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3 IN THE SUPREME COURT OF THE STATE OF NEVADA

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DEVON RAY HOCKEMIER,

Appellant,

CASE NO. 68333

vs.

THE STATE OF NEVADA,

Respondent.

Appeal From The Fourth Judicial District Court
Of The State of Nevada
In And For The County Of Elko

RESPONDENT'S ANSWERING BRIEF

THE HONORABLE ADAM PAUL LAXALT
ATTORNEY GENERAL OF NEVADA
100 N. CARSON STREET
CARSON CITY, NV 89701

MARK TORVINEN
Elko County District
Attorney's Office
540 Court Street,
Elko, NV 89801

SHERBURNE M. MACFARLAN III
919 Idaho St.
Elko, NV 89801
State Bar No. 3999

By: JEFFREY C. SLADE
State Bar No. 13249

ATTORNEYS FOR
RESPONDENT

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES

- I. Whether the District Court erred by imposing consecutive sentences rather than concurrent sentences.

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1 When it came time to make a ruling, the district court began by
2 agreeing with defense counsel's assertion that these types of cases are
3 very difficult. (JA, p.61). It went on to state that it "struggled with"
4 what its decision should be, "for the reasons stated by *both* attorneys."
5 (JA, p.62) (emphasis added).
6
7

8 After ruling that the sentences would run consecutively, the
9 District Court stated, "I am very mindful of the fact that I've just told a
10 22-year-old he's going to be in prison until he's at least 41 years old. I
11 wish it didn't have to be that way, but it's my judgment that it does."
12 (JA, p.65).
13
14

15 The hearing ended with the District Court expressing hope that
16 Hockemier would follow through with his stated intent to get help while
17 in prison and to, "find some way to make a positive life for [himself]
18 while [he] is there." (JA, p.66).
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1 sexually abusing *two* victims;³ the psychosexual evaluation;⁴ the fact that
2 his victims were 6 and 10 years old;⁵ and that during the abuse of the year
3 old, Hockemier placed his hand over the child's mouth to prevent the
4 child from yelling.⁶

6
7 B. No Abuse of Discretion

8 Hockemier's Brief characterizes the district court's decision as
9 "dramatic."⁷ Doubling the recommendation by Parole and Probation is,
10 however, much less "dramatic" than quintupling it. In Lloyd v. State, the
11 District Court did just that when it sentenced Lloyd to 30 years rather
12 than the 6 recommended by Parole and Probation. See Lloyd v. State, 94
13 Nev. 167, 576 P.2d 740(1978). Even this truly "dramatic" decision was
14 found by this court to *not* be an abuse of discretion. Id. This makes sense
15 in light of the fact that a District Court is not bound by the
16 recommendations of Parole and Probation. See Collins v. State, 88 Nev.
17 168, 494 P.2d 956(1972).

18 Hockemier's Brief contends that the District Court ignored the
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26 ³ JA, p.23, 24.

27 ⁴ JA, p. 27-32.

28 ⁵ JA, p. 23.

⁶ JA, p. 22.

⁷ AOB, p. 4.

1 recommendations of both defense counsel and Parole and Probation.⁸

2 This contention lacks merit for the following three reasons:

3
4 First, the District Court began the sentencing hearing by not
5 only placing on the record Parole and Probation's recommendation, but
6 went so far as to confirm that Hockemier understood it.⁹
7

8 Second, the District Court not only heard, but carefully
9 acknowledged the argument of defense counsel. In reaching its decision,
10 the District Court set a balanced and somber tone by agreeing with
11 defense counsel's framing of the decision as a difficult one.¹⁰ Rather
12 than simply giving a token acknowledgement of the defense counsel's
13 argument, the District Court went so far as to say it wished it did not have
14 to tell a 22 year old that he would be in prison until he was at least 41
15 years old.¹¹
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19 Third, the District Court ended the hearing by coming back to
20 Hockemier's stated intent to get help while in prison by expressing hope
21 that he would.¹²
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26 ⁸ AOB, p. 5.

27 ⁹ JA, p. 41.

28 ¹⁰ JA, p.62.

¹¹ JA, p.65.

¹² JA, p.66.

1 CONCLUSION

2 It is respectfully submitted that the District Court did not err
3
4 when it sentenced Hockemier to consecutive sentences. Accordingly, the
5 State requests that the District Court's decision be affirmed.

6 RESPECTFULLY SUBMITTED this 11 day of January,
7
8 2016.

9 MARK TORVINEN
10 Elko County District Attorney

11 By: 

12 JEFFREY C. SLADE
13 Deputy District Attorney
14 State Bar Number: 13249

15 CERTIFICATE OF COMPLIANCE

16
17 I hereby certify that this Respondent's Answering Brief complies
18 with the formatting requirements of NRAP 32(a)(4), the typeface
19 requirements of NRAP 32(a)(5) and the type style requirements of NRAP
20 32(a)(6). This Respondent's Answering Brief has been prepared in a
21 proportionally spaced typeface using Microsoft Office Word 2007, in
22 size 14 point Times New Roman font.
23
24

25 I further certify that this brief complies with the page or type-
26 volume limitations of NRAP 32(a)(7) because, excluding the parts of the
27
28

1 Respondent's Answering Brief exempted by NRAP32(a)(7)(C), because
2 it contains 931 words.
3

4 I hereby certify that I have read the Respondent's Answering Brief,
5 and to the best of my knowledge, information, and belief, it is not
6 frivolous or interposed for any improper purpose. I further certify that
7 this brief complies with all applicable Nevada Rules of Appellate
8 Procedure, in particular NRAP 28(e), which requires every assertion in
9 the brief regarding matters in the record to be supported by appropriate
10 references to the record on appeal. I understand that I may be subject to
11 sanctions in the event that the accompanying brief is not in conformity
12 with the requirements of the Nevada Rules of Appellate Procedure.
13
14
15

16 DATED this 11 day of January, 2016.
17

18 MARK TORVINEN
19 Elko County District Attorney
20 540 Court Street, 2nd Floor
21 Elko, NV 89801

22 By: 

23 JEFFREY C. SLADE
24 Deputy District Attorney
25 State Bar Number: 13249
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Honorable Adam Paul Laxalt
Nevada Attorney General

and


ANGIE FITCH
CASEWORKER

DA#: AP 00043