

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDSIE NEWMAN,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

Case No.

67756

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Apr 30 2015 04:08 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

RESPONSE TO EMERGENCY MOTION UNDER NRAP 27(E)  
BAIL PENDING APPEAL

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1 I. GROUNDS FOR THE RESPONSE

2 Pursuant to NRAP 27(a)(3), respondent is objecting to Lindsie Newman's  
3 (hereafter appellant) Emergency Motion Under NRAP 27(E) Bail Pending  
4 Appeal. Appellant is requesting that this Court grant her release and contends  
5 that the required motion for stay in the district court would be impracticable.  
6 This contention is without merit. Appellant did not articulate why the relief she  
7 is requesting is needed in less than 14 days to avoid irreparable harm. In  
8 addition, appellant has failed to show why moving for a motion to stay pending  
9 appeal in the district court first would be impracticable. Regardless, appellant's  
10 request to be released is without merit. Respondent respectfully requests that  
11 appellant's motion be denied.  
12

13 II. LEGAL ARGUMENT

- 14 a. Appellant has not shown that moving to stay pending appeal in  
15 district court would be impracticable.  
16

17 Appellant has failed to show that moving for a stay pending appeal in  
18 district court would be impracticable. *See* NRAP 8(a)(2)(A)(i). Appellant has  
19 not provided the facts relied on for granting her relief nor has she provided  
20 originals or copies of affidavits or other sworn statements in supporting facts  
21 subject to dispute and the relevant part of the record. *See* NRAP 8(a)(2)(B)(i)-  
22 (iii). Regardless, appellant's request is without merit.  
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1 b. Appellant's emergency motion is without merit.

2 Appellant, via an inappropriate and prematurely filed motion with this  
3 Court, is requesting that this Court release her from custody. This request is  
4 without merit. There is no constitutional right to bail following conviction and  
5 pending appeal. *Polito v. State*, 70 Nev. 525, 275 P.2d 884 (1954); *State v.*  
6 *McFarlin*, 41 Nev. 105, 167 P. 1011 (1917). Stays in criminal case shall be had  
7 in accordance with the provisions of NRS 177.095 et seq. *See* NRAP 8(e). NRS  
8 177.105 provides that a sentence of imprisonment shall be stayed if an appeal is  
9 taken and the defendant is admitted to bail. Admission to bail shall be as  
10 provided in NRS 178.4873 through 178.488. Bail pending appeal may be denied  
11 if an appellant's release poses a risk of flight or danger to the community. *Bergna*  
12 *v. State*, 120 Nev. 869, 875, 102 P.3d 549 (2004).

13  
14 If appellant were released she poses not only a risk of flight but a danger to  
15 the community. Appellant is an absconder. Appellant was, "at best, difficult [for  
16 Parole and Probation] to supervise"; she continued to use controlled substances;  
17 she did not abide by the Honorable Specialty Court Judge's orders; she  
18 absconded from the City of Refuge; she absconded from the Western Regional  
19 Drug Court; she exhausted all avenues provided to her to assist in her recovery;  
20 and she was terminated from the Western Regional Drug Court Program. *See*  
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1 Nevada Department of Public Safety, Division of Parole and Probation, Violation  
2 Report, Dated 2/25/15 attached as here as Exhibit 1.

3 Appellant is a risk not only to herself but to the community at large. With  
4 appellant track record this Court cannot "fashion conditions of release that will  
5 protect appellant." Appellant's emergency motion should be denied.  
6

7 Respectfully submitted, this 30th day of April 2015.  
8

9 JASON D. WOODBURY  
Carson City District Attorney

10 By: /S/ Mary-Margaret Madden  
11 Senior Deputy District Attorney  
12 Carson City District Attorney's Office  
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**VERIFICATION AND CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this answering brief complies with the formatting requirements of NRAP 27, the typeface requirements of NRAP 27 and the type style requirements of NRAP 27 because:

[X] This response brief has been prepared in a proportionally spaced type face using Microsoft Word 2003 in 14 point Times New Roman font.

2. I further certify that this answering brief complies with the page- or type-volume limitations of NRAP 27 because it does not exceed 5 pages.

Dated this 30<sup>th</sup> day of April 2015.

JASON D. WOODBURY  
Carson City District Attorney

By: /S/ Mary-Margaret Madden  
Senior Deputy District Attorney  
Carson City District Attorney's Office  
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**CERTIFICATE OF SERVICE**

I certify that this document was filed electronically with the Nevada Supreme Court on this 30<sup>th</sup> day of April 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Nevada Attorney General

Jason D. Woodbury  
Carson City District Attorney

Dated this 30<sup>th</sup> day of April 2015.

Signed: /S/ Mary-Margaret Madden  
Senior Deputy District Attorney

# EXHIBIT 1



*Division of Parole and Probation*

**VIOLATION REPORT**  
**Date Report Prepared: 02/25/2015**

**TO THE HONORABLE JAMES T RUSSELL**  
**FIRST JUDICIAL DISTRICT COURT**  
**DEPARTMENT I**  
**CARSON CITY, NEVADA**

**NAME: NEWMAN, LINDSIE**  
**FILE #: C13-0297A**  
**CC #: 13 CR 00226 1B**

**SUPERVISION GRANT: 12/16/2013**  
**ORIGINAL EXPIRATION: 12/16/2016**

**CRIME: POSSESSION OF A CONTROLLED SUBSTANCE**

**SENTENCE: \$25AAF, \$60CAF, \$3.00 DNA ASSESS FEE, \$500PD FEE, 453 PROGRAM, 3 YRS**

**I. VIOLATION:**

**Residence:**

On February 17, 2015, the City of Refuge coordinator contacted the undersigned to report that Ms. Newman fled from the program. It was reported that after being dropped off at a scheduled dentist appointment, Ms. Newman fled the doctor's office. She did not have permission to leave, and here whereabouts were unknown.

**Controlled Substances; Associates; Laws; Directives and Conduct; Special Condition (3) Abstain from use, possession or control of any alcoholic beverages, controlled substances and stolen property during your probation; Special Condition (6) You shall not enter into any bars nor casinos whatsoever except for employment only;**

On February 19, 2015, Ms. Newman was arrested by the Carson City Sheriff's office as she was inside a casino and they were aware of her absconder status. She was located with Kelly Manning, who was also considered an absconder. Both were taken into custody without incident. Ms. Newman was transported to the Carson City Jail. At the jail, a search of her purse yielded prescription pills which she did not have a prescription for. Ms. Newman was booked for Probation Violation (F), Failure to Appear (F) and Possession of a Dangerous Drug w/o a Prescription (F). Bail was set at \$2500. Ms. Newman is scheduled to appear in Justice Court on March 10, 2015.

On February 20, 2015, Ms. Newman signed an admission form admitting to taking morphine pills on February 18, 2015 in Lyon County. Although the drug test found the presence of methamphetamine, Ms. Newman denied any methamphetamine use. Ms. Newman also admitted to associating with Kelly Manning, even though the Honorable Specialty Court Judge had previously issued a "no contact" order between them on October 21, 2014.



**Special Condition (7) Enter and Complete the Western Regional Drug Court Program:**

On February 23, 2015, Ms. Newman was terminated from the Western Regional Drug Court program, and ordered back to her sentencing judge.

**Financial Obligations:**

Ms. Newman has failed to pay monthly supervision fees in the amount of \$30.00 as mandated by the Nevada Revised Statutes to defray the cost of supervision. She is currently \$570.00 in arrears towards this obligations.

Ms. Newman was ordered to pay a total of \$468.00 to the Carson City Court Clerk's Office. She currently has a balance of \$388.00

**II. RESPONSE TO SUPERVISION:**

Ms. Newman has been at best, difficult to supervise. She continues to use controlled substances, does not abide by the Honorable Specialty Court Judge's orders and was considered to be an absconder at the time of her arrest. Additionally, as Ms. Newman absconded from the City of Refuge, and was terminated from the Western Regional Drug Court Program, she has exhausted all avenues provided to her, to assist in her recovery. Although Ms. Newman was afforded the opportunity to attend and complete the City of Refuge, she instead fled and continued using drugs, further putting her unborn child's life in serious jeopardy. At present, the Division no longer views Ms. Newman as a viable candidate for community supervision.

**III. WHEREABOUTS AND AVAILABILITY:**

A HOLD was placed on February 23, 2015. Ms. Newman was placed in custody in the Carson City Jail. As of February 25, 2015, credit for time served is 0 days. All credits have been applied to CC# 13 CR 00050 1B

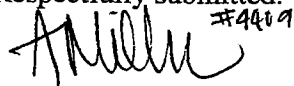
**IV. RECOMMENDATION:**

It is recommended that Ms. Newman's deferred sentence be rescinded. It is further recommended that Ms. Lindsie Newman be sentenced to a term of 12-32 months in the Nevada Department of Corrections.

Due to the above violation this offender will not have their probationary period reduced pursuant to NRS176A.500(5). As of February 25, 2015, if no further serious infractions occur, the projected discharge date will be December 16, 2016.

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Respectfully submitted:

 #4419

MILLER, ASHLEE A., DPS OFFICER II  
NORTHERN COMMAND, CARSON

Approved:



CAMPBELL, GARY S., DPS SERGEANT  
NORTHERN COMMAND, CARSON CITY, NV

## ON-SITE DRUG TEST RECORD

Offender Name: LINDSIE NEWMAN

File/Back #:

Employee Name: A. Miller

Date: 2/20/15

Check All Drugs Tested

- ☒ Cocaine
- ☒ Opiates
- ☒ THC
- ☒ PCP
- ☒ Amphetamines
- ☒ Barbiturates
- ☒ Meth

Check All Drugs Positive

- ☐ Cocaine
- ☒ Opiates
- ☐ THC
- ☐ PCP
- ☒ Amphetamines
- ☐ Barbiturates
- ☒ Meth

### DENIAL

I, \_\_\_\_\_, hereby deny any recent usage of a controlled substance.

Offender Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

### ADMISSION

I, Lindsie Newman, hereby certify that I used Morphine on 2/18, 2015 in Lyon County. I personally observed that such use has been verified by a field test conducted in my presence on the date indicated at the top of this form.

I certify that by providing a written admission to using Morphine, I may be subject to violation charges initiated by the division. I further understand that, if violation charges are brought against me as a result of my admission, I have a right to counsel at a final revocation hearing, unless I am an inmate of the Nevada Department of Corrections.

I freely make this admission to the individual whose signature appears below and acknowledge that my admission has been made without duress or undue influence.

Offender Signature: [Signature]

Date: 2/20/15

Witness Signature: A Miller #4409

STATE OF NEVADA  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION

**NOTICE OF PRELIMINARY INQUIRY HEARING**

You, Newman, Lindsie Number: 13 CR 00050 1B/13 CR 00226 1B

Case #

are advised that an informal Preliminary Inquiry Hearing pertaining to the following alleged violation(s) of your Parole/Probation condition(s) shall be conducted to determine if you shall be held in custody to answer said allegation(s) before the Court/Board at a formal Revocation Hearing:

Alleged Violation
Residence
Controlled Substances
Associates
Laws
Directives and Conduct
Special Condition (3) Abstain from use/possession/control of controlled substances
Special Condition (7) Enter/Completed WRDCP
Financial Obligations
Special Condition (2) Submit to substance abuse intake eval, participate in counseling program

Your Preliminary Inquiry Hearing is scheduled for \_\_\_\_\_  
at Carson City Jail \_\_\_\_\_  
Date Time  
Location

At this hearing, you have these due process rights: to speak in your own behalf; retain counsel, present letters, documents, or persons who can present relevant information, and; question any person giving adverse information against you, unless in the opinion of the hearing officer the individual would be subjected to risk of harm by disclosure of his/her identity.

You may waive this Preliminary Inquiry Hearing if you desire. Should you waive, your action shall in no way be considered an admission of guilt.

Please initial the appropriate response:

\_\_\_\_\_ I desire to have a Preliminary Inquiry Hearing at the date, time, and location indicated above.

\_\_\_\_\_ I will retain \_\_\_\_\_  
Name  
\_\_\_\_\_ to represent me.  
Address

\_\_\_\_\_ I wish to present the following witness (es) at my own expense:

\_\_\_\_\_ Name \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_ Name \_\_\_\_\_ Address \_\_\_\_\_

[Signature] I waive my right to a Preliminary Inquiry Hearing and request to present my case directly to the Court/Board.

[Signature] I have received a copy of the alleged violation(s) of Parole/Probation, and this, my Notice of Rights.

[Signature] Signature of Client \_\_\_\_\_ Number \_\_\_\_\_ Date 3/2/15

Wendy Maxxell Signature of Witness \_\_\_\_\_ Position \_\_\_\_\_ Date 3/2/15