORITIES

Steve McNeill seeks full briefing because one of his issues involves a substantial precedential and public policy question regarding separation of powers and the jurisdiction of the district court under NRS 212.1243. This case asks Court to decide if a person may be found guilty of a felony crime – crime of violation of Lifetime Supervision under NRS 212.1243 - if the State charges the person with violating a condition of Lifetime Supervision as imposed by his parole officer but that condition of supervision is not listed in NRS 213.1243.

A party may seek leave for full briefing pursuant to NRAP 3C (k) which states:

(k) Full Briefing, Calendaring or Summary Disposition.

(1) Based solely upon review of the rough draft transcript, fast track statement, fast track response, and any supplemental documents, the Supreme Court may summarily dismiss the appeal, may affirm or reverse the decision appealed from without further briefing or argument, may order the appeal to be fully briefed and argued or submitted for decision without argument, may order that briefing and any argument be limited to specific issues, or may direct the appeal to proceed in any manner reasonably calculated to expedite its resolution and promote justice.

(2) Motion for Full Briefing.

(A) A party may seek leave of the Supreme Court to remove an appeal from the fast track program and direct full briefing. The motion may not be filed solely for purposes of delay. It may be filed

1 in addition to or in lieu of the fast track pleading.

2
3 (B) The motion must identify specific reasons why the appeal is not
4 appropriate for resolution in the fast track program. Such reasons may
5 include, but are not limited to, the following circumstances:

6 (i) The case raises one or more issues that involve substantial
7 precedential, constitutional, or public policy questions; and/or

8 (ii) The case is legally or factually complex.

9
10 (C) If the issues or facts are numerous but not complex, full briefing
11 will not be granted but an excess page motion may be entertained.

12 **REASONS FOR FULL BRIEFING**

13 Only the legislature has the power to define what constitutes a crime.
14
15 *Sheriff, Clark County v. Lugman*, 101 Nev. 149 (1985). Here, the Parole and
16 Probation Department defined the crime of Lifetime Supervision when setting
17 conditions for lifetime supervision.

18
19 NRS 213.1243 is clear. NRS 213.1243 lays out conditions for lifetime
20 supervision. In summation, the conditions are that the sex offender: (1) may only
21 reside at a location approved by P&P officer and must keep the P&P officer
22 informed of his current address, (2) may not reside within 500 feet (or 1000 feet if
23 the offender is a Tier 3 offender) of any place that is designed primarily for the use
24 of children; (3) must comply with and pay for electronic monitoring, if the
25 division deems it appropriate for the offender; (4) must following instructions of
26
27
28

1 electronic monitoring, if it is deemed appropriate for the offender, and report any
2 damage to the device: and (5) have no communication with the victim or witness
3 of the underlying crime.
4

5 NRS 213.1243 distinguishes mandatory conditions from discretionary
6 conditions. Electronic monitoring is a discretionary condition. Living at least 500
7 feet from a place designated primarily for children is a mandatory condition.
8

9 Department of Parole and Probation administers the lifetime supervision
10 program. NRS 213.1243. "The administration of probation is the responsibility of
11 the judicial branch, whereas the administration of parole is the responsibility of the
12 executive branch." *James v. State*, 244 P.3d 542, 547 (Alaska 2011). Lifetime
13 supervision does not fall neatly in either category.
14
15

16 The penalty for a violation of a condition of lifetime supervision is severe:
17 category B felony - sentence of six years in prison with parole eligibility after one
18 year.
19

20 In Count 1, McNeill was convicted of violating Lifetime Supervision by:
21 "refusing to submit to a urinalysis, failing to report, failing to have his residence
22 approved, failing to cooperate with his supervising officer, failing to maintain
23 fulltime employment, failing to abide by a curfew, and/or was terminated from his
24 sex offender counseling." See Exhibit A: Information. Exhibit B: Judgment of
25 Conviction. Only one of the allegations listed is noted in NRS 213.1243.
26
27
28

1 After conviction, McNeill filed a motion to arrest judgment alternatively
2 judgment of acquittal based on no crime being charged under NRS 213.1243. See
3 Exhibit C: Motion by Defense; Exhibit D: State's Motion. Court denied the
4 motion.
5

6 In his motions and when arguing jury instructions, McNeill's objections
7 focused on the conditions of lifetime supervision imposed that were not listed in
8 NRS 213.1243.
9

10 Being placed on lifetime supervision is different from being placed on
11 parole or probation. When a defendant is convicted of a crime and placed on
12 probation or parole, the Department of Parole and Probation has great leeway in
13 setting rules because the defendant is under a term of imprisonment and, thus, has
14 limited constitutional rights. When establishing conditions for parole or probation,
15 the Department is not creating new crimes but merely taking away privileges.
16 Thus, a violation of a condition of probation or parole does not result in a new
17 criminal conviction. A violation may result in the removal of privileges and/or the
18 court imposing the already existing sentence of imprisonment.
19

20 In contrast, the crime of Violation of Lifetime Supervision is a new crime
21 created by the legislature: NRS 213.1243. This statute creates a new crime if the
22 conditions listed within the statute are violated. But individuals on Lifetime
23 Supervision under NRS 213.1243 are no longer under a sentence of imprisonment.
24
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1 Barring statutory intervention, all their rights (except those denied to felons) are
2 restored.

3
4 Because a violation of NRS 213.1243 is a new crime, only conditions
5 statutorily created can be used for a violation and conviction. Thus, a defendant
6 may not be convicted of a new crime under NRS 213.1243 if accused of violating
7 a condition of lifetime supervision put in place by the Department of Parole and
8 Probation when that condition is not listed within NRS 213.1243. The reason for
9 this – the legislature dictates actions constituting criminal conduct rather than the
10 Department of Parole and Probation.

11
12 If the legislature gives another branch of government the power to make an
13 otherwise legal act a crime, a violation of the separation of powers doctrine and
14 Article 3, Section 1, of the Nevada Constitution arises.

15
16 In this case and in others like it, the Parole and Probation Department
17 determines the elements of the crime for a conviction under NRS 213.1243 by
18 deciding on conditions for a possible Violation of Lifetime Supervision that not
19 enumerated within NRS 213.1243. The courts are enforcing the Departments
20 conditions.

21
22 Although McNeill may be able to brief the issues presented in a nominal
23 amount of pages - interpretation of NRS 213.1243, separation of powers,
24

1 jurisdiction, and court's failure to give his requested jury instructions - because
2 these issues are constitutional, they are worthy of full briefing.
3

4 Additionally, McNeill will be developing more issues upon reading the
5 appendix. As noted in the Judgment, McNeill was found guilty of Count 1 -
6 Violation of Lifetime Supervision - and Count 2 - Prohibited Acts by A Sex
7 Offender - was dismissed. See Exhibit B: Judgment of Conviction.
8

9
10 **CONCLUSION**

11 Based on the above, McNeill asks this Court to grant full briefing.

12 DATED this 19th day of February, 2015.

13
14 PHILIP J. KOHN
15 CLARK COUNTY PUBLIC DEFENDER

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

SHARON G. DICKINSON
HOWARD S. BROOKS

STEVE DELL MCNEILL
NDOC NO: 84046
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89018

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EXHIBIT A


CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001563
5 BERNIE ZADROWSKI
6 Chief Deputy District Attorney
7 Nevada Bar #006545
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA
I.A. 05/07/2014
9:30 AM
PD

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C-14-297725-1

DEPT NO: XXV

STEVE DELL MCNEILL,
#0648344

Defendant.

INFORMATION

STATE OF NEVADA)
COUNTY OF CLARK) ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That STEVE DELL MCNEILL, the Defendant(s) above named, having committed the crimes of **VIOLATION OF LIFETIME SUPERVISION BY CONVICTED SEX OFFENDER (Category B Felony - NRS 213.1243 - 53481)** and **PROHIBITED ACTS BY A SEX OFFENDER (Category D Felony - NRS 179D.441, 179D.447, 179D.550 - 52950)**, on or between December 14, 2012 and March 10, 2014, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

///

///

///

1 COUNT 1 - VIOLATION OF LIFETIME SUPERVISION BY CONVICTED SEX
2 OFFENDER


3 did then and there wilfully, unlawfully, knowingly and feloniously violate the
4 conditions of a Lifetime Supervision Agreement signed by the Defendant on 2007, pursuant
5 to having in 2004 been convicted of Attempt Lewdness With a Child Under the Age of 14, in
6 Case No. C204263 in Eighth Judicial District Court, Clark County, Nevada, to-wit: by
7 refusing to submit to a urinalysis, failing to report, failing to have his residence approved,
8 failing to cooperate with his supervising officer, failing to maintain fulltime employment,
9 failing to abide by a curfew, and/or was terminated from his sex offender counseling.

10 COUNT 2 - PROHIBITED ACTS BY A SEX OFFENDER

11 did wilfully, unlawfully, and feloniously, pursuant to his conviction in 2004 for
12 Attempt Lewdness With a Child Under the Age of 14, in Case No. C204263, in the Eighth
13 Judicial District Court, Clark County, Nevada, did fail to appear in person at the appropriate
14 law enforcement agency before three (3) business days passed since he changed his address
15 from his last registered address at Main and Wyoming, Las Vegas, Clark County, Nevada to
16 his current unknown address.

17 STEVEN B. WOLFSON
18 Clark County District Attorney
19 Nevada Bar #001565

20 BY

 #12/195 Per
21 BERNIE ZADROWSKI
22 Chief Deputy District Attorney
23 Nevada Bar #006545

24 Names of witnesses known to the District Attorney's Office at the time of filing this
25 Information are as follows:

26 NAME

ADDRESS

27 CUSTODIAN OF RECORDS, or Designee

CCDC
330 S. Casino Center Blvd., Las Vegas, NV

28 ///

1 CUSTODIAN OF RECORDS, or Designee

CCDC Communications
330 S. Casino Center Blvd., Las Vegas, NV

3 CUSTODIAN OF RECORDS, or Designee

LVMPD Communications
400 E. Stewart Ave, Las Vegas, NV

5 CUSTODIAN OF RECORDS, or Designee

LVMPD Records
400 E. Stewart Ave, Las Vegas, NV

7 LEE, MARCIA

5852 S. Pecos Rd, Apt 2, Las Vegas, NV

8 MANGAN, A.

NVPP P# 4487

9 TRAMMELL, MATT, or Designee

INVESTIGATOR
C.C. DISTRICT ATTORNEY

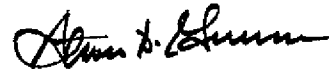
11 ZANA, B.

NVPP P# 039

27 DA#14F02393X/mc/L4
28 NVPP EV#13P017192
(TKI)

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EXHIBIT B



CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

STEVE DELL MCNEILL
#0648344

Defendant.

CASE NO. C297725-1

DEPT. NO. XXV

JUDGMENT OF CONVICTION
(JURY TRIAL)

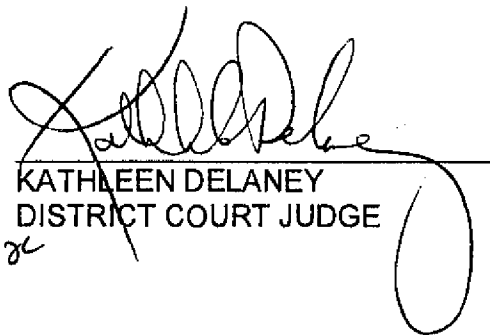
The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – VIOLATION OF LIFETIME SUPERVISION BY CONVICTED SEX OFFENDER (Category B Felony) in violation of NRS 213.1243, and COUNT 2 – PROHIBITED ACTS BY A SEX OFFENDER (Category D Felony) in violation of NRS 179D.441, 179D.447, 179D.550; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of COUNT 1 - VIOLATION OF LIFETIME SUPERVISION BY CONVICTED SEX OFFENDER (Category B Felony) in violation of NRS 213.1243; thereafter, on the 10th day of September, 2014, the Defendant was present in court for sentencing with his counsel XIOMARA BONAVENTURE, Deputy Public Defender, and good cause appearing,

SEP 16 2014

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
2 addition to the \$25.00 Administrative Assessment Fee, the Defendant is SENTENCED
3 to the Nevada Department of Corrections (NDC) as follows: as to COUNT 1 - to a
4 MAXIMUM of THIRTY-SIX (36) MONTHS with a MINIMUM parole eligibility of TWELVE
5 (12) MONTHS; with ONE HUNDRED FIFTY (150) DAYS credit for time served. As the
6 \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed, the Fee
7 and Testing in the current case are WAIVED. COUNT 2 - DISMISSED
8

9 DATED this 16th day of September, 2014
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KATHLEEN DELANEY
DISTRICT COURT JUDGE

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EXHIBIT C


CLERK OF THE COURT

MOT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-14-297725-1
)	
v.)	DEPT. NO. XXV
)	
STEVE DELL MCNEILL,)	DATE: July 30, 2014
)	TIME: 9:00 a.m.
Defendant.)	

MOTION FOR ARREST OF JUDGMENT PURSUANT TO NRS 176.525 OR, IN THE
ALTERNATIVE, MOTION FOR JUDGMENT OF AQUITAL PURSUANT TO NRS
175.381

COMES NOW, the Defendant, STEVE DELL MCNEILL, by and through XIOMARA A.
BONAVENTURE, Deputy Public Defender and hereby asks this Honorable Court to arrest
judgment in this case due to failure of the information to charge an offense.

This Motion is made and based upon all the papers and pleadings on file herein, the
attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 16th day of July, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Xiomara A. Bonaventure
XIOMARA A. BONAVENTURE, #12368
Deputy Public Defender

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1 **FACTS**

2
3 Steve McNeill was charged by Information with one count of Violation of Lifetime
4 Supervision by Convicted Sex Offender and one count of Prohibited Acts by Sex Offender.

5 McNeill entered a plea of not guilty at arraignment on May 7, 2014 and trial in the case
6 began on July 7, 2014. At trial, the District Attorney alleged that McNeill had violated lifetime
7 supervision because he failed to follow the conditions set forth in a "Lifetime Supervision
8 Agreement" that McNeil had signed.

9 During argument for Jury Instructions, the only substantive legal instruction relating to
10 count 1 was the following: "A sex offender under a sentence of lifetime supervision who commits
11 a violation of a condition imposed on him pursuant to the program of lifetime supervision is guilty
12 of Violation of Lifetime Supervision by Convicted Sex Offender." The defense objected to this
13 instruction being given.

14 On July 9, 2014 this Honorable Court granted a motion for a directed verdict as to count 2,
15 the Prohibited Acts by a Sex Offender. McNeill was subsequently convicted of Count1 and
16 acquitted of Count 2.

17
18 **ARGUMENT**

19 I. The Defense Moves for an Arrest of Judgment

20 The Defense moves for an Arrest of Judgment. Pursuant to NRS 176.525, the court shall
21 arrest judgment if the information does not charge an offense or if the court was without
22 jurisdiction of the offense charged. In this case, the court was without jurisdiction because none of
23 the actions alleged constituted the elements of the crime charged. Pursuant to NRS 213.1243, the
24 only actions which constitute a crime are those expressly laid out in the statute. Even the name of
25 the statute is "Release of sex offender; Program of lifetime supervision; required conditions of
26 lifetime supervision; penalties for violation of conditions; exception to conditions." The title of the
27 statute itself announces that this statute will lay out the conditions and what the penalties are for
28 violating the conditions.

1 In this case, the State failed to allege or prove a violation of conditions enumerated in the
2 statute. Because the actions alleged do not constitute a crime, the Court lacks the jurisdiction to
3 adjudge the Defendant guilty of the instant offense. Thus the Defense moves for an arrest of
4 judgment in this case.

5
6 II. In the Alternative, the Defense Moves for a Judgment of Acquittal

7
8 In the alternative, the Defense moves for a judgment of acquittal. Given the facts presented
9 and the jury instructions given to the jury, no reasonable jury could have returned a verdict of
10 guilty if they followed the law they were given. The only legal instruction given to the jury was a
11 generic statement that violating the conditions of lifetime supervision is a crime. No specific
12 instructions were given as to what conduct constitutes a violation of lifetime supervision. Because
13 they were never instructed on express conduct which constituted a violation of the conditions of
14 lifetime supervision, no jury could have found that the Defendant in this case committed that
15 conduct. Thus, even if the facts of the case are viewed in a light most favorable to the Defense, the
16 Defendant is entitled to a judgment of acquittal.

17 DATED this 16th day of July, 2014.

18 PHILIP J. KOHN
19 CLARK COUNTY PUBLIC DEFENDER

20 By: /s/ Xiomara A. Bonaventure
21 XIOMARA A. BONAVENTURE, #12368
22 Deputy Public Defender
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 30th day of July, 2014, at 9:00 a.m.

DATED this 16th day of July, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Xiomara A. Bonaventure
XIOMARA A. BONAVENTURE, #12368
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the foregoing, was made this 16th day of July, 2014 to:

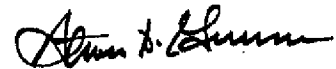
Clark County District Attorney's Office
Motions@clarkcountyda.com

Department 25 Judge
DEPT25LC@clarkcountycourts.us;

By: /s/ Joel Rivas
Employee of the Public Defender's Office

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EXHIBIT D



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

STEVE DELL MCNEILL,
#0648344

Defendant.

CASE NO: C-14-297725-1

DEPT NO: XXV

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR ARREST OF JUDGMENT
PURSUANT TO NRS 176.525 OR, IN THE ALTERNATIVE, MOTION FOR
JUDGMENT OF ACQUITTAL PURSUANT TO NRS 175.381

DATE OF HEARING: July 30, 2014

TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
District Attorney, through JONATHAN COOPER, Deputy District Attorney, and hereby
submits the attached Points and Authorities in opposition to Defendant's Motion for Arrest of
Judgment Pursuant to NRS 176.525 or, in the Alternative, Motion for Judgment of Acquittal
Pursuant to NRS 175.381.

This Opposition is made and based upon all the papers and pleadings on file herein, the
attached points and authorities in support hereof, and oral argument at the time of hearing, if
deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF CASE**

3 On August 8, 2014, Steve McNeill (hereinafter defendant) was charged via criminal
4 complaint with one count of Violation of Lifetime Supervision by Convicted Sex Offender
5 and one count of Prohibited Acts by a Sex Offender. Following a Preliminary hearing held on
6 April 29, 2014, the defendant was bound over on both charges. The Preliminary hearing
7 transcript was filed on June 6, 2014. Jury Trial in this case commenced on July 7, 2014. On
8 July 9, 2014, this Court granted defendant's motion for directed verdict as to count two (2),
9 Prohibited Acts by a Sex Offender. The Jury returned with a verdict of guilty on Count one
10 (1), Violation of Lifetime Supervision by Convicted Sex Offender.

11 **ARGUMENT**

12 During trial this Honorable Court addressed the issues raised in Defendant's instant
13 motion. After receiving argument and analyzing both statutory and case authority, this
14 Honorable Court rejected the positions taken by Defendant. Defendant's instant motion is in
15 essence nothing more than a motion to reconsider and should be denied.

16 **I. THE DEFENDANT IS NOT ENTITLED TO AN ARREST OF**
17 **JUDGMENT**

18 First, Defendant claims that this Honorable Court did not have jurisdiction of the
19 offense charged. In support of this assertion Defendant does nothing more than cite to the title
20 of NRS 213.1243, the program of lifetime supervision statute. NRS 213.1243 in pertinent part
21 states:

22 1. The Board shall establish by regulation a program of lifetime supervision of sex
23 offenders to commence after any period of probation or any term of imprisonment and
24 any period of release on parole. The program must provide for the lifetime supervision
of sex offenders by parole and probation officers.

25 2. Lifetime supervision shall be deemed a form of parole for:

26 (a) The limited purposes of the applicability of the provisions of NRS
213.1076, subsection 9 of NRS 213.1095, NRS 213.1096 and subsection 2 of NRS
213.110; and

27 (b) The purposes of the Interstate Compact for Adult Offender Supervision
28 ratified, enacted and entered into by the State of Nevada pursuant to NRS 213.215.

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1 NRS 213.1243 (emphasize added).

2 It is clear that the legislature intended for the parole board to establish regulations to
3 organize and implement the program of lifetime supervision. Said regulations are contained
4 within the Nevada Administrative Code. NAC 213.290 states:

5 1. At least 120 days before the first day of the month in which a sex offender who has
6 been sentenced to a special sentence of lifetime supervision is scheduled to be released from
7 an institution or facility of the Department, the Department shall provide written notification
8 to the Division of the date that the sex offender is scheduled to be released. If more than one
9 such sex offender is scheduled to be released during the month, the Department shall provide
10 notice for such sex offenders pursuant to this subsection in the form of a list that includes the
11 name of each sex offender scheduled for release and the date on which each sex offender will
12 be released.

13 2. At least 90 days before the first day of the month in which a sex offender who has been
14 sentenced to a special sentence of lifetime supervision is scheduled to complete a term of parole
15 or probation or is scheduled to be released from an institution or facility of the Department, the
16 Division shall provide written notification to the Board of the date that the sex offender is
17 scheduled to complete a term of parole or probation or to be released from an institution or
18 facility of the Department. If more than one such sex offender is scheduled to complete a term
19 of parole or probation or to be released from an institution or facility of the Department during
20 the month, the Division shall provide notice for such sex offenders pursuant to this subsection
21 in the form of a list that includes the name of each sex offender and the date on which each sex
22 offender will complete his or her term or be released.

23 3. Upon receipt of written notification pursuant to subsection 2, the Board will schedule
24 a hearing to establish the conditions of lifetime supervision for the sex offender. The Board
25 will:

26 (a) Determine an appropriate location for the hearing that may include, without limitation,
27 the institution or facility at which the sex offender is housed or an office of the Board; and

28 (b) Appoint a panel pursuant to NRS 213.133 to conduct the hearing.

The Board may establish the conditions of lifetime supervision for more than one sex offender at a hearing.

4. At least 30 days before the date on which a hearing is scheduled pursuant to subsection
3, the Division shall provide to the Board a report on the status of the sex offender who is the
subject of the hearing. The report must include, without limitation:

(a) A summary of the progress of the sex offender while on parole or probation or in an
institution or facility of the Department, as applicable; and

(b) Recommendations for conditions of lifetime supervision for the sex offender.

5. The Division may request the Board to modify the conditions of lifetime supervision
of a sex offender. Upon receipt of such a request, the Board will schedule and hold a hearing
in the same manner as provided in subsection 3. The Board may require the presence of the sex
offender at the hearing.

6. as used in this section:

(a) "Board" means the State Board of Parole Commissioners.

(b) "Department" means the Department of Corrections.

(c) "Division" means the Division of Parole and Probation of the Department of Public
Safety.

(d) "Sex offender" has the meaning ascribed to it in NRS 213.107.

NAC 213.290 (emphasize added).

1 Again, it is clear that the Board of Parole Commissioners may establish the conditions
2 of lifetime supervision for each offender on a case by case basis. Further, this process has been
3 upheld by the Nevada Supreme Court.

4 Here, the Parole Board established conditions for Defendant's release on lifetime
5 supervision and enumerated them in Defendant's Lifetime Supervision Agreement. See
6 Exhibit 1. Defendant violated several of his Lifetime Supervision conditions. Pursuant to NRS
7 213.1243(3), failure to comply with the conditions of Lifetime Supervision is a felony offense.
8 It is clear that this Court has jurisdiction to adjudge Defendant guilty of Violation of Lifetime
9 Supervision by Convicted Sex Offender and Defendant's motion should be denied.

10 **II. DEFENDANT IS NOT ENTITLED TO A JUDGEMENT OF**
11 **ACQUITTAL.**

12 As stated in more detail above the conditions imposed on Defendant by the Board of
13 Parole Commissioners pursuant to NRS 213.1243 are valid. Further, there was overwhelming
14 evidence that the Defendant violated several of the conditions imposed on him pursuant to
15 lifetime supervision. The Defendant is not entitled to a judgment of acquittal.


16 **CONCLUSION**

17 As the Defendant's claims are without merit, his motion should be denied.

18 DATED this 29th day of July, 2014.

19 Respectfully submitted,

20 STEVEN B. WOLFSON
21 Clark County District Attorney
22 Nevada Bar # 001565

23 BY 
24 JONATHAN COOPER
25 Deputy District Attorney
26 Nevada Bar #012195

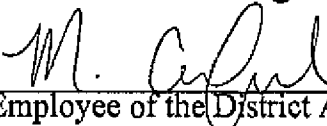
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1 CERTIFICATE OF ELECTRONIC TRANSMISSION

2 I hereby certify that service of State's Opposition to Defendant's Motion for Arrest of
3 Judgment Pursuant to NRS 176.525 or, in the Alternative, Motion for Judgment of Acquittal
4 Pursuant to NRS 175.381., was made this 29th day of July, 2014, by electronic transmission
5 to:

6
7 XIOMARA BONAVENTURE, Deputy Public Defender
 Xiomara. Bonaventure@ClarkCountyNV.gov

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9 _____
 Employee of the District Attorney's Office

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EXHIBIT “1”

State of Nevada
DEPARTMENT OF PUBLIC SAFETY
Board of Parole Commissioners

Date Activated: NOVEMBER 16, 2007

LIFETIME SUPERVISION AGREEMENT

NDOC No: N/A
File No.: LS08-0537
CC No.: C204263

On the 10TH day of NOVEMBER, 2004, MCNEILL, STEVE was sentenced by JOHN S MCGROARTY, District Judge of the 8TH Judicial District Court in and for the County of CLARK, State of Nevada, to imprisonment in the Nevada State Prison System, for the crime of

The sentencing court, in addition to your sentence, ordered that you be placed on Lifetime Supervision under the Chief of the Division of Parole and Probation. The Board of Parole Commissioners, by virtue of the authority vested in it by the laws of the State of Nevada, hereby assigns the conditions of Lifetime Supervision.

1. **Reporting/Release:** You are required to submit a written report as directed by your supervising officer. The report will be true and correct in all respects. In addition, you shall report in person as directed by your supervising officer and submit a DNA sample as required.
2. **Residence:** You shall reside at a location only if it has been approved by your supervising officer. You shall not change your place of residence without first obtaining permission from your supervising officer.
3. **Intoxicants:** You shall not drink or partake of any alcoholic beverages whatsoever. Upon request by the any Parole or Peace Officer, you shall submit to a medically recognized test for blood alcohol content. Failure to submit shall constitute a violation of your lifetime supervision. Test results of .08 blood alcohol or higher shall be sufficient proof of excess.
4. **Controlled Substances:** You shall not use, purchase or process any narcotic drugs, nor any dangerous drugs, unless first prescribed by a licensed physician; you shall submit to periodic tests to determine whether you are using a controlled substance, as required by your supervising officer.
5. **Weapons:** You shall not possess, own, carry, or have under your control, any type of firearm or illegal weapon.
6. **Associates:** You shall not associate with ex-felons or any person who is required to register as a sex offender under Nevada law without permission from your supervising officer.
7. **Cooperation:** You shall, at all times, cooperate with your supervising officer and your behavior shall justify the opportunity granted to you by this Lifetime Supervision.
8. **Laws and Conduct:** You shall comply with all municipal, county, state and federal laws, and ordinances; and conduct yourself as a good citizen. You shall comply with all offender registration requirements.
9. **Out-of-State Travel:** You shall not leave the State without first obtaining written permission from your supervising officer.
10. **Employment/Program:** You shall seek and maintain employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. You shall accept a position of employment only if it has been approved by your supervising officer.
11. **Supervision Fees:** Pay all applicable fees, fines and restitution on a schedule as determined by the Division of Parole and Probation.
12. **Curfew:** You shall abide by any curfew imposed by your supervising officer.
13. **Counseling:** Participate in professional counseling if deemed necessary by the Division of Parole and Probation.
14. **Polygraph Examination:** You shall submit to periodic polygraph examination, as required by your supervising officer.
15. **No Contact:** You shall not have contact or communicate with a victim of the offense who testified against you, or solicit another person to engage in such contact or communication on your behalf without permission from your supervising officer.
16. **Alias Names:** You shall not use aliases or fictitious names without permission from your supervising officer.
17. **Post Office Box:** You shall not obtain a post office box unless you have obtained permission from your supervising officer.
18. **No Contact With Persons Under 18 Years of Age:** You shall not have contact with a person less than 18 years of age in a secluded environment unless another adult who has never been convicted of an offense listed in NRS 179D.410 is present.
19. **Presence:** You shall not be in or near:
 - a) A playground, school or school grounds;

age in a secluded environment unless another adult who has never been convicted of an offense listed in NRS 179D.410 is present.

19. **Presence:** You shall not be in or near:
- a) A playground, school or school grounds;
 - b) A motion picture theater;
 - c) A business that primarily has children as customers or conducts events that primarily children attend.
20. **Search:** You shall submit to a search of your person, property under your control, or place of residence, by a Parole Officer, at any time of the day or night without a warrant, upon reasonable cause as ascertained by the Parole Officer.
21. **Special Conditions of Your Lifetime Supervision: EFFECTIVE 5/24/11:** 1) Not to patronize a business which offers a sexually related form of entertainment and which is deemed inappropriate by the supervising officer; 2) Not possess any electronic device capable of accessing the Internet and not access the Internet through any such device of any other means, unless possession of a such a device or such access is approved by the supervising officer. An Internet monitoring service provider approved by the supervising officer will be the only means allowed for any and all Internet access device or service. 3) Abstain from consuming, possessing or having under your control any alcohol; 4) Not possess any sexually explicit material that is deemed inappropriate by the supervising officer; 5) Not possess any sexually explicit material that is deemed inappropriate by the supervising officer; 5) Comply with any protocol concerning the prescription medication prescribed by the treating physician, including, without limitation, any protocol concerning the use of psychotropic medication;

6) Do not enter any bar/lounge for any purpose except for employment.

This Lifetime Supervision is granted to and accepted by you, subject to the conditions stated herein, and with the knowledge that the Board of Parole Commissioners has the power, at any time, to modify the conditions of supervision. Pursuant to NRS 213.1243(3), failure to comply with the conditions as set forth may result in felony charges being filed.

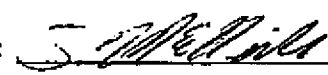
Chief Parole Officer: _____

Dated: _____

AGREEMENT BY OFFENDER

I do hereby waive extradition to the State of Nevada from any state in the United States, and from any territory or country outside the continental United States, and also agree that I will not contest any effort to return me to the United States or the State of Nevada. I have read or had read to me, the conditions of my Lifetime Supervision, and I fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I, in any manner, violate the foregoing conditions.

Witness:  _____

Offender:  _____

Dated: 11/7/12 _____