

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

No. 70587

Electronically Filed  
Oct 02 2017 08:28 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

V.

Respondent.

**APPELLANT'S APPENDIX VOLUME VII PAGES 1464-1589**

STEVE WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

ADAM LAXALT  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

Counsel for Respondent

**INDEX**  
**JASON RICHARD LOFTHOUSE**  
**Case No. 70587**

	<u>PAGE NO.</u>
Amended Criminal Complaint filed 07/09/15 .....	9-14
Amended Information filed 07/16/15 .....	21-27
Amended Jury List filed 03/24/16 .....	235
Amended Reply to State's Response to Defendant's Motion to Correct Illegal Sentence Date of Hrg: 06/08/17 .....	1537-1547
Amended Supplemental Notice of Witnesses And/Or Expert Witnesses filed 02/24/16 .....	221-225
Certification filed 06/16/17 .....	1582-1584
Correspondence from Nevada Department of Corrections Requesting Correction of Judgment of Conviction dated 05/18/17 .....	1485-1487
Correspondence Regarding Amended Judgment of Conviction dated 07/24/17 .....	1585-1589
Court's Exhibits List .....	1466
Court Exhibit 6 dated 03/25/16 .....	1467
Criminal Complaint filed 06/05/15 .....	1-2
Defendant's Motion in Limine to Preclude the State from Introducing or Attempting to Introduce Evidence of Any Other Actual or Potential Victims filed 03/16/16 .....	229-233
Defendant's Opposition to Motion to Preclude Defense Presentation of Jury Nullification Arguments filed 02/02/16 .....	207-209
Defendant's Proposed Jury Instructions Not Used at Trial filed 03/20/16 .....	263-264
Defendant's Sentencing Memorandum filed 05/12/16 .....	269-379
District Court Minutes from 07/20/15 through 06/21/16 .....	393-417
Information filed 07/16/15 .....	15-20
Instructions to the Jury filed 03/25/16 .....	236-262
Judgment of Conviction filed 05/20/16 .....	380-382
Judgment of Conviction filed 05/20/16 .....	1488-1490

1	Jury List filed 03/21/16.....	234
2	Justice Court Minutes from 06/04/15 through 07/09/15 .....	3-8
3	Motion to Associate Counsel	
4	Date of Hrg: 10/15/15.....	180-197
5	Motion to Correct Illegal Sentence	
6	Date of Hrg: 06/08/17.....	1491-1520
7	Motion to Withdraw as Counsel of Record and for an Order Appointing the Office of the Public Defender	
8	Date of Hrg: 06/09/16.....	383-388
9	Notice of Appeal filed 06/09/16.....	389-390
10	Notice of Motion and Motion to Preclude Defense Presentation of Jury Nullification Arguments	
11	Date of Hrg: 01/12/16.....	202-206
12	Notice of Witnesses And/Or Expert Witnesses filed 12/29/15 .....	210-212
13	Order Admitting to Practice filed 10/01/15.....	200-201
14	Order Granting Motion to Withdraw filed 06/14/16 .....	391-392
15	Order that Writ of Habeas Corpus Issue filed 09/18/15 .....	172
16	Petition for Writ of Habeas Corpus (Pre-Trial) filed on 08/20/15 .....	124-171
17	Petitioner's Traverse filed 09/15/15 .....	173-179
18	Presentence Investigation Report dated 05/03/16 .....	1468-1475
19	Reply to State's Response to Defendant's Motion to Correct Illegal Sentence	
20	Date of Hrg: 06/08/17.....	1526-1536
21	Second Amended Information filed 01/13/16 .....	213-217
22	Second Supplemental Notice of Witnesses And/Or Expert Witnesses filed 03/04/16.....	226-228
23	State's Exhibits List.....	1464-1465
24	State's Response to Defendant's Motion to Correct Illegal Sentence	
25	Date of Hrg: 06/08/17.....	1521-1525
26	Substitution of Attorney filed 10/01/15.....	198-199
27	Supplemental Notice of Witnesses And/Or Expert Witnesses filed 02/22/16.....	218-220
28	Supplemental Presentence Investigation Report dated 05/13/16 .....	1476-1484
	Verdict filed 03/25/16.....	265-268

## **TRANSCRIPTS**

1		
2		
3	Recorder's Transcript	
3	Preliminary Hearing	
4	Date of Hrg: 07/09/15.....	28-123
4		
5	Recorder's Transcript	
5	Defendant's Motion to Correct Illegal Sentence	
6	Date of Hrg: 06/08/17.....	1560-1571
6		
7	Recorder's Transcript	
7	Defendant's Motion to Correct Illegal Sentence	
8	Date of Hrg: 06/22/17.....	1572-1574
8		
9	Recorder's Transcript	
9	Defendant's Motion to Correct Illegal Sentence	
10	Date of Hrg: 07/13/17.....	1575-1581
10		
11	Recorder's Transcript	
11	Initial Arraignment	
12	Date of Hrg: 07/20/15.....	418-420
12		
13	Recorder's Transcript	
13	Status Check: Clarification of Sentence	
14	Date of Hrg: 05/18/17.....	1548-1559
14		
15	Reporter's Transcript	
15	Date of Hrg: 09/22/15.....	421-429
16		
16	Reporter's Transcript	
17	Date of Hrg: 10/01/15.....	430-446
17		
18	Reporter's Transcript	
18	Date of Hrg: 11/10/15.....	447-456
19		
19	Reporter's Transcript	
20	Date of Hrg: 12/02/15.....	457-488
20		
21	Reporter's Transcript	
21	Date of Hrg: 01/12/16.....	489-501
22		
22	Reporter's Transcript	
23	Date of Hrg: 02/09/16.....	502-507
23		
24	Reporter's Transcript	
24	<b>Jury Trial Day 1</b>	
25	Date of Hrg: 03/21/16.....	508-866
25		
26	Reporter's Transcript	
26	<b>Jury Trial Day 2</b>	
27	Date of Hrg: 03/22/16.....	867-1005
27		
28		

1	Reporter's Transcript	
2	<b>Jury Trial Day 3</b>	
	Date of Hrg: 03/23/16.....	1006-1219
3	Reporter's Transcript	
4	<b>Jury Trial Day 4</b>	
	Date of Hrg: 03/24/16.....	1229-1398
5	Reporter's Transcript	
6	<b>Jury Trial Day 5</b>	
	Date of Hrg: 03/25/16.....	1399-1407
7	Reporter's Transcript	
8	Jury Verdict	
	Date of Hrg: 03/25/16.....	1408-1421
9	Reporter's Transcript	
10	Sentencing	
	Date of Hrg: 05/17/16.....	1422-1463
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

STATE'S EXHIBITS

CASE NO. C 307937

	Date Offered	Objection	Date Admitted
1. MESSAGES BETWEEN DEFT AND MICHELLE			
2. TEXT MESSAGES			
3. CELL PHONE - DUD			
4. ALIANTE HOTEL PAPERWORK	3/21	STIP	3/21/16
5. CANNERY HOTEL PAPERWORK	3/21	STIP	3/21/16
6. DUD - CANNERY VIDEO	3/21	STIP	3/21/16
7. PHOTO - DEFT KISSING IN ELEVATOR	3/24	N/O	3/24/16
8. " - DEFT EXITING ELEVATOR	3/24	N/O	3/24/16
9. " - SELFIE PHOTO - DEFT	3/23	N/O	3/23/16
10. " - HOTEL ROOM - ALIANTE	3/23	N/O	3/23/16
11. PHOTO - DEFT'S CLASSROOM #803	3/22	N/O	3/22/16
12. " - DEFT'S CLASSROOM #803 - WINDOWS/HALL	3/22	N/O	3/22/16
13. " - CLASSROOM #803 - FACING SOUTH	3/22	N/O	3/22/16
14. " - CLASSROOM #803 - LOOKING WEST	3/22	N/O	3/22/16
15. " - CLASSROOM #803 - FROM SOUTHWEST CORNER. (WEST)	3/22	N/O	3/22/16
16. " - CLASSROOM #803 - FROM SOUTHWEST CORNER. (EAST)	3/22	N/O	3/22/16
17. PHOTO - CLASSROOM #803 LOOKING THROUGH WINDOW. DOOR	3/22	N/O	3/22/16
18. " - CLASSROOM #803 AT DOOR	3/22	N/O	3/22/16
19. " - CLASSROOM #803 AT DOOR - LOOKING WEST	3/22	N/O	3/22/16
20. " - CLASSROOM #803 - DEFT'S COMPUTER	3/22	N/O	3/22/16
21. REDACTED E-MAILS	3/23	STIP	3/23/16
22. SMALL EVIDENCE ENVELOPE	3/24	N/O	3/24/16
A. APPLE PHONE - TORRES	3/24	N/O	3/24/16

STATE'S

## EXHIBITS

CASE NO. C307937

[illegible]

## EXHIBITS

CASE NO. C307937

WITNESS  
IT

Date Offered	Objection	Date Admitted
--------------	-----------	---------------

[illegible]



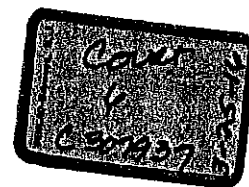
#10

- May we read transcript for the definition of enticement - provided by the female attorney in her rebuttal closing argument? - Thank you  
OR

- can we have the definition of "enticement"?

or a dictionary?

↑  
legal



MAR 25 2016

## PRESENTENCE INVESTIGATION REPORT

The Honorable Eric Johnson  
Department XX, Clark County  
Eighth Judicial District Court

Date Report Prepared: May 3, 2016

---

Prosecutor: Stacey Kollins, Chief DDA  
Defense Attorney: Jason Margolis, Retained

PSI: 491296

### I. CASE INFORMATION

Defendant: Jason Richard Lofthouse  
Case: C-15-307937-1  
ID: 7019775  
P&P Bin: 1004108214

PCN: 25566681  
Offense Date: On or between 05-06-15  
and 05-28-15  
Arrest Date: 06-04-15  
Plea Date: 03-25-16, Jury Trial  
Sentencing Date: 05-17-16

### II. CHARGE INFORMATION

Offense: Counts 1, 3, 4, 5, 6, 7, 9, 10, 11, 12 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)

NRS: 201.540.1(c)

Category: C

NOC: 51067

Penalty: Imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute, each count.

Offense: Counts 2 & 8 – First Degree Kidnapping (F)

NRS: 200.310, 200.320

Category: A

NOC: 50053

Penalty: Imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served; or for a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served, each count.

**III. DEFENDANT INFORMATION**

Address: 10263 Kadumba St.  
City/State/Zip: Las Vegas, Nevada 89178  
NV Resident: Yes  
SSN: 325-72-1505  
POB: Peoria, Illinois  
Date of Birth: 09-03-82  
Age: 33  
Phone: (574) 286-4162 (cell)  
Driver's License: 1603656006  
State: Nevada  
Status: Valid

FBI: 530180FH8  
SID: NV04523506  
Aliases: Jason Lofthouse  
Additional SSNs: None reported  
Additional DOBs: None reported  
Additional POB: None reported  
Alien Registration: N/A  
US Citizen: Yes  
Notification Required per NRS 630.307: N/A

**Identifiers:**

Sex: M                      Race: W                      Height: 6'4"                      Weight: 180 (SCOPE reflects: 190)  
Hair: Blonde                      Eyes: Blue  
Scars: Chest 4"  
Tattoos (type and location): None reported

**Social History:** The following social history is as related by the defendant and is unverified unless otherwise noted:

**Childhood/Family:** The defendant was born in Illinois and grew up in Indiana. He reported his relationship with his family as "strained." He also reported having an unhappy childhood because the relationship between his parents, after their divorce when he was eight years old, was not good; this kind of affected him and his sister.

**Marital Status:** Married – 2005

**Children:** (3) Two daughters age three years and one son and one year.

**Custody Status of Children:** The defendant and his wife have custody of their children.

**Monthly Child Support Obligation:** None reported

**Employment Status:** The defendant has been unemployed since September 2015. From 2010 to September 2015 he worked at Rancho High School as a teacher. The victim in the Instant Offense was a pupil at Rancho High School. He also has retail experience through previous employment endeavors.

**Number of Months Employed Full Time in 12 months Prior to Commission of Instant Offense:** 12

**Age at first arrest:** 19 or younger ☐                      20- 23 ☐                      24 or older ☒

**Income:** None reported

**Other Sources:** \$2,500 (Spouse's income)

**Assets:** \$300,000 (Car and house)

**Debts:** \$6,000-\$7,000 (Credit cards and student loan)

**Education:** The defendant received his Master's degree in education in 2009.

**Military Service:** None reported

**Health and Medical History:** The defendant rated his physical health as "good."

**Mental Health History:** The defendant has never participated in mental health counseling. He reported that in 1998, he attempted suicide because he felt worthless, unimportant and no one would miss him. The defendant has not attempted suicide since that time.

**Gambling History:** No history reported

**Substance Abuse History:** The defendant first consumed alcohol at the age of 17. He used alcohol on a casual basis and his last reported use was eleven months ago. He reported no use of any controlled substances.

**Gang Activity/Affiliation:** None reported

#### IV. CRIMINAL RECORD

As of May 3, 2016, records of the Las Vegas Metropolitan Police Department, the National Crime Information Center and the Federal Bureau of Investigation reflect the following information:

**CONVICTIONS-**      **FEL:** 0                              **GM:** 0                              **MISD:** 0

**INCARCERATIONS-**              **PRISON:** 0                              **JAIL:** 0

**SUPERVISION HISTORY:**

**CURRENT-**      **Probation Terms:** 0                              **Parole Terms:** 0

**PRIOR TERMS:**

**Probation-**      **Revoked:** 0                              **Discharged:**      **Honorable:** 0      **Other:** 0

**Parole-**              **Revoked:** 0                              **Discharged:**      **Honorable:** 0      **Other:** 0

**Adult:**

<b>Arrest Date:</b>	<b>Offense:</b>	<b>Disposition:</b>
06-04-15	1. Sex Act, Adult School	Instant Offense,
Las Vegas, NV	Employee/Volunteer with Pupil, 16-17 (F)	CC#:C-15-307937-1
CCSD	2. Kidnapping, 1st Degree (F)	
	3. Contribute to Delinquency of Minor (M)	
	RMD: 07-09-15	
	1. Sex Act, Adult School	
	Employee/Volunteer with Pupil, 16-17 (F)	
	(6 Counts)	
	2. Open/Gross Lewdness (1st) (GM)	
	(2 Counts)	

Supplemental Information: N/A

Institutional/Supervision Adjustment: N/A

#### V. OFFENSE SYNOPSIS

Records provided by the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On June 3, 2015, an officer with the Las Vegas Metropolitan Police Department responded to Rancho High School regarding a rumor that a student was having sexual relations with a teacher. Information was received from another teacher who stated a student came to her in confidence and reported that a friend of hers was having a sexual relationship with a teacher, identified as the defendant Jason Lofthouse. Further investigation revealed that the victim (DOB 10-22-97) told her friend she was having a "thing" with Mr. Lofthouse. The officer attempted to make contact with the victim at school; however, she was not in her classroom. An unknown student told the officer the victim was in Mr. Lofthouse's classroom. The officer went to Mr. Lofthouse's room and attempted to enter but the door was locked. The officer gained entry and saw Mr. Lofthouse and the victim close to one another. When the officer entered Mr. Lofthouse separated himself from the victim. The officer then escorted the victim to the office to be interviewed.

During the interview, the victim stated she was aware of rumors that Mr. Lofthouse and she had a thing going on and confirmed that he was her teacher, and described their relationship as close. She stated Mr. Lofthouse was a mentor and she enjoyed talking to him as a student to teacher relationship. The victim stated she never met Mr. Lofthouse outside of school but did admit they had been alone in his classroom several times. She stated they have spoken outside of school but only on Twitter and denied ever sleeping with Mr. Lofthouse.

Later that day, the victim admitted to her father that she had sex with Mr. Lofthouse. The victim was interviewed for a second time by the officer at the Child Advocacy Center. The victim stated that she and Mr. Lofthouse started talking sometime in January or February of 2015. She stated they would communicate almost on a daily basis on Twitter. The victim stated they were texting each other a lot on a daily basis and met him twice outside of school. She admitted he picked her up twice and took her to a hotel. When asked what led up to these meetings, the victim admitted to going into his class several times a week. The victim stated she and Mr. Lofthouse started kissing in his classroom a week or two prior to their first encounter at a hotel. The victim stated it was an everyday occurrence that she and Mr. Lofthouse would kiss in his classroom. The victim identified May 20<sup>th</sup> as the first day Mr. Lofthouse picked her up outside her residence and took her to a hotel. The victim said prior to that, she went to his classroom and performed oral sex on him. The officer asked the victim if Mr. Lofthouse ejaculated and she stated yes. The officer asked what led to the oral sex and she stated they were kissing and touching each other. She stated Mr. Lofthouse was touching her on her breasts and butt, but not her vagina. The victim stated after the oral sex they continued to text and Mr. Lofthouse suggested getting a hotel room. The officer asked if at any point in time Mr. Lofthouse had permission from her parents to pick her up or drive her anywhere and she stated no.

The victim stated Mr. Lofthouse picked her up on May 20, 2015, and drove her to the Aliante Hotel and Casino. The victim stated they walked into the hotel room and started kissing and touching each other. The victim stated she gave Mr. Lofthouse oral sex and Mr. Lofthouse ejaculated in her mouth. Then they showered together. After the shower they lay on the bed and talked. They talked for approximately an hour and then they had sex. The victim stated his penis went into her vagina and Mr. Lofthouse's back was on the bed and she was on top of him. The victim stated at no point during sex or oral sex did Mr. Lofthouse wear a condom. The victim stated after sex they sat on the bed and talked again. They had sex again and the victim stated this time

Mr. Lofthouse ejaculated on her stomach. The victim admitted she and Mr. Lofthouse had sex a third time as well. The victim stated they talked for a while then got dressed and left the hotel.

The victim stated the second time she met Mr. Lofthouse outside of school was on May 28, 2015. The victim stated they were texting every day and she was going to his classroom on a daily basis. The same things were happening in his classroom. The victim described these things as kissing and making out. The officer asked her how many times she performed oral sex on Mr. Lofthouse and she stated twice in his classroom. On May 28<sup>th</sup> Mr. Lofthouse picked her up and took her to the Cannery. Once in the room, they began making out and started taking each other's clothes off. The victim stated Mr. Lofthouse was touching her breasts, butt and vagina. The victim said she and Mr. Lofthouse had sex on the bed. The victim stated after sex, she and Mr. Lofthouse went to the shower and they kissed but not much else. They had sex again. The victim stated maybe they had sex a third time but she did not remember. They both got dressed got dressed, left the hotel, and Mr. Lofthouse dropped her off.

On June 4, 2015, the officer went to the Cannery and spoke with the surveillance room supervisor. The officer was provided with images from the casino surveillance showing Mr. Lofthouse and the victim inside of the elevator kissing.

Mr. Lofthouse was arrested and transported to the Clark County Detention Center where he was booked accordingly.

Co-Defendant/Offender Information: N/A

**VI. DEFENDANT'S STATEMENT**

☐ See Attached      ☒ Defendant interviewed, no statement submitted      ☐ Defendant not interviewed

**VII. VICTIM INFORMATION/STATEMENT**

A Victim Impact Statement was mailed to the victim (VC2235338) on April 11, 2016; however, as of the date of this report no information has been received. Telephone contact was also attempted to no avail. If the requested information is received after this report has been submitted, it will be provided to the court at sentencing.

Contact was made with the Clark County Victim Witness Assistance Center who indicated no contact with the victim. Contact was made with the State of Nevada Victims of Crime who indicated the victim's claim was approved; however, as of the date of this report no monies have been paid. Contact was also made with Clark County Social Services; however, as of the date of this report no information has been received.

**VIII. CUSTODY STATUS/CREDIT FOR TIME SERVED**

Custody Status: In Custody, CCDC

CTS: 349 DAYS; 06-04-15 to 05-17-16 (CCDC)

**IX. PLEA NEGOTIATIONS**

N/A; Found guilty at trial

**X. RECOMMENDATIONS**

Based on information obtained and provided in this report, the following recommendations are submitted.

190 Day Regimental Discipline Program: N/A      Deferred Sentence Per NRS 453.3363, 458.300,  
458A.200, 176A.250, 176A.280: N/A

**FEES**

Administrative Assessment: \$25.00	Chemical/Drug Analysis: N/A	DNA: \$150.00
DNA Admin Assessment: \$3.00		
Domestic Violence Fee: N/A	Extradition: N/A	Psychosexual Fee: N/A

**SENTENCE**

**Count 1 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**  
Minimum Term: 12 months      Maximum Term: 36 months      Location: NDOC

Consecutive to/Concurrent With: N/A	Probation Recommended: No	Probation Term: N/A
Fine: None	Restitution: None	Mandatory Probation/ Prison: N/A

**Count 2 – First Degree Kidnapping (F)**  
Minimum Term: N/A

Maximum Term: Definite term of 15 years, with eligibility for parole  
beginning when a minimum of 5 years  
has been served

Consecutive to: Count 1	Probation Recommended: No	Probation Term: N/A
Fine: N/A	Restitution: None	Mandatory Prison: Yes

**Count 3 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**  
Minimum Term: 12 months      Maximum Term: 36 months      Location: NDOC

Concurrent With: Count 2	Probation Recommended: No	Probation Term: N/A
Fine: None	Restitution: None	Mandatory Probation/ Prison: N/A

**Count 4 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**  
Minimum Term: 12 months      Maximum Term: 36 months      Location: NDOC

Concurrent With: Count 3	Probation Recommended: No	Probation Term: N/A
Fine: None	Restitution: None	Mandatory Probation/ Prison: N/A

**Count 5 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 4	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 6 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 5	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 7 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 6	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 8 – First Degree Kidnapping (F)**

<b>Minimum Term:</b> N/A	<b>Maximum Term:</b> Definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 7	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> N/A	<b>Restitution:</b> None	<b>Mandatory Prison:</b> Yes

**Count 9 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 8	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 10 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 9	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 11 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 10	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A



Count 12 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)

Minimum Term: 12 months

Maximum Term: 36 months

Location: NDOC

Concurrent With: Count 11

Probation Recommended: No

Probation Term: N/A

Fine: None

Restitution: None

Mandatory Probation/  
Prison: N/A

Per NRS 179D.460, the defendant shall register as a sex offender within 48 hours of sentencing or release from custody.

☒ Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

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

Per the Nevada Supreme Court opinion in Stockmeier v. Nevada Board of Parole Commissioners et al., any changes to factual allegations in the Presentence Investigation Report must be made at or before sentencing. Permanent changes to Criminal History must be initiated by the defendant by submitting a written request to the Criminal History Repository in the reporting state.

The information used in the Presentence Investigation Report may be utilized reviewed by federal, state and/or local agencies for the purpose of prison classification, program eligibility and parole consideration.

In accordance with current Interstate Commission for Adult Offender Supervision rules and requirements, all felony convictions and certain [gross] misdemeanants are offense eligible for compact consideration. Due to Interstate Compact standards, this conviction may or may not be offense eligible for courtesy supervision in the defendant's state of residence. If not offense eligible, the Division may still authorize the offender to relocate to their home state and report by mail until the term of probation is complete and/or the case has been completely resolved.

Respectfully Submitted,

Natalie A. Wood, Chief

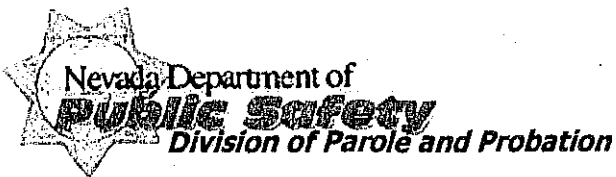
Report prepared by: L. LaBranche  
DPS Parole and Probation, Specialist IV

Approved by:

N. Antonucci

Nora Antonucci, DPS Parole and Probation Supervisor  
Southern Command, Las Vegas

Original signature on file



## SUPPLEMENTAL PRESENTENCE INVESTIGATION REPORT

The Honorable Eric Johnson  
Department XX, Clark County  
Eighth Judicial District Court

Date Report Prepared: May 13, 2016

Prosecutor: Stacey Kollins, Chief DDA  
Defense Attorney: Jason Margolis, Retained

PSI: 494022

### I. CASE INFORMATION

Defendant: Jason Richard Lofthouse  
Case: C-15-307937-1  
ID: 7019775  
P&P Bin: 1004108214

PCN: 25566681  
Offense Date: On or between 05-06-15  
and 05-28-15  
Arrest Date: 06-04-15  
Plea Date: 03-25-16, Jury Trial  
Sentencing Date: 05-17-16

### II. CHARGE INFORMATION

Offense: Counts 1, 3, 4, 5, 6, 7, 9, 10, 11, 12 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)

NRS: 201.540.1(c)

Category: C

NOC: 51067

Penalty: Imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute, each count.

Offense: Counts 2 & 8 – First Degree Kidnapping (F)

NRS: 200.310, 200.320

Category: A

NOC: 50053

Penalty: Imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served; or for a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served, each count.

**III. DEFENDANT INFORMATION**

**Address:** 10263 Kadumba St.  
**City/State/Zip:** Las Vegas, Nevada 89178  
**NV Resident:** Yes  
**SSN:** 325-72-1505  
**POB:** Peoria, Illinois  
**Date of Birth:** 09-03-82  
**Age:** 33  
**Phone:** (574) 286-4162 (cell)  
**Driver's License:** 1603656006  
**State:** Nevada  
**Status:** Valid

**FBI:** 530180FH8  
**SID:** NV04523506  
**Aliases:** Jason Lofthouse  
**Additional SSNs:** None reported  
**Additional DOBs:** None reported  
**Additional POB:** None reported  
**Alien Registration:** N/A  
**US Citizen:** Yes  
**Notification Required per NRS 630.307:** N/A

**Identifiers:**

**Sex:** M                      **Race:** W                      **Height:** 6'4"                      **Weight:** 180 (SCOPE reflects: 190)  
**Hair:** Blonde                      **Eyes:** Blue  
**Scars:** Chest 4"  
**Tattoos (type and location):** None reported

**Social History:** The following social history is as related by the defendant and is unverified unless otherwise noted:

**Childhood/Family:** The defendant was born in Illinois and grew up in Indiana. He reported his relationship with his family as "strained." He also reported having an unhappy childhood because the relationship between his parents, after their divorce when he was eight years old, was not good; this kind of affected him and his sister.

**Marital Status:** Married – 2005

**Children:** (3) Two daughters age three years and one son and one year.

**Custody Status of Children:** The defendant and his wife have custody of their children.

**Monthly Child Support Obligation:** None reported

**Employment Status:** The defendant has been unemployed since September 2015. From 2010 to September 2015 he worked at Rancho High School as a teacher. The victim in the Instant Offense was a pupil at Rancho High School. He also has retail experience through previous employment endeavors.

**Number of Months Employed Full Time in 12 months Prior to Commission of Instant Offense:** 12

**Age at first arrest:** 19 or younger ☐                      20- 23 ☐                      24 or older ☒

**Income:** None reported                      **Other Sources:** \$2,500 (Spouse's income)

**Assets:** \$300,000 (Car and house)

**Debts:** \$6,000-\$7,000 (Credit cards and student loan)

**Gang Activity/Affiliation:** None reported

## 1478

JASON RICHARD LOFTHOUSE

CC#: C-15-307937-1

Supplemental Information: N/A

Institutional/Supervision Adjustment: N/A

V. OFFENSE SYNOPSIS

Records provided by the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On June 3, 2015, an officer with the Las Vegas Metropolitan Police Department responded to Rancho High School regarding a rumor that a student was having sexual relations with a teacher. Information was received from another teacher who stated a student came to her in confidence and reported that a friend of hers was having a sexual relationship with a teacher, identified as the defendant Jason Lofthouse. Further investigation revealed that the victim (DOB 10-22-97) told her friend she was having a "thing" with Mr. Lofthouse. The officer attempted to make contact with the victim at school; however, she was not in her classroom. An unknown student told the officer the victim was in Mr. Lofthouse's classroom. The officer went to Mr. Lofthouse's room and attempted to enter but the door was locked. The officer gained entry and saw Mr. Lofthouse and the victim close to one another. When the officer entered Mr. Lofthouse separated himself from the victim. The officer then escorted the victim to the office to be interviewed.

During the interview, the victim stated she was aware of rumors that Mr. Lofthouse and she had a thing going on and confirmed that he was her teacher, and described their relationship as close. She stated Mr. Lofthouse was a mentor and she enjoyed talking to him as a student to teacher relationship. The victim stated she never met Mr. Lofthouse outside of school but did admit they had been alone in his classroom several times. She stated they have spoken outside of school but only on Twitter and denied ever sleeping with Mr. Lofthouse.

Later that day, the victim admitted to her father that she had sex with Mr. Lofthouse. The victim was interviewed for a second time by the officer at the Child Advocacy Center. The victim stated that she and Mr. Lofthouse started talking sometime in January or February of 2015. She stated they would communicate almost on a daily basis on Twitter. The victim stated they were texting each other a lot on a daily basis and met him twice outside of school. She admitted he picked her up twice and took her to a hotel. When asked what led up to these meetings, the victim admitted to going into his class several times a week. The victim stated she and Mr. Lofthouse started kissing in his classroom a week or two prior to their first encounter at a hotel. The victim stated it was an everyday occurrence that she and Mr. Lofthouse would kiss in his classroom. The victim identified May 20<sup>th</sup> as the first day Mr. Lofthouse picked her up outside her residence and took her to a hotel. The victim said prior to that, she went to his classroom and performed oral sex on him. The officer asked the victim if Mr. Lofthouse ejaculated and she stated yes. The officer asked what led to the oral sex and she stated they were kissing and touching each other. She stated Mr. Lofthouse was touching her on her breasts and butt, but not her vagina. The victim stated after the oral sex they continued to text and Mr. Lofthouse suggested getting a hotel room. The officer asked if at any point in time Mr. Lofthouse had permission from her parents to pick her up or drive her anywhere and she stated no.

The victim stated Mr. Lofthouse picked her up on May 20, 2015, and drove her to the Aliante Hotel and Casino. The victim stated they walked into the hotel room and started kissing and touching each other. The victim stated she gave Mr. Lofthouse oral sex and Mr. Lofthouse ejaculated in her mouth. Then they showered together. After the shower they lay on the bed and talked. They talked for approximately an hour and then they had sex. The victim stated his penis went into her vagina and Mr. Lofthouse's back was on the bed and she was on top of him. The victim stated at no point during sex or oral sex did Mr. Lofthouse wear a condom. The victim stated after sex they sat on the bed and talked again. They had sex again and the victim stated this time

Mr. Lofthouse ejaculated on her stomach. The victim admitted she and Mr. Lofthouse had sex a third time as well. The victim stated they talked for a while then got dressed and left the hotel.

The victim stated the second time she met Mr. Lofthouse outside of school was on May 28, 2015. The victim stated they were texting every day and she was going to his classroom on a daily basis. The same things were happening in his classroom. The victim described these things as kissing and making out. The officer asked her how many times she performed oral sex on Mr. Lofthouse and she stated twice in his classroom. On May 28<sup>th</sup> Mr. Lofthouse picked her up and took her to the Cannery. Once in the room, they began making out and started taking each other's clothes off. The victim stated Mr. Lofthouse was touching her breasts, butt and vagina. The victim said she and Mr. Lofthouse had sex on the bed. The victim stated after sex, she and Mr. Lofthouse went to the shower and they kissed but not much else. They had sex again. The victim stated maybe they had sex a third time but she did not remember. They both got dressed got dressed, left the hotel, and Mr. Lofthouse dropped her off.

On June 4, 2015, the officer went to the Cannery and spoke with the surveillance room supervisor. The officer was provided with images from the casino surveillance showing Mr. Lofthouse and the victim inside of the elevator kissing.

Mr. Lofthouse was arrested and transported to the Clark County Detention Center where he was booked accordingly.

**Co-Defendant/Offender Information:** N/A

**VI. DEFENDANT'S STATEMENT**

☐ See Attached    ☒ Defendant interviewed, no statement submitted    ☐ Defendant not interviewed

**VII. VICTIM INFORMATION/STATEMENT**

A Victim Impact Statement was mailed to the victim (VC2235338) on April 11, 2016; however, as of the date of this report no information has been received. Telephone contact was also attempted to no avail. If the requested information is received after this report has been submitted, it will be provided to the court at sentencing.

Contact was made with the Clark County Victim Witness Assistance Center who indicated no contact with the victim. Contact was made with the State of Nevada Victims of Crime who indicated the victim's claim was approved; however, as of the date of this report no monies have been paid. Contact was also made with Clark County Social Services; however, as of the date of this report no information has been received.

**VIII. CUSTODY STATUS/CREDIT FOR TIME SERVED**

**Custody Status:** In Custody, CCDC

**CTS:** 349 DAYS: 06-04-15 to 05-17-16 (CCDC)

**IX. PLEA NEGOTIATIONS**

N/A; Found guilty at trial

JASON RICHARD LOFTHOUSE

CC#: C-15-307937-1

**X. RECOMMENDATIONS**

Based on information obtained and provided in this report, the following recommendations are submitted.

**190 Day Regimental Discipline Program: N/A****Deferred Sentence Per NRS 453.3363, 458.300, 458A.200, 176A.250, 176A.280: N/A****FEES****Administrative Assessment: \$25.00****Chemical/Drug Analysis: N/A****DNA: \$150.00****DNA Admin Assessment: \$3.00****Domestic Violence Fee: N/A****Extradition: N/A****Psychosexual Fee: N/A****SENTENCE****Count 1 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)****Minimum Term: 12 months****Maximum Term: 36 months****Location: NDOC****Consecutive to/Concurrent With: N/A****Probation Recommended: No****Probation Term: N/A****Fine: None****Restitution: None****Mandatory Probation/  
Prison: N/A****Count 2 – First Degree Kidnapping (F)****Minimum Term: N/A****Maximum Term: Definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served****Location: NDOC****Consecutive to: Count 1****Probation Recommended: No****Probation Term: N/A****Fine: N/A****Restitution: None****Mandatory Prison: Yes****Count 3 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)****Minimum Term: 12 months****Maximum Term: 36 months****Location: NDOC****Concurrent With: Count 2****Probation Recommended: No****Probation Term: N/A****Fine: None****Restitution: None****Mandatory Probation/  
Prison: N/A****Count 4 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)****Minimum Term: 12 months****Maximum Term: 36 months****Location: NDOC****Concurrent With: Count 3****Probation Recommended: No****Probation Term: N/A****Fine: None****Restitution: None****Mandatory Probation/  
Prison: N/A**

**Count 5 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 4	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 6 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 5	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 7 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 6	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 8 – First Degree Kidnapping (F)**

<b>Minimum Term:</b> N/A	<b>Maximum Term:</b> Definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 7	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> N/A	<b>Restitution:</b> None	<b>Mandatory Prison:</b> Yes

**Count 9 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 8	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 10 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 9	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A

**Count 11 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)**

<b>Minimum Term:</b> 12 months	<b>Maximum Term:</b> 36 months	<b>Location:</b> NDOC
<b>Concurrent With:</b> Count 10	<b>Probation Recommended:</b> No	<b>Probation Term:</b> N/A
<b>Fine:</b> None	<b>Restitution:</b> None	<b>Mandatory Probation/Prison:</b> N/A



**PRESENTENCE INVESTIGATION REPORT**  
**JASON RICHARD LOFTHOUSE**  
**CC#: C-15-307937-1**

**Page 8**

<b>Count 12 – Sexual Misconduct between Certain Employees or Volunteers of School and Pupil (F)</b>		
<b>Minimum Term: 12 months</b>	<b>Maximum Term: 36 months</b>	<b>Location: NDOC</b>
<b>Concurrent With: Count 11</b>	<b>Probation Recommended: No</b>	<b>Probation Term: N/A</b>
<b>Fine: None</b>	<b>Restitution: None</b>	<b>Mandatory Probation/ Prison: N/A</b>

Per NRS 179D.460, the defendant shall register as a sex offender within 48 hours of sentencing or release from custody. The Court will include as part of this sentence, in addition to any other penalties provided by law, lifetime supervision commencing after any period of probation or any term of imprisonment and period of release upon parole; said special sentence of lifetime supervision must begin upon release from incarceration.

☒ Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

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

Per the Nevada Supreme Court opinion in Stockmeier v. Nevada Board of Parole Commissioners et al., any changes to factual allegations in the Presentence Investigation Report must be made at or before sentencing. Permanent changes to Criminal History must be initiated by the defendant by submitting a written request to the Criminal History Repository in the reporting state.

The information used in the Presentence Investigation Report may be utilized reviewed by federal, state and/or local agencies for the purpose of prison classification, program eligibility and parole consideration.

In accordance with current Interstate Commission for Adult Offender Supervision rules and requirements, all felony convictions and certain [gross] misdemeanants are offense eligible for compact consideration. Due to Interstate Compact standards, this conviction may or may not be offense eligible for courtesy supervision in the defendant's state of residence. If not offense eligible, the Division may still authorize the offender to relocate to their home state and report by mail until the term of probation is complete and/or the case has been completely resolved.

**PRESENTENCE INVESTIGATION REPORT**  
**JASON RICHARD LOFTHOUSE**  
**CC#: C-15-307937-1**

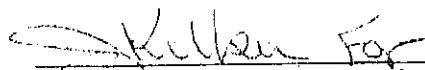
**Page 9**

Respectfully Submitted,

Natalie A. Wood, Chief

Report prepared by: L. LaBranche  
DPS Parole and Probation, Specialist IV

Approved by:

  
\_\_\_\_\_  
**Tom Ely, DPS Parole and Probation Captain**  
Southern Command, Las Vegas

Dept. 20

5/18/17

April 24, 2017

Attached is a letter (or letters) from NDC reflecting errors in the JOCs prepared and forwarded to them.

They have described the requested corrections. In some cases, the matter may need to be put back on calendar.

Once the corrections have been made, please return these copies to me and I will pass them along to our JOC Clerks to prepare the amended documents. If you determine that a correction will not be necessary, please notify NDC of your decision and copy me on your response.

Thank you for your assistance.

Barbara Belt  
Legal Office Services Supervisor  
671-0660

01/18/2017

To Whom it may concern:

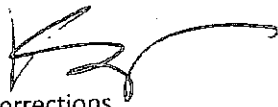
These requests were sent a while back and we have not received any Amended Judgment (if applicable) or any memo, (if no corrections are to be made). I apologize if something was sent; it never made it to our office. Please review requests and either send a Certified Amended Judgment if it applies or a simple memo as to why it will not be changed if you feel no corrections are to be made. We are attempting to resolve these issues / concerns / confirmations as soon as we can, as if any changes may affect the inmates release dates with NDOC.

You can also send the memo via email to myself or just a simple email as to why no corrections will be made will suffice. My e-mail address is [kwinters@doc.nv.gov](mailto:kwinters@doc.nv.gov). This is the best form of contact for me, as I am not always available via telephone, but I will make every attempt to return your call, if a message was given to me.

If any are at the 4<sup>th</sup> attempt, then that will be the last attempt to resolve this issue.

Thank you for your time.

Kristy Rodriguez



Nevada Department of Corrections

Offender Management Division

All Certified Amended JOC's / or memos can be sent to:

**Nevada Department of Corrections**

**Attn: Kristy Rodriguez Offender Management Division**

**PO Box 7011**

**Carson City, NV 89702**

RECEIVED  
APR 18 2017

Board of State  
Prison Commissioners

BRIAN SANDOVAL  
Governor

BARBARA CEGAVSKE  
Secretary of State

ADAM PAUL LAXALT  
Attorney General



STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS

Offender Management Division  
5500 Snyder Avenue, Carson City, NV 89702  
Phone: (775) 837-3285 - Fax: (775) 837-3138



BRIAN SANDOVAL  
Governor

James E. Dzurenda  
Director

DWAYNE DEAL  
Offender Management  
Administrator

Dept. 20

August 16, 2016

# SECOND REQUEST

4-11-17

Clark County Clerk's Office  
Barbara Belt  
200 Lewis Avenue, 3<sup>rd</sup> Floor, Room 3114  
Las Vegas, Nevada 89101

Re: NDOC #1159974 Lofthouse, Jason  
Criminal Case # C307937-1

Dear Sir/Madam:

The Nevada Department of Corrections has received a conflicting Judgment of Conviction in the above referenced case. We are unable to determine the proper sentence structure without additional or corrected information. Please review the information and advise us that the judgment will not be changed or forward a certified copy of the corrected judgment to:

**Description of Discrepancy: The Judgment of Conviction was given a total maximum aggregation of 180 months maximum, according to our calculations it is a 19 year maximum. Please clarify?**

Nevada Department of Corrections  
Attn: Kristy Rodriguez Offender Management  
P.O. Box 7011  
Carson City, Nevada 89702

Thank you for your prompt attention in this matter.

Sincerely,

*Kristy Rodriguez*

Kristy Rodriguez  
Administrative Assistant IV  
775-887-3207  
kwinters@doc.nv.gov

RECEIVED

APR 18 2017

115994

Electronically Filed  
05/20/2016 02:10:16 PM

*Alvin B. Quinn*

CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C307937-1

-vs-

DEPT. NO. XX

JASON RICHARD LOFTHOUSE  
#7019775

Defendant.

JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 3, 4, 5, 6, 7, 9, 10, 11 and 12 – SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony) in violation of NRS 201.540; COUNTS 2 and 8 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310, 200.320; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1, 3, 4, 5, 6, 7, 9, 10, 11 and 12 – SEXUAL CONDUCT BETWEEN CERTAIN EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony) in violation of NRS 201.540; COUNTS 2 and 8 – FIRST DEGREE KIDNAPPING

1 (Category A Felony) in violation of NRS 200.310, 200.320; thereafter, on the 17<sup>th</sup> day of  
2 May, 2016, the Defendant was present in court for sentencing with counsel JASON  
3 MARGOLIS, ESQ., and good cause appearing,

4 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in  
5 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee  
6 including testing to determine genetic marks plus \$3.00 DNA Collection Fee, the  
7 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:

8  
9 **COUNT 1** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole  
10 Eligibility of TWELVE (12) MONTHS; **COUNT 2** - a MAXIMUM of FIFTEEN (15) YEARS  
11 with a MINIMUM Parole Eligibility of FIVE (5) YEARS, CONSECUTIVE to COUNT 1;  
12 **COUNT 3** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole  
13 Eligibility of TWELVE (12) MONTHS, CONSECUTIVE to COUNT 1, CONCURRENT  
14 with COUNT 2; **COUNT 4** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a  
15 MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNTS  
16 2 and 3; **COUNT 5** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM  
17 Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 4;  
18 **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole  
19 Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 5; **COUNT 7**  
20 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
21 TWELVE (12) MONTHS, CONSECUTIVE to COUNT 3, CONCURRENT with COUNT  
22 2; **COUNT 8** - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility  
23 of FIVE (5) YEARS, CONCURRENT with COUNTS 2 and 7; **COUNT 9** - a MAXIMUM  
24 of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)  
25 MONTHS, CONSECUTIVE to COUNT 7, CONCURRENT with COUNT 2; **COUNT 10** -  
26  
27  
28

1 a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
2 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 9; COUNT 11 - a  
3 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
4 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 10; and COUNT 12 - a  
5 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
6 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 11; with THREE  
7 HUNDRED FORTY-SEVEN (347) DAYS credit for time served. The AGGREGATE  
8 TOTAL sentence is ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a  
9 MINIMUM PAROLE ELIGIBILITY OF SEVENTY-TWO (72) MONTHS.  
10  
11

12 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION  
13 is imposed to commence upon release from any term of imprisonment, probation or  
14 parole. In addition, before the Defendant is eligible for parole, a panel consisting of  
15 the Administrator of the Mental Health and Development Services of the Department  
16 of Human Resources or his designee; the Director of the Department of corrections or  
17 his designee; and a psychologist licensed to practice in this state; or a psychiatrist  
18 licensed to practice medicine in Nevada must certify that the Defendant does not  
19 represent a high risk to re-offend based on current accepted standards of assessment.  
20

21 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender  
22 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any  
23 release from custody.  
24

25 DATED this 19 day of May, 2016  
26  
27  
28

  
ERIC JOHNSON  
DISTRICT COURT JUDGE

us



*Steven D. Grierson*

1 MOT  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite 226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 JASON RICHARD LOFTHOUSE.

14 Defendant.

CASE NO. C-15-307937-1

DEPT. NO. XX

DATE: 06/08/17  
TIME: 9:00 A.M.

15 MOTION TO CORRECT ILLEGAL SENTENCE

16 COMES NOW, the Defendant, JASON RICHARD LOFTHOUSE, by  
17 and through WILLIAM M. WATERS, Deputy Public Defender and hereby moves the  
18 court to correct the Defendant's illegal sentence and vacate the imposition of lifetime  
19 supervision.

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

23 DATED this 19<sup>th</sup> day of May, 2017.

24 PHILIP J. KOHN

25 CLARK COUNTY PUBLIC DEFENDER.

26 By /s/ William M. Waters  
27 WILLIAM M. WATERS, #9456  
28 Deputy Public Defender

## POINTS AND AUTHORITIES

### Statement of Relevant Facts and Procedural History

On July 16, 2015, the State filed an Information charging LOFTHOUSE with nine (9) counts of Sexual Conduct Between Certain Employees or Volunteers of School and Pupil in violation of NRS 201.540, two (2) counts of First Degree Kidnapping in violation of NRS 200.310, and two (2) counts of Open and Gross Lewdness in violation of NRS 201.210. Essentially, the State alleged LOFTHOUSE engaged in sexual conduct with his student M.T. on four occasions, twice in a Rancho High School classroom, once at the Aliante Hotel and Casino, and once at the Cannery Hotel and Casino. These four sexual encounters all occurred between May 6 and May 28, 2015. This Court dismissed the Open and Gross Lewdness charges after argument on LOFTHOUSE's pre-trial Petition for Writ of Habeas Corpus.

LOFTHOUSE went to trial on the remaining charges and a jury returned guilty verdicts on all counts. This Court sentenced LOFTHOUSE on May 16, 2016. In addition to the aggregate 6 to 15 year prison term, this Court imposed a condition of lifetime supervision pursuant to NRS 176.0931.<sup>1</sup> The Court also imposed a condition of sex offender registration pursuant to NRS 179D.460. The Court filed the Judgment of Conviction on May 20, 2016, which also noted the condition of lifetime supervision. LOFTHOUSE filed his Notice of Appeal with the Nevada Supreme Court on June 9, 2016. This court appointed the Clark County Public Defender to represent

---

<sup>1</sup> The department of Parole and Probation completed the original presentence investigation report on May 3, 2016. The original presentence report did not include any reference to lifetime supervision. However, for reasons unclear from the record, the department completed a supplemental report on May 13, 2016 which included a reference to lifetime supervision.

1 LOFTHOUSE on June 14, 2016, after LOFTHOUSE's trial attorneys, Dmitry  
2 Gurovich and Jason Margolis, moved to withdraw from representation.

3       Between June 14, 2016, and February 27, 2017, Appellate counsel for the Clark  
4 County Public Defender requested three extensions of time to file LOFTHOUSE's  
5 opening brief in the Nevada Supreme Court. Each request was based upon missing  
6 transcripts of the district court proceedings. When the Supreme Court granted the third  
7 extension on March 6, 2017, it indicated the opening brief would be due on May 2,  
8 2017. Department 20's court reporter filed the remaining transcripts on April 7, 2017.  
9 Once these transcripts were filed counsel had less than one month to visit  
10 LOFTHOUSE at High Desert State Prison to discuss his appeal<sup>2</sup>, research all  
11 meritorious legal issues, and write the opening brief.

12       Ultimately Counsel realized given the late receipt of transcripts he could not  
13 provide LOFTHOUSE with constitutionally adequate appellate representation by May  
14 2, 2017. Counsel submitted a final request for extension of time to file  
15 LOFTHOUSE's opening brief with a requested due date of July 3, 2017. The good  
16 cause supporting Counsel's request was: (1) late receipt of transcripts; and (2)  
17 Counsel's wedding was scheduled for May 26, 2017, in Los Angeles, CA.

18       On May 9, 2017, Counsel received Notice from this Court that per NDOC's  
19 request, the court was placing LOFTHOUSE's case on calendar on May 18, 2017 for  
20 clarification of sentence. Specifically, NDOC sought clarification regarding the  
21 aggregation of LOFTHOUSE's sentence. In preparation for the May 18, 2017 hearing  
22 Counsel researched the aggregation issue. While scrutinizing the judgement of  
23

24  
25  
26  
27  
28  

---

<sup>2</sup> LOFTHOUSE's is only allowed visitation on Mondays. Counsel visited  
LOFTHOUSE at High Desert State Prison for 3 hours on Monday May 8, 2017.

1 conviction, Counsel became concerned regarding the court's imposition of lifetime  
2 supervision. Counsel then researched the lifetime supervision statute and believed  
3 LOFTHOUSE's alleged crimes did not subject him to lifetime supervision per NRS  
4 176.0931.  
5

6 On May 15, 2017 the Supreme Court denied Counsel's request to extend the  
7 deadline to file the opening brief until July 3, 2017. Instead, the Court ordered the  
8 brief to be filed no later than May 30, 2017. Counsel immediately filed a Motion to  
9 Reconsider in the Supreme Court noting his wedding on May 26, 2017 would prevent  
10 him from being able to file the opening brief by May 30, 2017. Additionally, Counsel  
11 asked the Supreme Court to suspend briefing to allow this court to consider a Motion to  
12 Correct Illegal sentence which Counsel anticipated filing in open court at the May 18,  
13 2017 hearing regarding NDOC's request for sentence clarification.  
14

15 At the hearing on May 18, 2017 this Court indicated it would not alter  
16 LOFTHOUSE's original 72 - 180 month sentence. Additionally, the court denied  
17 Counsel's Motion to Correct Illegal sentence regarding lifetime supervision. However,  
18 Counsel believes this court indicated should the Supreme Court grant Counsel's  
19 emergency Motion to suspend briefing, this court would allow Counsel to re-file his  
20 motion.<sup>3</sup>  
21  
22

23 Later that afternoon, the Nevada Supreme Court entered an Order granting  
24 Counsel's emergency motion in part. The Court suspended briefing to allow this court  
25 to entertain Counsel's Motion to Correct Illegal Sentence. Additionally, the Supreme  
26

27 <sup>3</sup> This is based solely upon Counsel's recollection of the May 18, 2017, hearing.  
28 Counsel has filed an ex parte order for transcripts for the May 18<sup>th</sup> hearing and will  
provide them to the court when he receives them.

1 Court gave Counsel 30 days to comply with the procedure outlined in Foster v.  
2 Dingwall, 126 Nev. 49, 52-53, 228 P.3d 453, 454-56 (2010). See attached as Exhibit  
3 'A.' Pursuant to Foster, if this Court is inclined to grant Counsel's Motion to Correct  
4 Illegal Sentence it must certify its intent to do so. Thereafter, Counsel must file a  
5 Motion for Limited Remand in the Supreme Court with this Court's certification  
6 attached. The Supreme Court will then remand the case to this court to modify the  
7 Judgement of Conviction. If this Court is not inclined to grant Counsel's motion, then  
8 Counsel must send Notice to the Supreme Court advising the same. In either event,  
9 Counsel must either Notice the Supreme Court that this court is not inclined to modify  
10 the judgement of conviction or Move for limited remand by June 18, 2017.

### 13 Argument

#### 15 I. LOFTHOUSE's Sentence is Illegal because He is not Subject to Lifetime 16 Supervision.

17 A judgment of conviction must set forth: (1) the plea; (2) the verdict or finding;  
18 and (3) the adjudication and sentence including "a reference to the statute under which  
19 the defendant is sentenced[.]" NRS 176.015(1)(a)-(c). The district court retains  
20 jurisdiction to correct an illegal sentence at any time. NRS 176.555; Gray v. State, 124  
21 Nev. 110, 123, 178 P.3d 154, 163 (2008). An "illegal" sentence is "one 'at variance with  
22 the controlling sentencing statute,' or 'illegal' in the sense that the court goes beyond its  
23 authority by acting without jurisdiction or imposing a sentence in excess of the statutory  
24 maximum provided...." Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996)  
25 (citing Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

#### 27 A. Sexual Conduct between Certain Employees or Volunteers of 28 School and Pupil (NRS 201.540).

1 NRS 176.0931(1) currently states: "If a defendant is convicted of a sexual  
2 offense, the court shall include in sentencing, in addition to any other penalties  
3 provided by law, a special sentence of lifetime supervision." Moreover, NRS  
4 176.0931(5)(c)(1) states:

5  
6 As used in this section:

7 "Sexual offense" means:

8 A violation of NRS 200.366, subsection 4 of NRS  
9 200.400, NRS 200.710, 200.720, subsection 2 of NRS  
10 200.730, NRS 201.180, 201.230, 201.450, 201.540 or  
11 201.550 or paragraph (a) or (b) of subsection 4 or  
12 paragraph (a) or (b) of subsection 5 of NRS 201.560.

(emphasis added):

13 However, prior to 2015, NRS 176.0931(1),(5)(c)(1) stated:

14 If a defendant is convicted of a sexual offense, the court  
15 shall include in sentencing, in addition to any other  
16 penalties provided by law, a special sentence of lifetime  
supervision.

17 As used in this section:

18 Sexual offense means:

19 A violation of NRS 200.366, subsection 4 of NRS  
20 200.400, NRS 200.710, 200.720, subsection 2 of NRS  
21 200.730, NRS 201.180, 201.230 or 201.450 or paragraph  
22 (a) or (b) of subsection 4 or paragraph (a) or (b) of  
subsection 5 of NRS 201.560[.]

23 NRS 176.0931 (2013)

24 The pre-2015 version of NRS 176.0931(5)(c)(1) did not include NRS 201.540 within  
25 the list of "sexual offenses" subject to lifetime supervision. The 2015 amendment  
26 essentially added NRS 201.540 to the list of sexual offenses which subject a defendant  
27 to lifetime supervision upon conviction and sentencing. However, and most  
28

1 importantly, the 2015 amendment to NRS 176.0931 was only applicable to offenses  
2 which occurred "on or after October 1, 2015." See attached as Exhibit B.<sup>4</sup>  
3

4 Here, LOFTHOUSE's offenses involving Sexual Conduct between Certain  
5 Employees or Volunteers of School and Pupil occurred in May 2015 and thus before  
6 October 1, 2015. Therefore, NRS 176.0931 does not apply to LOFTHOUSE's  
7 convictions for Sexual Conduct between Certain Employees or Volunteers of School  
8 and Pupil. Accordingly, LOFTHOUSE's sentence of lifetime supervision as it pertains  
9 to his conviction for Sexual Conduct between Certain Employees or Volunteers of  
10 School and Pupil is illegal as it is "at variance with the controlling sentencing statute"  
11 which is the pre-2015 version of NRS 176.0931.  
12  
13

14 B. First Degree Kidnapping (NRS 200.310)  
15

16 Although LOFTHOUSE's convictions for Sexual Conduct between Certain  
17 Employees or Volunteers of School and Pupil do not subject him to lifetime  
18 supervision, at the hearing on May 18, 2017, the State suggested LOFTHOUSE's  
19 conviction for First Degree Kidnapping would subject him to lifetime supervision  
20 because the kidnapping was committed with the intent to commit a sex crime.  
21

22 According to NRS 176.0931(5)(c)(3):  
23

24 5. As used in this section:  
25

26 ...  
27 (c) "Sexual offense" means:  
28

<sup>4</sup> Page 16 of exhibit B states, "The amendatory provisions of Sections 1 to 4, inclusive, 10 and 11 of this act apply to offenses committed on or after October 1, 2015." The amendments to NRS 176.0931 are contained in section 1.

1  
2 (3) An act of murder in the first or second degree; kidnapping in the first  
3 or second degree, false imprisonment, burglary or invasion of the home  
4 if the act is determined to be sexually motivated at a hearing  
5 conducted pursuant to NRS 175.547.

6 Thus, a conviction for First Degree Kidnapping could *potentially* subject a defendant to  
7 lifetime supervision if the court conducts a hearing pursuant to NRS 175.547 and finds  
8 the kidnapping was sexually motivated.

9 NRS 175.547 states:

10  
11 1. In any case in which a defendant pleads or is found  
12 guilty or guilty but mentally ill of murder in the first or  
13 second degree, kidnapping in the first or second degree,  
14 false imprisonment, burglary or invasion of the home, the  
15 court shall, at the request of the prosecuting attorney,  
16 conduct a separate hearing to determine whether the  
17 offense was sexually motivated. A request for such a  
18 hearing may not be submitted to the court unless the  
19 prosecuting attorney, before the commencement of the  
20 trial, files and serves upon the defendant a written notice  
21 of the prosecuting attorney's intention to request such a  
22 hearing.

23 2. A hearing requested pursuant to subsection 1 must be  
24 conducted before:

25 (a) The court imposes its sentence; or

26 (b) A separate penalty hearing is conducted.

27 3. At the hearing, only evidence concerning the question  
28 of whether the offense was sexually motivated may be  
presented. The prosecuting attorney must prove beyond a  
reasonable doubt that the offense was sexually  
motivated.

4. The court shall enter its finding in the record.

5. For the purposes of this section, an offense is  
"sexually motivated" if one of the purposes for which the  
person committed the offense was the person's sexual  
gratification.

Thus, the court cannot impose lifetime supervision as a condition of a sentence.



1 for First Degree Kidnapping unless the State files written notice of its intent to request  
2 a hearing **BEFORE** trial and upon conviction the court conducts a hearing and finds  
3 the offense was sexually motivated. Here, the State did not file a written request before  
4 trial for a hearing to determine whether LOFTHOUSE's alleged kidnapping was  
5 sexually motivated and therefore, obviously, no hearing actually occurred.  
6 Accordingly, the imposition of lifetime supervision as it potentially pertained to  
7 LOFTHOUSE's conviction for First Degree Kidnapping is illegal because this portion  
8 of the sentence is at variance with NRS 173.0931 and NRS 175.547 and additionally,  
9 the court lacked jurisdiction in imposing lifetime supervision as a condition of  
10 LOFTHOUSE's sentence. See Edwards, 112 Nev. at 708, 918 P.2d at 324.  
11

12  
13 **Conclusion**

14 Based upon the foregoing, Defendant respectfully requests this court vacate the  
15 illegal portion of his sentence involving the imposition of lifetime supervision.  
16

17 DATED this 19th day of May, 2017.

18 PHILIP J. KOHN

19 CLARK COUNTY PUBLIC DEFENDER

20 By /s/ William M. Waters  
21 WILLIAM M. WATERS, #9456  
22 Deputy Public Defender  
23  
24  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

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 8<sup>th</sup> day of June, 2017 at the hour of 9:00 o'clock A.M.

CLARK COUNTY PUBLIC DEFENDER

**CERTIFICATE OF ELECTRONIC FILING**

/s/ Carrie M. Connolly  
Secretary for the  
Public Defender's Office

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON RICHARD LOFTHOUSE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70587

**FILED**

MAY 18 2017


ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**ORDER**

Appellant has filed a motion in which he asserts that his sentence is illegal and represents that a "Clarification of Sentence" is scheduled to be held on May 18, 2017, in the district court. Appellant asks that this court remand this matter to the district court so that it may correct the illegal sentence.

The district court has no authority to enter an amended judgment of conviction after the notice of appeal has been filed and before the remittitur has issued from this court. See NRS 177.155, NRS 177.305; *Foster v. Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 454-56 (2010); *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). If the district court is inclined to grant appellant relief and amend the judgment of conviction, the district court should certify its inclination to modify the judgment of conviction, after which appellant may file a motion in this court, with the district court's certification attached, seeking a limited remand for entry of an amended judgment of conviction. See *Foster*, 126 Nev. at 53, 228 P.3d at 455-56. If, however, the district court is not inclined to grant relief, it may enter an order denying relief without a remand from this court. See *id.* at 456, 228 P.3d at 455.

SUPREME COURT  
OF  
NEVADA

101.641A 

17-16658

Appellant's counsel shall have 30 days from the date of this order to comply with the procedure set forth in *Foster*; inform this court that the district court has denied the motion, or inform this court of the status of the district court proceedings on the motion.

Briefing of this appeal shall be suspended pending further order of this court.<sup>1</sup>

It is so ORDERED.

Cherry C.J.

cc: Hon. Eric Johnson, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup>Given this order, we take no action on appellant's alternative motion to reconsider our order denying his motion for a fourth extension of time to file the opening brief.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT B**

2015 Nevada Laws Ch. 287 (S.B. 192)

NEVADA 2015 SESSION LAWS

REGULAR SESSION OF THE 78TH LEGISLATURE (2015)

Additions are indicated by Text; deletions by

~~Text~~.

Vetoed are indicated by ~~Text~~;

stricken material by ~~Text~~.

Ch. 287

S.B. No. 192

SCHOOL EMPLOYEES—CRIMES—SEX OFFENSES

AN ACT relating to crimes; providing that certain employees of or volunteers at a school who are convicted of engaging in sexual conduct with certain pupils are subject to various statutory provisions relating to sex offenders; providing that certain employees of a college or university who are convicted of engaging in sexual conduct with certain students are also subject to various statutory provisions relating to sex offenders; revising provisions relating to certain employees of or volunteers at a school who engage in sexual conduct with certain pupils; prohibiting certain employees of or volunteers at a school from engaging in sexual conduct with certain pupils; prohibiting certain employees of a college or university from engaging in sexual conduct with certain students; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) requires a court to include a special sentence of lifetime supervision for any person convicted of certain sexual offenses; and (2) provides certain conditions of lifetime supervision. (NRS 176.0931, 213.1243) Sections 1 and 12 of this bill add to the list of sexual offenses that require a sentence of lifetime supervision and for which certain conditions of lifetime supervision apply: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law also: (1) requires a person convicted of certain sexual offenses to undergo a psychosexual evaluation as part of the presentence investigation and report prepared by the Division of Parole and Probation of the Department of Public Safety; and (2) prohibits the court from granting probation to or suspending the sentence of a person convicted of certain sexual offenses, unless the person who conducts the psychosexual evaluation certifies that the person convicted of the sexual offense does not represent a high risk to reoffend. (NRS 176.133, 176.135, 176A.110) Sections 2 and 3 of this bill add to the list of sexual offenses which require a psychosexual evaluation as part of the presentence investigation and report and a certification that the person convicted does not represent a high risk to reoffend before the person may be granted probation or have his or her sentence suspended: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law requires the prosecuting attorney, sheriff or chief of police, upon request, to inform a victim or witness of certain sexual offenses: (1) when the defendant is released from custody at any time before or during the defendant's trial; and (2) of the final disposition of the case involving the victim or witness. (NRS 178.5698) Section 4 of this bill adds to the list of sexual offenses that are subject to such requirements concerning notification of a victim or witness: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law allows a person convicted of certain offenses to petition the court for the sealing of all records relating to the conviction, but does not authorize the sealing of records relating to a conviction of certain sexual offenses. (NRS 179.245)

Section 5 of this bill adds to the list of sexual offenses for which the sealing of records is not authorized: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law also defines the term "sexual offense" for the purpose of requiring persons convicted of certain sexual offenses to register as a sex offender, to comply with certain mandatory conditions of probation or parole and to fulfill certain other requirements. (NRS 118A.335, 176A.410, 179D.097, 213.1099, 213.1245) Section 6 of this bill revises the list of sexual offenses to which these statutory provisions apply to include: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law requires the Department of Corrections to assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner. The State Board of Parole Commissioners must consider the assessment before determining whether to grant or revoke the parole of a person convicted of a sexual offense. (NRS 213.1214) Section 13 of this bill adds to the list of sexual offenses which require such an assessment: (1) an offense involving sexual conduct between certain employees of or volunteers at a school and certain pupils; and (2) an offense involving sexual conduct between certain employees of a college or university and certain students.

Existing law generally provides that a person who: (1) is 21 years of age or older; (2) is or was employed in a position of authority by or is or was volunteering in a position of authority at a public or private school; and (3) engages in sexual conduct with a pupil, is guilty of a category C felony if the pupil is 16 or 17 years of age or a category B felony if the pupil is 14 or 15 years of age. (NRS 201.540) Section 10 of this bill: (1) removes the requirement that such a person be employed or volunteer in a position of authority; and (2) prohibits such a person from engaging in sexual conduct with a pupil who is 16 years of age or older and who has not received a high school diploma, a general educational development certificate or an equivalent document. Similarly, existing law generally provides that a person who: (1) is 21 years of age or older; (2) is employed in a position of authority by a college or university; and (3) engages in sexual conduct with a student who is 16 or 17 years of age and enrolled in or attending the college or university, is guilty of a category C felony. (NRS 201.550) Section 11 of this bill prohibits such a person from engaging in sexual conduct with a student who is 16 years of age or older and who is enrolled in or attending the college or university but has not received a high school diploma, a general educational development certificate or an equivalent document.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 176.0931 is hereby amended to read as follows:

<< NV ST 176.0931 >>

1. If a defendant is convicted of a sexual offense, the court shall include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision.
2. The special sentence of lifetime supervision commences after any period of probation or any term of imprisonment and any period of release on parole.
3. A person sentenced to lifetime supervision may petition the sentencing court or the State Board of Parole Commissioners for release from lifetime supervision. The sentencing court or the Board shall grant a petition for release from a special sentence of lifetime supervision if:

(a) The person has complied with the requirements of the provisions of NRS 179D.010 to 179D.550, inclusive;

(b) The person has not been convicted of an offense that poses a threat to the safety or well-being of others for an interval of at least 10 consecutive years after the person's last conviction or release from incarceration, whichever occurs later; and



(c) The person is not likely to pose a threat to the safety of others, as determined by a person professionally qualified to conduct psychosexual evaluations, if released from lifetime supervision.

4. A person who is released from lifetime supervision pursuant to the provisions of subsection 3 remains subject to the provisions for registration as a sex offender and to the provisions for community notification, unless the person is otherwise relieved from the operation of those provisions pursuant to the provisions of NRS 179D.010 to 179D.550, inclusive.

5. As used in this section:

(a) "Offense that poses a threat to the safety or well-being of others" includes, without limitation:

(1) An offense that involves:

(I) A victim less than 18 years of age;

(II) A crime against a child as defined in NRS 179D.0357;

(III) A sexual offense as defined in NRS 179D.097;

(IV) A deadly weapon, explosives or a firearm;

(V) The use or threatened use of force or violence;

(VI) Physical or mental abuse;

(VII) Death or bodily injury;

(VIII) An act of domestic violence;

(IX) Harassment, stalking, threats of any kind or other similar acts;

(X) The forcible or unlawful entry of a home, building, structure, vehicle or other real or personal property; or

(XI) The infliction or threatened infliction of damage or injury, in whole or in part, to real or personal property.

(2) Any offense listed in subparagraph (1) that is committed in this State or another jurisdiction, including, without limitation, an offense prosecuted in:

(I) A tribal court.

(II) A court of the United States or the Armed Forces of the United States.

(b) "Person professionally qualified to conduct psychosexual evaluations" has the meaning ascribed to it in NRS 176.133.

(c) "Sexual offense" means:

(1) A violation of NRS 200.366, subsection 4 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, 201.230, or 201.450, 201.540 or 201.550 or paragraph (a) or (b) of subsection 4 or paragraph (a) or (b) of subsection 5 of NRS 201.560;

(2) An attempt to commit an offense listed in subparagraph (1); or

(3) An act of murder in the first or second degree, kidnapping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to NRS 175.547.

Sec. 2. NRS 176.133 is hereby amended to read as follows:

<< NV ST 176.133 >>

As used in NRS 176.133 to 176.161, inclusive, unless the context otherwise requires:

1. "Person professionally qualified to conduct psychosexual evaluations" means a person who has received training in conducting psychosexual evaluations and is:

(a) A psychiatrist licensed to practice medicine in this State and certified by the American Board of Psychiatry and Neurology, Inc.;

(b) A psychologist licensed to practice in this State;

(c) A social worker holding a master's degree in social work and licensed in this State as a clinical social worker;

(d) A registered nurse holding a master's degree in the field of psychiatric nursing and licensed to practice professional nursing in this State;

(e) A marriage and family therapist licensed in this State pursuant to chapter 641A of NRS; or

(f) A clinical professional counselor licensed in this State pursuant to chapter 641A of NRS;

2. "Psychosexual evaluation" means an evaluation conducted pursuant to NRS 176.139.

3. "Sexual offense" means:

(a) Sexual assault pursuant to NRS 200.366;

(b) Statutory sexual seduction pursuant to NRS 200.368, if punished as a felony;

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(d) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation and is punished as a felony;

(e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(f) Incest pursuant to NRS 201.180;

(g) Open or gross lewdness pursuant to NRS 201.210, if punished as a felony;

(h) Indecent or obscene exposure pursuant to NRS 201.220, if punished as a felony;

(i) Lewdness with a child pursuant to NRS 201.230;

(j) Sexual penetration of a dead human body pursuant to NRS 201.450;

(k) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540;

(l) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550;

(m) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;

(n) An attempt to commit an offense listed in paragraphs (a) to (k), (m), inclusive, if punished as a felony; or

WESTLAW ©2017 Thomson Reuters. No claim to original U.S. Government Works.

~~(m)~~ (o) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.

Sec. 3. NRS 176A.110 is hereby amended to read as follows:

<< NV ST 176A.110 >>

1. The court shall not grant probation to or suspend the sentence of a person convicted of an offense listed in subsection 3, unless:

(a) If a psychosexual evaluation of the person is required pursuant to NRS 176.139, the person who conducts the psychosexual evaluation certifies in the report prepared pursuant to NRS 176.139 that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment; or

(b) If a psychosexual evaluation of the person is not required pursuant to NRS 176.139, a psychologist licensed to practice in this State who is trained to conduct psychosexual evaluations or a psychiatrist licensed to practice medicine in this State who is certified by the American Board of Psychiatry and Neurology, Inc., and is trained to conduct psychosexual evaluations certifies in a written report to the court that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment.

2. This section does not create a right in any person to be certified or to continue to be certified. No person may bring a cause of action against the State, its political subdivisions, or the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for not certifying a person pursuant to this section or for refusing to consider a person for certification pursuant to this section.

3. The provisions of this section apply to a person convicted of any of the following offenses:

(a) Attempted sexual assault of a person who is 16 years of age or older pursuant to NRS 200.366.

(b) Statutory sexual seduction pursuant to NRS 200.368.

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(d) Abuse or neglect of a child pursuant to NRS 200.508.

(e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(f) Incest pursuant to NRS 201.180.

(g) Open or gross lewdness pursuant to NRS 201.210.

(h) Indecent or obscene exposure pursuant to NRS 201.220.

(i) Sexual penetration of a dead human body pursuant to NRS 201.450.

(j) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

(k) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

(l) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

~~(k)~~ (m) A violation of NRS 207.180.

(H) (n) An attempt to commit an offense listed in paragraphs (b) to ~~(k)~~ (m), inclusive.

~~(m)~~ (o) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

Sec. 4. NRS 178.5698 is hereby amended to read as follows:

<< NV ST 178.5698 >>.

1. The prosecuting attorney, sheriff or chief of police shall, upon the request of a victim or witness, inform the victim or witness:

(a) When the defendant is released from custody at any time before or during the trial, including, without limitation, when the defendant is released pending trial or subject to electronic supervision;

(b) If the defendant is so released, the amount of bail required, if any; and

(c) Of the final disposition of the criminal case in which the victim or witness was directly involved.

2. A request for information pursuant to subsection 1 must be made:

(a) In writing; or

(b) By telephone through an automated or computerized system of notification, if such a system is available.

3. If an offender is convicted of a sexual offense or an offense involving the use or threatened use of force or violence against the victim, the court shall provide:

(a) To each witness, documentation that includes:

(1) A form advising the witness of the right to be notified pursuant to subsection 5;

(2) The form that the witness must use to request notification in writing; and

(3) The form or procedure that the witness must use to provide a change of address after a request for notification has been submitted.

(b) To each person listed in subsection 4, documentation that includes:

(1) A form advising the person of the right to be notified pursuant to subsection 5 or 6 and NRS 176.015, 176A.630, 178.4715, 209.392, 209.3925, 209.521, 213.010, 213.040, 213.095 and 213.131 or NRS 213.10915;

(2) The forms that the person must use to request notification; and

(3) The forms or procedures that the person must use to provide a change of address after a request for notification has been submitted.

4. The following persons are entitled to receive documentation pursuant to paragraph (b) of subsection 3:

(a) A person against whom the offense is committed.

(b) A person who is injured as a direct result of the commission of the offense.

(c) If a person listed in paragraph (a) or (b) is under the age of 18 years, each parent or guardian who is not the offender.

(d) Each surviving spouse, parent and child of a person who is killed as a direct result of the commission of the offense.

(e) A relative of a person listed in paragraphs (a) to (d), inclusive, if the relative requests in writing to be provided with the documentation.

5. Except as otherwise provided in subsection 6, if the offense was a felony and the offender is imprisoned, the warden of the prison shall, if the victim or witness so requests in writing and provides a current address, notify the victim or witness at that address when the offender is released from the prison.

6. If the offender was convicted of a violation of subsection 3 of NRS 200.366 or a violation of subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of NRS 200.308, the warden of the prison shall notify:

(a) The immediate family of the victim if the immediate family provides their current address;

(b) Any member of the victim's family related within the third degree of consanguinity, if the member of the victim's family so requests in writing and provides a current address; and

(c) The victim, if the victim will be 18 years of age or older at the time of the release and has provided a current address,

before the offender is released from prison.

7. The warden must not be held responsible for any injury proximately caused by the failure to give any notice required pursuant to this section if no address was provided to the warden or if the address provided is inaccurate or not current.

8. As used in this section:

(a) "Immediate family" means any adult relative of the victim living in the victim's household.

(b) "Sexual offense" means:

(1) Sexual assault pursuant to NRS 200.366;

(2) Statutory sexual seduction pursuant to NRS 200.368;

(3) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(4) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(5) Incest pursuant to NRS 201.180;

(6) Open or gross lewdness pursuant to NRS 201.210;

(7) Indecent or obscene exposure pursuant to NRS 201.220;

(8) Lewdness with a child pursuant to NRS 201.230;

(9) Sexual penetration of a dead human body pursuant to NRS 201.450;

(10) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540;

(11) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550;

(12) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;

~~(11)~~ (13) An offense that, pursuant to a specific statute, is determined to be sexually motivated; or

~~(12)~~ (14) An attempt to commit an offense listed in this paragraph;

Sec. 5. NRS 179.245 is hereby amended to read as follows:

<< NV ST 179.245 >>

1. Except as otherwise provided in subsection 5 and NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a person may petition the court in which the person was convicted for the sealing of all records relating to a conviction of:

(a) A category A or B felony after 15 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(b) A category C or D felony after 12 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(c) A category E felony after 7 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(d) Any gross misdemeanor after 5 years from the date of release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of NRS 484C.110 or 484C.120 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later; or

(f) Any other misdemeanor after 2 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must:

(a) Be accompanied by the petitioner's current, verified records received from:

(1) The Central Repository for Nevada Records of Criminal History; and

(2) All agencies of criminal justice which maintain such records within the city or county in which the conviction was entered;

(b) If the petition references NRS 453.3365 or 458.330, include a certificate of acknowledgment or the disposition of the proceedings for the records to be sealed from all agencies of criminal justice which maintain such records;

(c) Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed; and

(d) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed, including, without limitation, the:

(1) Date of birth of the petitioner;

(2) Specific conviction to which the records to be sealed pertain; and

(3) Date of arrest relating to the specific conviction to which the records to be sealed pertain.

3. Upon receiving a petition pursuant to this section, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the person was convicted in a district court or justice court, the prosecuting attorney for the county; or

(b) If the person was convicted in a municipal court, the prosecuting attorney for the city.

The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending, or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of any agency of criminal justice or any public or private agency, company, official or other custodian of records in the State of Nevada, and may also order all such records of the petitioner returned to the file of the court where the proceeding was commenced from, including, without limitation, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information and all other agencies of criminal justice which maintain such records and which are reasonably known by either the petitioner or the court to have possession of such records.

5. A person may not petition the court to seal records relating to a conviction of:

(a) A crime against a child;

(b) A sexual offense;

(c) A violation of NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400;

(d) A violation of NRS 484C.430;

(e) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;

(f) A violation of NRS 488.410 that is punishable as a felony pursuant to NRS 488.427; or

(g) A violation of NRS 488.420 or 488.425.

6. If the court grants a petition for the sealing of records pursuant to this section, upon the request of the person whose records are sealed, the court may order sealed all records of the civil proceeding in which the records were sealed.

7. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.0357.

(b) "Sexual offense" means:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a felony.

- (4) Battery with intent to commit sexual assault pursuant to NRS 200.400.
- (5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.
- (6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.
- (7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
- (8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
- (9) Incest pursuant to NRS 201.180.
- (10) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony.
- (11) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony.
- (12) Lewdness with a child pursuant to NRS 201.230.
- (13) Sexual penetration of a dead human body pursuant to NRS 201.450.
- (14) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.
- (15) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.
- (16) Luring a child or a person with mental illness pursuant to NRS 201.560, if punishable as a felony.
- ~~(15)~~ (17) An attempt to commit an offense listed in this paragraph.

Sec. 6. NRS 179D.097 is hereby amended to read as follows:

<< NV ST 179D.097 >>

1. "Sexual offense" means any of the following offenses:

- (a) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.
- (b) Sexual assault pursuant to NRS 200.366.
- (c) Statutory sexual seduction pursuant to NRS 200.368.
- (d) Battery with intent to commit sexual assault pursuant to subsection 4 of NRS 200.400.
- (e) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this subsection.
- (f) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this section.
- (g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.



- (h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;
  - (i) Incest pursuant to NRS 201.180.
  - (j) Open or gross lewdness pursuant to NRS 201.210.
  - (k) Indecent or obscene exposure pursuant to NRS 201.220.
  - (l) Lewdness with a child pursuant to NRS 201.230.
  - (m) Sexual penetration of a dead human body pursuant to NRS 201.450.
  - (n) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.
  - (o) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.
  - (p) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
  - (q) Sex trafficking pursuant to NRS 201.300.
  - (r) Any other offense that has an element involving a sexual act or sexual conduct with another.
  - (s) An attempt or conspiracy to commit an offense listed in paragraphs (a) to (p), (r), inclusive.
  - (t) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.
  - (u) An offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this subsection. This paragraph includes, without limitation, an offense prosecuted in:
    - (1) A tribal court.
    - (2) A court of the United States or the Armed Forces of the United States.
  - (v) An offense of a sexual nature committed in another jurisdiction, whether or not the offense would be an offense listed in this section, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a sex offender because of the offense. This paragraph includes, without limitation, an offense prosecuted in:
    - (1) A tribal court.
    - (2) A court of the United States or the Armed Forces of the United States;
    - (3) A court having jurisdiction over juveniles;
2. The Except for the offenses described in paragraphs (n) and (o) of subsection 1, the term does not include an offense involving consensual sexual conduct if the victim was:
- (a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or
  - (b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 179D.495 is hereby amended to read as follows:

<< NV ST 179D.495 >>

If a person who is required to register pursuant to NRS 179D.010 to 179D.550, inclusive, has been convicted of an offense described in paragraph ~~(p)~~ (r) of subsection 1 of NRS 179D.097, paragraph (e) of subsection 1 or subsection 3 of NRS 179D.115 or subsection 7 or 9 of NRS 179D.117, the Central Repository shall determine whether the person is required to register as a Tier I offender, Tier II offender or Tier III offender.

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 201.540 is hereby amended to read as follows:

<< NV ST 201.540 >>

1. Except as otherwise provided in subsection 4, 3, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed ~~in a position of authority~~ by a public school or private school or is or was volunteering ~~in a position of authority~~ at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 16 ~~or 17~~ years of age or older, who has not received a high school diploma, a general educational development certificate or an equivalent document and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. Except as otherwise provided in subsection 4, 3, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed ~~in a position of authority~~ by a public school or private school or is or was volunteering ~~in a position of authority~~ at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 14 or 15 years of age and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000;  
3. ~~For the purposes of subsections 1 and 2, a person shall be deemed to be or have been employed in a position of authority by a public school or private school or deemed to be or have been volunteering in a position of authority at a public or private school if the person is or was employed or volunteering as:~~

~~(a) A teacher or instructor;~~

~~(b) An administrator;~~

~~(c) A head or assistant coach; or~~

~~(d) A teacher's aide or an auxiliary, nonprofessional employee who assists licensed personnel in the instruction or supervision of pupils pursuant to NRS 391.100.~~

4. The provisions of this section do not apply to a person who is married to the pupil.

4. The provisions of this section must not be construed to apply to sexual conduct between two pupils.

Sec. 11. NRS 201.550 is hereby amended to read as follows:

<< NV ST 201.550 >>

1. Except as otherwise provided in subsection 3, a person who:

(a) Is 21 years of age or older;

(b) Is employed in a position of authority by a college or university; and

(c) Engages in sexual conduct with a student who is 16 or 17 years of age and or older, who has not received a high school diploma, a general educational development certificate or an equivalent document and who is enrolled in or attending the college or university at which the person is employed,

is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. For the purposes of subsection 1, a person shall be deemed to be employed in a position of authority by a college or university if the person is employed as:

(a) A teacher, instructor or professor;

(b) An administrator; or

(c) A head or assistant coach.

3. The provisions of this section do not apply to a person who is married to the student.

4. The provisions of this section must not be construed to apply to sexual conduct between two students.

Sec. 12. NRS 213.107 is hereby amended to read as follows:

<< NV ST 213.107 >>

As used in NRS 213.107 to 213.157, inclusive, unless the context otherwise requires:

1. "Board" means the State Board of Parole Commissioners.
2. "Chief" means the Chief Parole and Probation Officer.
3. "Division" means the Division of Parole and Probation of the Department of Public Safety.
4. "Residential confinement" means the confinement of a person convicted of a crime to his or her place of residence under the terms and conditions established by the Board.
5. "Sex offender" means any person who has been or is convicted of a sexual offense.
6. "Sexual offense" means:
  - (a) A violation of NRS 200.366, subsection 4 of NRS 200.400, NRS 200.710, 200.720, subsection 2 of NRS 200.730, NRS 201.180, 201.230, or 201.450, 201.540 or 201.550 or paragraph (a) or (b) of subsection 4 or paragraph (a) or (b) of subsection 5 of NRS 201.560;
  - (b) An attempt to commit any offense listed in paragraph (a); or
  - (c) An act of murder in the first or second degree, kidnapping in the first or second degree, false imprisonment, burglary or invasion of the home if the act is determined to be sexually motivated at a hearing conducted pursuant to NRS 175.547.
7. "Standards" means the objective standards for granting or revoking parole or probation which are adopted by the Board or the Chief.

Sec. 13, NRS 213.1214 is hereby amended to read as follows:

<< NV ST 213.1214 >>

1. The Department of Corrections shall assess each prisoner who has been convicted of a sexual offense to determine the prisoner's risk to reoffend in a sexual manner using a currently accepted standard of assessment. The completed assessment must return a risk level of low, moderate or high. The Director shall ensure a completed assessment is provided to the Board before, but not sooner than, 120 days before, a scheduled parole hearing.
2. The Director shall:
  - (a) Ensure that any employee of the Department who completes an assessment pursuant to subsection 1 is properly trained to assess the risk of an offender to reoffend in a sexual manner.
  - (b) Establish a procedure to:
    - (1) Ensure the accuracy of each completed assessment provided to the Board; and
    - (2) Correct any error occurring in a completed assessment provided to the Board.
3. This section does not create a right in any prisoner to be assessed or reassessed more frequently than the prisoner's regularly scheduled parole hearings or under a current or previous standard of assessment and does not restrict the Department from conducting additional assessments of a prisoner if such assessments may assist the Board in determining whether parole should be granted or continued. No cause of action may be brought against the State, its political subdivisions,

of the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for assessing, not assessing or considering or relying on an assessment of a prisoner, if such decisions or actions are made or conducted in compliance with the procedures set forth in this section.

4. The Board shall consider an assessment prepared pursuant to this section before determining whether to grant or revoke the parole of a person convicted of a sexual offense.

5. The Board may adopt by regulation the manner in which the Board will consider an assessment prepared pursuant to this section in conjunction with the standards adopted by the Board pursuant to NRS 213.10885.

6. As used in this section:

(a) "Director" means the Director of the Department of Corrections.

(b) "Reoffend in a sexual manner" means to commit a sexual offense.

(c) "Sex offender" means a person who, after July 1, 1956, is or has been:

(1) Convicted of a sexual offense; or

(2) Adjudicated delinquent or found guilty by a court having jurisdiction over juveniles of a sexual offense listed in subparagraph (1)-(20) of paragraph (d).

The term includes, but is not limited to, a sexually violent predator or a nonresident sex offender who is a student or worker within this State.

(d) "Sexual offense" means any of the following offenses:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368.

(4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

(6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.

(7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

(8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(9) Incest pursuant to NRS 201.180.

(10) Open or gross lewdness pursuant to NRS 201.210.

(11) Indecent or obscene exposure pursuant to NRS 201.220.

(12) Lewdness with a child pursuant to NRS 201.230.

(13) Sexual penetration of a dead human body pursuant to NRS 201.450.

(14) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

(15) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

(16) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

~~(15)~~ (17) An attempt or conspiracy to commit an offense listed in subparagraphs (1) to ~~(14)~~, (16), inclusive.

~~(16)~~ (18) An offense that is determined to be sexually motivated pursuant to NRS 175.547 or 207.193.

~~(17)~~ (19) An offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this paragraph. This subparagraph includes, but is not limited to, an offense prosecuted in:

(I) A tribal court.

(II) A court of the United States or the Armed Forces of the United States.

~~(18)~~ (20) An offense of a sexual nature committed in another jurisdiction, whether or not the offense would be an offense listed in this paragraph, if the person who committed the offense resides or has resided or is or has been a student or worker in any jurisdiction in which the person is or has been required by the laws of that jurisdiction to register as a sex offender because of the offense. This subparagraph includes, but is not limited to, an offense prosecuted in:

(I) A tribal court.

(II) A court of the United States or the Armed Forces of the United States.

(III) A court having jurisdiction over juveniles.

The Except for the offenses described in subparagraphs 14 and 15, the term does not include an offense involving consensual sexual conduct if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

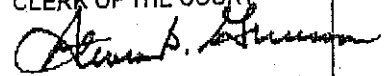
Sec. 14. The amendatory provisions of:

1. Sections 1 to 4, inclusive; 10 and 11 of this act apply to offenses committed on or after October 1, 2015.
2. Sections 5 to 8, inclusive; 12 and 13 of this act apply to offenses committed before, on or after October 1, 2015.

Approved by the Governor May 29, 2015.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works



1 RSPN  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JAMES R. SWEETIN  
6 Chief Deputy District Attorney  
7 Nevada Bar #005144  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 JASON LOFTHOUSE,  
14 #7019775

15 Defendant.

CASE NO: C-15-307937-1

DEPT NO: XX

16 **STATE'S RESPONSE TO DEFENDANT'S MOTION**  
17 **TO CORRECT ILLEGAL SENTENCE**

18 DATE OF HEARING: JUNE 8, 2017  
19 TIME OF HEARING: 9:00 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby  
22 submits the attached Points and Authorities in Response to Defendant's Motion To Correct  
23 Illegal Sentence.

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

27 //

28 //

W:\2015\2015FIN09\39\15FN0939-RSPN-(LOFTHOUSE\_JASON\_06\_08\_2017)-001.DOCX

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On July 16, 2015, Defendant Jason Lofthouse (hereinafter "Defendant") was charged  
4 by way of Amended Information with ten Counts of Sexual Conduct Between Certain  
5 Employees Or Volunteers Of School And Pupil (Category C Felony - NRS 201.540 - NOC  
6 51067), two counts of Open Or Gross Lewdness (Gross Misdemeanor - NRS 201.210 - NOC  
7 50971) and two counts of First Degree Kidnapping (Category A Felony - NRS 200.310,  
8 200.320 - NOC 50053). On January 13, 2016, the State filed a Second Amended information  
9 charging Defendant with ten Counts of Sexual Conduct Between Certain Employees Or  
10 Volunteers Of School And Pupil (Category C Felony - NRS 201.540 - NOC 51067), and two  
11 counts of First Degree Kidnapping (Category A Felony - NRS 200.310, 200.320 - NOC  
12 50053).

13 The Jury trial commenced on March 21, 2016. On March 25, 2016, the jury returned a  
14 verdict of GUILTY for all 12 counts. On May 17, 2016, Defendant was adjudicated guilty  
15 and sentenced to Count 1: 12 to 40 months; Count 2: 5 to 15 years, consecutive to Count 1;  
16 Count 3: 12 to 48 months, consecutive to count 1; Count 4: 12 to 48 months, concurrent to  
17 Count 3; Count 5: 12 to 48 months, concurrent to Count 4; Count 6: 12 to 48 months,  
18 concurrent to Count 5; Count 7: 12 to 48 months, consecutive to Count 3; Count 8: 5 to 15  
19 years, concurrent to Count 2 and Count 7; Count 9: 12 to 48 months, consecutive to Count 7;  
20 Count 1: 12 to 48 months, concurrent to Count 9; Count 11: 12 to 48 months, concurrent to  
21 Count 10; Count 12: 12 to 48 months, concurrent to Count 11.<sup>1</sup> The Judgment of Conviction  
22 was filed on May 20, 2016. Defendant filed a Notice of Appeal on June 9, 2016.

23 On May 19, 2017, Defendant filed the instant Motion to Correct Illegal Sentence. The  
24 State responds as follows.

25 //

26 //

27 //

28 <sup>1</sup> The aggregate sentence pronounced at sentencing was incorrectly stated as 72 to 180 months. The correct aggregate sentence is 72 to . This incorrect aggregate sentence was also reflected in the Judgment of Conviction.



## ARGUMENT

### **a. Defendant Is Not Subject To Lifetime Supervision**

Defendant claims that his sentence is illegal because he is not subject to lifetime supervision. "A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing." Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The Nevada Supreme Court has stated that the district court has the right to correct an illegal sentence at any time. Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992); see also NRS 176.555. However, the grounds to correct an illegal sentence are interpreted narrowly as a defendant is limited to asserting that the sentence is facially illegal. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

Upon review of the facts of the instant case, it appears that Defendant has made a claim to this court which has merit. Therefore, the State has no objection to the District Court certifying its intent pursuant to Foster v. Dingwall, 126 Nev. 49, 50, 228 P.3d 453, 454 (2010), to grant Defendant's Motion to Correct Illegal Sentence and file an amended Judgment of Conviction which reflects that Defendant is not subject to lifetime supervision.

### **b. The State Requests That The Aggregate Sentence Is Corrected In The Amended Judgment of Conviction**

Where a sentence imposes a minimum and maximum term of imprisonment, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment and must aggregate the maximum terms of imprisonment to determine the maximum aggregate term of imprisonment. NRS 179.035. Pursuant to the sentence imposed, the aggregate sentence is 72 to 228 months. However, due to a clerical mathematical error the aggregate sentence pronounced at sentencing and reflected in the judgment of conviction is 72 to 180 months.

//

//

1 At a hearing held prior to the filing of the instant motion, Defendant argued that if the  
2 District Court were to correct the clerical error in the Judgment of Conviction by amending it  
3 to reflect that actual aggregate sentence, the District Court would be violating the double  
4 jeopardy clause. Reporters Transcript May 18, 2017, p. 3-4. In support of this argument, the  
5 Defendant cites Miranda v. State, 114 Nev. 385, 387, 956 P.2d 1377 (1998), which provides:

6 "To comply with the Double Jeopardy Clause of the Nevada  
7 Constitution, a District Court may correct an illegal sentence by  
8 increasing its severity only when necessary to bring the sentence  
into compliance with the pertinent statute, and a correction that  
increases sentence severity is 'necessary' only when there is no  
other, less severe means of correcting the illegality."

9 Id.

10 Defendant's reliance on Miranda is misplaced. In Miranda, the District Court judge  
11 imposed an illegal sentence when he sentenced the defendant to a minimum term that was one-  
12 half of the maximum term. See NRS 193.130(1) (Minimum term of imprisonment "must not  
13 exceed 40 percent of the maximum term imposed."). To correct the illegality, the judge  
14 increased the maximum period of years so as to be within the statutory guidelines. The Nevada  
15 Supreme Court held that "[a] District Court may correct an illegal sentence 'only to the extent  
16 necessary to bring the sentence into compliance with the statute.'" Id. at 1 (quoting United  
17 States v. Fogel, 829 F.2d 77, 88 (D.C. Cir. 1987)). The Nevada Supreme Court ruled that the  
18 District Court violated the Double Jeopardy Clause when it increased the defendant's sentence  
19 when such an increase was not "necessary" to bring the sentence into compliance with the  
20 underlying statute. The instant case is distinguished from Miranda. There, the sentence itself  
21 was illegal. Here, the sentence that was imposed is a legal sentence, however, when the  
22 aggregate was calculated, it was calculated incorrectly.

23 NRS 176.565 states: Clerical mistakes in judgments, orders or other parts of the record  
24 and errors in the record arising from oversight or omission may be corrected by the court at  
25 any time and after such notice, if any, as the court orders. Here, the incorrect aggregation of  
26 the sentence was a clerical error that can be corrected by this Court pursuant to NRS 176.565.  
27 Correcting the clerical error made here would not raise the maximum period of incarceration  
28 as the lower court did in Miranda, rather it ensures that the Judgment of Conviction reflects

1 the correct aggregate sentence based on the sentence imposed by this Court for each count  
2 Defendant was found guilty of. Therefore, the State requests that when this Court files the  
3 Amended Judgment of Conviction, the aggregate sentence is also adjusted to reflect the correct  
4 aggregate sentence of 72 to 228 months.

5 **CONCLUSION**

6 It is for the foregoing reasons that the State does not oppose the District Court certifying  
7 its intent to grant the motion to correct illegal sentence pursuant to Foster as it pertains to the  
8 removal of the condition of lifetime supervision. Additionally, the State requests that the  
9 aggregate sentence is corrected in the Amended Judgment of Conviction.

10 DATED this 5th day of June, 2017.

11 Respectfully submitted,

12 STEVEN B. WOLFSON  
13 Clark County District Attorney  
Nevada Bar #001565

14 BY /s/ JAMES R. SWEETIN  
15 JAMES R. SWEETIN  
16 Chief Deputy District Attorney  
Nevada Bar #005144

17  
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that service of the above and foregoing was made this 5th day of MAY  
20 2017, to:  
21

22 WILLIAM WATERS, DPD  
waterswm@ClarkCountyNV.gov

23  
24 BY /s/ HOWARD CONRAD  
25 Secretary for the District Attorney's Office  
26 Special Victims Unit

27  
28 hjc/SVU

*Steven D. Grierson*

1 REPLY  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite 226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 JASON RICHARD LOFTHOUSE,

14 Defendant.

CASE NO. C-15-307937-1

DEPT. NO. XX

DATE: June 8, 2017  
TIME: 9:00 a.m.

15 REPLY TO STATE'S RESPONSE TO DEFENDANT'S MOTION TO CORRECT  
16 ILLEGAL SENTENCE

17 COMES NOW, the Defendant, JASON RICHARD LOFTHOUSE, by and  
18 through WILLIAM M. WATERS, Deputy Public Defender and hereby replies to the  
19 State's Response to Defendant's Motion to Correct Illegal Sentence.

20 This Reply is made and based upon all the papers and pleadings on file  
21 herein, the attached Declaration of Counsel, and oral argument at the time set for hearing  
22 on LOFTHOUSE's Motion.

23 DATED this 5<sup>th</sup> day of June, 2017.

24 PHILIP J. KOHN  
25 CLARK COUNTY PUBLIC DEFENDER

26 By /s/ William M. Waters  
27 WILLIAM M. WATERS, #9456  
28 Deputy Public Defender

## POINTS AND AUTHORITIES

### Reply Argument

#### 1. Lifetime Supervision

The State concedes LOFTHOUSE's convictions do not subject him to lifetime supervision pursuant to NRS 176.0931. State's Response P. 3. Accordingly, LOFTHOUSE respectfully requests this Court certify its intent to grant his Motion to Correct Illegal Sentence so that he may notify the Nevada Supreme Court. The Nevada Supreme Court can then remand the case to this Court for entry of order. See LOFTHOUSE v. State, Case No. 70587, Order filed May 18, 2017; Foster v. Dingwall, 126 Nev. 49, 52-53, 228 P.3d 453, 454-56 (2010). Thereafter, LOFTHOUSE can resume his direct appeal.

#### 2. Aggregate Sentence

The State also requests this Court modify LOFTHOUSE's aggregate sentence and in effect, unconstitutionally increase LOFTHOUSE's sentence from 72 to 180 months to 72 to 228 months. State's Response P. 3. The State claims the Court incorrectly aggregated LOFTHOUSE's sentence based upon a "clerical mathematical error." Id.

##### a. LOFTHOUSE's aggregate sentence is not properly before this Court.

On or about May 9, 2017, Clark County Public Defender Michael Wilfong received notice that per NDOC's request this Court was placing LOFTHOUSE's case on calendar on May 18, 2017 for clarification of sentence. NDOC sought clarification as "The Judgment of Conviction was given a total maximum aggregation of 180 months maximum, according to our calculations it is a 19 year maximum. Please clarify?" See

1 State of Nevada Department of Corrections Letter dated August 16, 2016. Wilfong  
2 forwarded all pertinent information concerning the May 18, 2017 hearing to  
3 LOFTHOUSE's appellate attorney William M. Waters.<sup>1</sup>

4 At the hearing on May 18, 2017, LOFTHOUSE asserted this Court's sentence  
5 violated NRS 176.035(2)(b) in that the court did not aggregate the maximum term of his  
6 consecutive sentence. However, LOFTHOUSE averred this Court could not increase his  
7 maximum sentence to correct the illegality and instead must decrease his minimum  
8 sentence to 60 months to correct the illegality. This Court clearly and definitively  
9 denied LOFTHOUSE's request to modify his minimum sentence to 60 months to  
10 conform to NRS 176.035 and re-iterated its intention was to sentence LOFTHOUSE to  
11 72 to 180 months. Trans. Hearing May 18, 2017 p. 8, 11.  
12

13  
14 Additionally, however, at the May 18, 2017 hearing LOFTHOUSE attempted to  
15 file a Motion to Correct Illegal Sentence arguing the Court incorrectly imposed lifetime  
16 supervision as a condition of sentence. LOFTHOUSE was unaware of any issues  
17 involving lifetime supervision until he scrutinized the judgement of conviction in  
18 preparation for the hearing regarding NDOC's concerns with the sentence aggregation.  
19 This Court also denied LOFTHOUSE's request to correct his illegal sentence regarding  
20 lifetime supervision but advised, "Okay. All right. I will deny the motion to correct the  
21 illegal sentence. You can take a look at it; if you want to, you can refile this." Trans.  
22 Hearing May 18, 2017 p. 11. Thus, when the Nevada Supreme Court suspended  
23 LOFTHOUSE's appellate briefing later that day, May 18, 2017, LOFTHOUSE re-filed  
24  
25

26  
27 <sup>1</sup> The Clark County Public Defender did not represent LOFTHOUSE at trial. This Court appointed  
28 the Clark County Public Defender to represent LOFTHOUSE on direct appeal after  
LOFTHOUSE's trial attorneys Dmitry Gurovich and Jason Margolis withdrew post-sentencing.

1 his Motion to Correct Illegal Sentence regarding lifetime supervision. Counsel did not  
2 seek to re-litigate this Court's clear ruling concerning the sentence aggregation. Because  
3 LOFTHOUSE filed the instant Motion to Correct Illegal Sentence and did not include  
4 any argument concerning his aggregate sentence, the State should not be allowed to raise  
5 an issue not addressed in the Motion in its Response.

6  
7 **b. Even if the issue involving the aggregate sentence is properly**  
8 **before this Court, the Court cannot increase LOFTHOUSE's**  
9 **sentence.**

10 Assuming this Court entertains the State's request, although LOFTHOUSE  
11 maintains it should not, this Court cannot increase LOFTHOUSE's maximum sentence to  
12 228 months. A judgment of conviction must set forth: (1) the plea; (2) the verdict or  
13 finding; and (3) the adjudication and sentence including "a reference to the statute under  
14 which the defendant is sentenced[.]" NRS 176.015(1)(a)-(c). Once the judgment of  
15 conviction is "signed by the judge and entered by the clerk" the judgment is final and a  
16 defendant begins serving his sentence. Bradley v. State, 109 Nev. 1090, 1095, 864 P.2d  
17 1272, 1275 (1993); see also Miller v. Hayes, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979).  
18 Thereafter, the district court generally lacks the power or jurisdiction to amend the  
19 judgment of conviction. Campbell v. Eighth Judicial District Court, 114 Nev. 410, 413,  
20 957 P.2d 1141, 1143 (1998).

21  
22 The district court arguably however retains jurisdiction to correct an illegal  
23 sentence (NRS 176.555) and to correct a judgment if the judgment is based upon  
24 materially untrue assumptions or mistakes which work to the extreme detriment of a  
25 defendant. State v. Kimsey, 109 Nev. 519, 522, 853 P.2d 109, 111 (1993). The  
26 mistake(s) must be the result of the judge's misapprehension of a defendant's criminal  
27  
28

1 record. Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321 324 (1996). In this sense, the  
2 district court can only modify its judgment if the modification benefits the defendant, not  
3 the State. See Staley v. State, 106 Nev. 75, 80, 787 P.2d 396, 399 (1990) (overruled on  
4 other grounds by Hodges v. State, 119 Nev. 479, 78 P.3d 67 (2003)). Finally, the district  
5 court can correct clerical mistakes in orders and judgments. NRS 176.565; see also In re:  
6 Humboldt River System, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961). If none of these  
7 aforementioned exceptions are applicable, once a person begins serving his sentence, and  
8 is subject to the executive authority of the parole board, "the power to alleviate the  
9 sentence rests entirely with the executive branch." Kimsey, 109 Nev. at 523, 853 P.2d at  
10 112 (citing Creps v. State, 94 Nev. 351, 358, 581 P.2d 842, 847 (1978)).  
11

12 Here, any aggregation error was not a result of this Court's mistaken assumption  
13 regarding LOFTHOUSE's criminal record. Therefore, this Court could only "correct"  
14 the sentence if it is illegal or the result of a clerical error.  
15

16  
17 (1) *The aggregation error in LOFTHOUSE's sentence was not a*  
18 *"mathematical clerical error."*

19 NRS 176.565 states, "[c]lerical mistakes in judgments, orders or other parts of the  
20 record and errors in the record arising from oversight or omission may be corrected by  
21 the court at any time and after such notice, if any, as the court orders." A clerical error is  
22 the result of a "minor mistake or inadvertence and not from judicial reasoning or  
23 determination; esp., a drafter's or typist's technical error that can be rectified without  
24 serious doubt about the correct reading." Black's Law Dictionary (10<sup>th</sup> ed. 2014).  
25

26 In Robertson v. State, 109 Nev. 1086, 1088 fn. 1, 863 P.2d 1040, 1041 fn. 1  
27 (2000) (overruled on other grounds by Krauss v. State, 116 Nev. 307, 310, 998 P.2d 163,  
28 165 (2000)), the Nevada Supreme Court explained, "[t]he object and purpose of a *minc*



1 *pro tunc* order is to make a record speak the truth concerning acts done.... [A]n order  
2 *nunc pro tunc* cannot be made use of nor resorted to, to supply omitted action. Power to  
3 order the entry of judgment *nunc pro tunc* cannot be used for the purpose of correcting  
4 judicial errors or omissions of the court. Nor can this procedure be employed to change  
5 the judgment actually rendered to one which the court neither rendered nor intended to  
6 render." Likewise, in civil cases the Nevada Supreme Court has noted, "[a] clerical error  
7 is a mistake in writing or copying. As more specifically applied to judgments and decrees  
8 a clerical error is a mistake or omission by a clerk, counsel, judge, or printer which is  
9 not the result of the exercise of the judicial function." *Mable v. Wright*, 77 Nev. 244,  
10 248, 362 P.2d 265, 267 (1961) (emphasis added); *see also* *Silva v. Second Judicial*  
11 *District Court*, 57 Nev. 468, 66 P.2d 422, 424 (1937); *McKissick v. McKissick*, 93 Nev.  
12 139, 143-44, 560 P.2d 1366, 1368 (1977); *Channel 13 of Las Vegas, Inc. v. Ettlinger*, 94  
13 Nev. 578, 580, 583 P.2d 1085, 1086 (1978); *Koester v. Administrator of Estate of*  
14 *Koester*, 101 Nev. 68, 73 fn.2, 693 P.2d 569, 573 (1985).

17 Here, the Court clearly and repeatedly indicated its intention was to sentence  
18 LOFTHOUSE to 60 to 180 months. This decision was not the result of a mistake in  
19 writing or copying as the judgment of conviction mirrors the oral sentence  
20 pronouncement. The 60 to 180 sentence was the result of the exercise of judicial  
21 discretion. Accordingly, the sentence is not a "mathematical clerical error" subject to  
22 correction. Therefore, LOFTHOUSE respectfully requests this Court deny the State's  
23 request.  
24

26 (2) LOFTHOUSE's sentence was illegal but this Court cannot correct the  
27 illegality by increasing the maximum sentence.

28 Although LOFTHOUSE did not raise any issue concerning his sentence

1 aggregation in his Motion to Correct Illegal Sentence, if this Court is inclined to address  
2 the State's request concerning LOFTHOUSE's sentence aggregation, LOFTHOUSE  
3 asserts his sentence is illegal. Additionally, the only way to correct the illegality is to  
4 reduce the minimum term of imprisonment.

5 The Nevada Supreme Court has held an "illegal" sentence is "one 'at variance  
6 with the controlling sentencing statute,' or 'illegal' in the sense that the court goes  
7 beyond its authority by acting without jurisdiction or imposing a sentence in excess of the  
8 statutory maximum provided...." Edwards, 112 Nev. at 708, 918 P.2d at 324; *citing* Allen  
9 v. United States, 495 A.2d 1145, 1149 (D.C. 1985). "[I]f any portion of a defendant's  
10 criminal sentence is illegal at the time of the pronouncement of sentencing, whether the  
11 minimum sentence or the maximum sentence, the entire sentence is illegal." Cassinelli v.  
12 State, 131 Nev. \_\_\_, \_\_\_, 357 P.3d 349, 361 (Nev. Ct. App. 2015). If the district court  
13 has the jurisdiction to correct an illegal sentence it may do so "only to the extent  
14 necessary to bring the sentence into compliance with the statute." Miranda v. State, 114  
15 Nev. 385, 387, 956 P.2d 1377, 1378 (1998) (citing U.S. v. Fogel, 829 F.2d 77, 88 (D.C.  
16 Cir. 1987)).

17 In Miranda, the district court sentenced the defendant to 18 to 36 months in  
18 prison. Miranda, 114 Nev. at 386, 956 P.2d at 1377. This sentence violated Nevada's  
19 40% rule and was illegal. See NRS 193.130(1). Subsequently the district court re-  
20 sentenced the defendant by increasing the maximum term to 45 months. Miranda, 114  
21 Nev. at 386, 956 P.2d at 1377. On appeal, the Nevada Supreme Court reversed holding  
22 "To comply with the Double Jeopardy Clause of the Nevada Constitution, a district court  
23 may correct an illegal sentence by increasing its severity only when necessary to bring  
24 the sentence into compliance with the pertinent statute, and a correction that increases  
25 the sentence into compliance with the pertinent statute, and a correction that increases  
26 the sentence into compliance with the pertinent statute, and a correction that increases  
27 the sentence into compliance with the pertinent statute, and a correction that increases  
28 the sentence into compliance with the pertinent statute, and a correction that increases

1 sentence severity is "necessary" only when there is no other, less severe means of  
2 correcting the illegality." Id. at 387, 956 P.2d at 1378. The Court further noted "the  
3 sentencing illegality in the present case could have been corrected by lowering the  
4 minimum terms rather than increasing the maximum terms, and, therefore, the correction  
5 imposed was not necessary to bring the sentences into compliance with the pertinent  
6 sentencing statute. Id. Therefore, "[b]ecause the sentencing correction unnecessarily  
7 increased the severity of the sentences, we conclude that the correction violated the  
8 Double Jeopardy Clause of the Nevada Constitution." Id.  
9

10 LOFTHOUSE was convicted of multiples counts of Sexual conduct between  
11 certain employees of school or volunteers at school and pupil in violation of NRS  
12 201.540. Additionally, LOFTHOUSE was convicted of two counts of First Degree  
13 Kidnapping in violation of NRS 200.310. This Court essentially sentenced  
14 LOFTHOUSE to 12 to 48 months with a consecutive 60 to 180 month sentence.  
15 However, when aggregating the sentence pursuant to NRS 173.035 this Court aggregated  
16 the minimum term but did not aggregate the maximum term and announced  
17 LOFTHOUSE's total sentence as 72 to 180 months. The Court later included this oral  
18 pronouncement in the judgement of conviction.  
19  
20

21 NRS 176.0635(1),(2)(b) states:  
22

23 1. Whenever a person is convicted of two or more offenses,  
24 and sentence has been pronounced for one offense, the  
25 court in imposing any subsequent sentence may provide  
26 that the sentences subsequently pronounced run either  
27 concurrently or consecutively with the sentence first  
28 imposed....For offenses committed on or after July 1, 2014,  
if the court imposes the sentences to run consecutively, the  
court must pronounce the minimum and maximum  
aggregate terms of imprisonment pursuant to subsection 2,  
unless the defendant is sentenced to life imprisonment

without the possibility of parole or death.

2. When aggregating terms of imprisonment pursuant to subsection 1:

(b) If all the sentences impose a minimum and maximum term of imprisonment, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment and must aggregate the maximum terms of imprisonment to determine the maximum aggregate term of imprisonment.

Here, the court did not aggregate the maximum sentence LOFTHOUSE's sentence and therefore the sentence is illegal because it is at variance with the controlling statute, NRS 176.035(2)(b). In order to correct this illegality the Court can only increase the maximum sentence if there is no other less severe means of correcting the illegality. See Miranda, 114 Nev. at 387, 956 P.2d at 1378. However, there is a less severe way to correct the illegality and that is to effectively reduce the minimum sentence to 60 months by running the 12 to 48 month sentence concurrent with the 60 to 180 month sentence. Accordingly, if this Court entertains the State's request to address the aggregation LOFTHOUSE respectfully requests this Court reduce the minimum term to 60 months, for a total sentence of 60 to 180 months, rather than unconstitutionally increase the maximum term to 228 months.

///

///

///

///

///

Conclusion

Based upon the foregoing, Defendant respectfully requests this court vacate the illegal portion of his sentence involving the imposition of lifetime supervision. Additionally, if this Court entertains the State's request concerning LOFTHOUSE's aggregate sentence, LOFTHOUSE respectfully requests the Court deny the State's request and instead grant his request to reduce the minimum sentence to 60 months to comply with the Nevada Constitution's Double Jeopardy Clause.

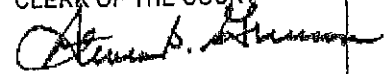
DATED this 5th day of June, 2017.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By /s/ William M. Waters  
WILLIAM M. WATERS, #9456  
Deputy Public Defender

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

District Attorneys Office  
E-Mail Address:  
PDMotions@clarkcountyda.com  
Jennifer.Garcia@clarkcountyda.com  
Eileen.Davis@clarkcountyda.com  
/s/ Carrie M. Connolly  
Secretary for the  
Public Defender's Office



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

5  
6 DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 JASON RICHARD LOFTHOUSE,

11 Defendant.  
12

CASE NO. C-15-307937-1

DEPT. NO. XX

DATE: June 8, 2017  
TIME: 9:00 a.m.

13 AMENDED REPLY TO STATE'S RESPONSE TO  
14 DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

15 COMES NOW, the Defendant, JASON RICHARD LOFTHOUSE, by and  
16 through WILLIAM M. WATERS, Deputy Public Defender and hereby replies to the  
17 State's Response to Defendant's Motion to Correct Illegal Sentence.

18 This Reply is made and based upon all the papers and pleadings on file  
19 herein, the attached Declaration of Counsel, and oral argument at the time set for hearing  
20 on LOFTHOUSE's Motion.

21 DATED this 6<sup>th</sup> day of June, 2017.

22 PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

23 By /s/ William M. Waters  
24 WILLIAM M. WATERS, #9456  
25 Deputy Public Defender  
26  
27  
28

## POINTS AND AUTHORITIES

### Reply Argument

#### 1. Lifetime Supervision

The State concedes LOFTHOUSE's convictions do not subject him to lifetime supervision pursuant to NRS 176.0931. State's Response P. 3. Accordingly, LOFTHOUSE respectfully requests this Court certify its intent to grant his Motion to Correct Illegal Sentence so that he may notify the Nevada Supreme Court. The Nevada Supreme Court can then remand the case to this Court for entry of order. See LOFTHOUSE v. State, Case No. 70587, Order filed May 18, 2017; Foster v. Dingwall, 126 Nev. 49, 52-53, 228 P.3d 453, 454-56 (2010). Thereafter, LOFTHOUSE can resume his direct appeal.

#### 2. Aggregate Sentence

The State also requests this Court modify LOFTHOUSE's aggregate sentence and in effect, unconstitutionally increase LOFTHOUSE's sentence from 72 to 180 months to 72 to 228 months. State's Response P. 3. The State claims the Court incorrectly aggregated LOFTHOUSE's sentence based upon a "clerical mathematical error." Id.

##### a. LOFTHOUSE's aggregate sentence is not properly before this Court.

On or about May 9, 2017, Clark County Public Defender Michael Wilfong received notice that per NDOC's request this Court was placing LOFTHOUSE's case on calendar on May 18, 2017 for clarification of sentence. NDOC sought clarification as "The Judgement of Conviction was given a total maximum aggregation of 180 months maximum, according to our calculations it is a 19 year maximum. Please clarify?" See



1 State of Nevada Department of Corrections Letter dated August 16, 2016. Wilfong  
2 forwarded all pertinent information concerning the May 18, 2017 hearing to  
3 LOFTHOUSE's appellate attorney William M. Waters.<sup>1</sup>

4 At the hearing on May 18, 2017, LOFTHOUSE asserted this Court's sentence  
5 violated NRS 176.035(2)(b) in that the court did not aggregate the maximum term of his  
6 consecutive sentence. However, LOFTHOUSE averred this Court could not increase his  
7 maximum sentence to correct the illegality and instead must decrease his minimum  
8 sentence to 60 months to correct the illegality. This Court clearly and definitively  
9 denied LOFTHOUSE's request to modify his minimum sentence to 60 months to  
10 conform to NRS 176.035 and re-iterated its intention was to sentence LOFTHOUSE to  
11 72 to 180 months. Trans. Hearing May 18, 2017 p. 8; 11.

14 Additionally, however, at the May 18, 2017 hearing LOFTHOUSE attempted to  
15 file a Motion to Correct Illegal Sentence arguing the Court incorrectly imposed lifetime  
16 supervision as a condition of sentence. LOFTHOUSE was unaware of any issues  
17 involving lifetime supervision until he scrutinized the judgement of conviction in  
18 preparation for the hearing regarding NDOC's concerns with the sentence aggregation.  
19 This Court also denied LOFTHOUSE's request to correct his illegal sentence regarding  
20 lifetime supervision but advised, "Okay. All right. I will deny the motion to correct the  
21 illegal sentence. You can take a look at it; if you want to, you can refile this." Trans.  
22 Hearing May 18, 2017 p. 11. Thus, when the Nevada Supreme Court suspended  
23 LOFTHOUSE's appellate briefing later that day, May 18, 2017, LOFTHOUSE re-filed

26  
27 <sup>1</sup> The Clark County Public Defender did not represent LOFTHOUSE at trial. This Court appointed  
28 the Clark County Public Defender to represent LOFTHOUSE on direct appeal after  
LOFTHOUSE's trial attorneys Dmitry Gurovich and Jason Margolis withdrew post-sentencing.

1 his Motion to Correct Illegal Sentence regarding lifetime supervision. Counsel did not  
2 seek to re-litigate this Court's clear ruling concerning the sentence aggregation. Because  
3 LOFTHOUSE filed the instant Motion to Correct Illegal Sentence and did not include  
4 any argument concerning his aggregate sentence, the State should not be allowed to raise  
5 an issue not addressed in the Motion in its Response.

6  
7 **b. Even if the issue involving the aggregate sentence is properly**  
8 **before this Court, the Court cannot increase LOFTHOUSE's**  
9 **sentence.**

10 Assuming this Court entertains the State's request, although LOFTHOUSE  
11 maintains it should not, this Court cannot increase LOFTHOUSE's maximum sentence to  
12 228 months. A judgment of conviction must set forth: (1) the plea; (2) the verdict or  
13 finding; and (3) the adjudication and sentence including "a reference to the statute under  
14 which the defendant is sentenced[.]" NRS 176.015(1)(a)-(c). Once the judgment of  
15 conviction is "signed by the judge and entered by the clerk" the judgment is final and a  
16 defendant begins serving his sentence. Bradley v. State, 109 Nev. 1090, 1095, 864 P.2d  
17 1272, 1275 (1993); see also Miller v. Hayes, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979).  
18 Thereafter, the district court generally lacks the power or jurisdiction to amend the  
19 judgment of conviction. Campbell v. Eighth Judicial District Court, 114 Nev. 410, 413,  
20 957 P.2d 1141, 1143 (1998).

21  
22  
23 The district court arguably however retains jurisdiction to correct an illegal  
24 sentence (NRS 176.555) and to correct a judgment if the judgment is based upon  
25 materially untrue assumptions or mistakes which work to the extreme detriment of a  
26 defendant. State v. Kimsey, 109 Nev. 519, 522, 853 P.2d 109, 111 (1993). The  
27 mistake(s) must be the result of the judge's misapprehension of a defendant's criminal  
28

1 record. Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321 324 (1996). In this sense, the  
2 district court can only modify its judgment if the modification benefits the defendant, not  
3 the State. See Staley v. State, 106 Nev. 75, 80, 787 P.2d 396, 399 (1990) (overruled on  
4 other grounds by Hodges v. State, 119 Nev. 479, 78 P.3d 67 (2003)). Finally, the district  
5 court can correct clerical mistakes in orders and judgments. NRS 176.565; see also In re:  
6 Humboldt River System, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961). If none of these  
7 aforementioned exceptions are applicable, once a person begins serving his sentence, and  
8 is subject to the executive authority of the parole board, "the power to alleviate the  
9 sentence rests entirely with the executive branch." Kimsey, 109 Nev. at 523, 853 P.2d at  
10 112 (citing Creps v. State, 94 Nev. 351, 358, 581 P.2d 842, 847 (1978)).  
11

12 Here, any aggregation error was not a result of this Court's mistaken assumption  
13 regarding LOFTHOUSE's criminal record. Therefore, this Court could only "correct"  
14 the sentence if it is illegal or the result of a clerical error.  
15

16 (1) *The aggregation error in LOFTHOUSE's sentence was not a*  
17 *"mathematical clerical error."*

18 NRS 176.565 states, "[c]lerical mistakes in judgments, orders or other parts of the  
19 record and errors in the record arising from oversight or omission may be corrected by  
20 the court at any time and after such notice, if any, as the court orders." A clerical error is  
21 the result of a "minor mistake or inadvertence and not from judicial reasoning or  
22 determination; esp., a drafter's or typist's technical error that can be rectified without  
23 serious doubt about the correct reading." Black's Law Dictionary (10<sup>th</sup> ed. 2014).  
24

25 In Robertson v. State, 109 Nev. 1086, 1088 fn. 1, 863 P.2d 1040, 1041 fn. 1  
26 (2000) (overruled on other grounds by Krauss v. State, 116 Nev. 307, 310, 998 P.2d 163,  
27 165 (2000)), the Nevada Supreme Court explained, "[t]he object and purpose of a *nunc*  
28

1 *pro tunc* order is to make a record speak the truth concerning acts done.... [A]n order  
2 *nunc pro tunc* cannot be made use of nor resorted to, to supply omitted action. Power to  
3 order the entry of judgment *nunc pro tunc* cannot be used for the purpose of correcting  
4 judicial errors or omissions of the court. Nor can this procedure be employed to change  
5 the judgment actually rendered to one which the court neither rendered nor intended to  
6 render." Likewise, in civil cases the Nevada Supreme Court has noted, "[a] clerical error  
7 is a mistake in writing or copying. As more specifically applied to judgments and decrees  
8 a clerical error is a mistake or omission by a clerk, counsel, judge, or printer which is  
9 not the result of the exercise of the judicial function." *Mable v. Wright*, 77 Nev. 244,  
10 248, 362 P.2d 265, 267 (1961) (emphasis added); *see also Silva v. Second Judicial*  
11 *District Court*, 57 Nev. 468, 66 P.2d 422, 424 (1937); *McKissick v. McKissick*, 93 Nev.  
12 139, 143-44, 560 P.2d 1366, 1368 (1977); *Channel 13 of Las Vegas, Inc. v. Ettlinger*, 94  
13 Nev. 578, 580, 583 P.2d 1085, 1086 (1978); *Koester v. Administrator of Estate of*  
14 *Koester*, 101 Nev. 68, 73 fn.2, 693 P.2d 569, 573 (1985).

17 Here, the Court clearly and repeatedly indicated its intention was to sentence  
18 LOFTHOUSE to 72 to 180 months. This decision was not the result of a mistake in  
19 writing or copying as the judgment of conviction mirrors the oral sentence  
20 pronouncement. The 72 to 180 sentence was the result of the exercise of judicial  
21 discretion. Accordingly, the sentence is not a "mathematical clerical error" subject to  
22 correction. Therefore, LOFTHOUSE respectfully requests this Court deny the State's  
23 request.  
24  
25

26 (2) *LOFTHOUSE's sentence was illegal but this Court cannot correct the*  
27 *illegality by increasing the maximum sentence.*

28 Although LOFTHOUSE did not raise any issue concerning his sentence

1 aggregation in his Motion to Correct Illegal Sentence, if this Court is inclined to address  
2 the State's request concerning LOFTHOUSE's sentence aggregation, LOFTHOUSE  
3 asserts his sentence is illegal. Additionally, the only way to correct the illegality is to  
4 reduce the minimum term of imprisonment.

5 The Nevada Supreme Court has held an "illegal" sentence is "one 'at variance  
6 with the controlling sentencing statute,' or 'illegal' in the sense that the court goes  
7 beyond its authority by acting without jurisdiction or imposing a sentence in excess of the  
8 statutory maximum provided..." Edwards, 112 Nev. at 708, 918 P.2d at 324; *citing Allen*  
9 *v. United States*, 495 A.2d 1145, 1149 (D.C. 1985). "[I]f any portion of a defendant's  
10 criminal sentence is illegal at the time of the pronouncement of sentencing, whether the  
11 minimum sentence or the maximum sentence, the entire sentence is illegal." Cassinelli v.  
12 State, 131 Nev. \_\_\_, \_\_\_, 357 P.3d 349, 361 (Nev. Ct. App. 2015). If the district court  
13 has the jurisdiction to correct an illegal sentence it may do so "only to the extent  
14 necessary to bring the sentence into compliance with the statute." Miranda v. State, 114  
15 Nev. 385, 387, 956 P.2d 1377, 1378 (1998) (citing U.S. v. Fogel, 829 F.2d 77, 88 (D.C.  
16 Cir. 1987)).

17 In Miranda, the district court sentenced the defendant to 18 to 36 months in  
18 prison. Miranda, 114 Nev. at 386, 956 P.2d at 1377. This sentence violated Nevada's  
19 40% rule and was illegal. See NRS 193.130(1). Subsequently the district court re-  
20 sentenced the defendant by increasing the maximum term to 45 months. Miranda, 114  
21 Nev. at 386, 956 P.2d at 1377. On appeal, the Nevada Supreme Court reversed holding  
22 "To comply with the Double Jeopardy Clause of the Nevada Constitution, a district court  
23 may correct an illegal sentence by increasing its severity only when necessary to bring  
24 the sentence into compliance with the pertinent statute, and a correction that increases  
25 the sentence into compliance with the pertinent statute, and a correction that increases  
26 the sentence into compliance with the pertinent statute, and a correction that increases  
27 the sentence into compliance with the pertinent statute, and a correction that increases  
28 the sentence into compliance with the pertinent statute, and a correction that increases

1 sentence severity is "necessary" only when there is no other, less severe means of  
2 correcting the illegality." Id. at 387, 956 P.2d at 1378. The Court further noted "the  
3 sentencing illegality in the present case could have been corrected by lowering the  
4 minimum terms rather than increasing the maximum terms, and, therefore, the correction  
5 imposed was not necessary to bring the sentences into compliance with the pertinent  
6 sentencing statute. Id. Therefore, "[b]ecause the sentencing correction unnecessarily  
7 increased the severity of the sentences, we conclude that the correction violated the  
8 Double Jeopardy Clause of the Nevada Constitution." Id.  
9

10 LORTHOUSE was convicted of multiples counts of Sexual conduct between  
11 certain employees of school or volunteers at school and pupil in violation of NRS  
12 201.540. Additionally, LOFTHOUSE was convicted of two counts of First Degree  
13 Kidnapping in violation of NRS 200.310. This Court essentially sentenced  
14 LOFTHOUSE to 12 to 48 months with a consecutive 60 to 180 month sentence.  
15 However, when aggregating the sentence pursuant to NRS 173.035 this Court aggregated  
16 the minimum term but did not aggregate the maximum term and announced  
17 LOFTHOUSE's total sentence as 72 to 180 months. The Court later included this oral  
18 pronouncement in the judgement of conviction.  
19  
20

21 NRS 176.0635(1),(2)(b) states:  
22

23 1. Whenever a person is convicted of two or more offenses,  
24 and sentence has been pronounced for one offense, the  
25 court in imposing any subsequent sentence may provide  
26 that the sentences subsequently pronounced run either  
27 concurrently or consecutively with the sentence first  
28 imposed....For offenses committed on or after July 1, 2014,  
if the court imposes the sentences to run consecutively, the  
court must pronounce the minimum and maximum  
aggregate terms of imprisonment pursuant to subsection 2,  
unless the defendant is sentenced to life imprisonment

without the possibility of parole or death.

2. When aggregating terms of imprisonment pursuant to subsection 1:

(b) If all the sentences impose a minimum and maximum term of imprisonment, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment and must aggregate the maximum terms of imprisonment to determine the maximum aggregate term of imprisonment.

Here, the court did not aggregate the maximum sentence LOFTHOUSE's sentence and therefore the sentence is illegal because it is at variance with the controlling statute, NRS 176.035(2)(b). In order to correct this illegality the Court can only increase the maximum sentence if there is no other less severe means of correcting the illegality. See Miranda, 114 Nev. at 387, 956 P.2d at 1378. However, there is a less severe way to correct the illegality and that is to effectively reduce the minimum sentence to 60 months by running the 12 to 48 month sentence concurrent with the 60 to 180 month sentence. Accordingly, if this Court entertains the State's request to address the aggregation LOFTHOUSE respectfully requests this Court reduce the minimum term to 60 months, for a total sentence of 60 to 180 months, rather than unconstitutionally increase the maximum term to 228 months.

///

///

///

///

///

Conclusion

Based upon the foregoing, Defendant respectfully requests this court vacate the illegal portion of his sentence involving the imposition of lifetime supervision. Additionally, if this Court entertains the State's request concerning LOFTHOUSE's aggregate sentence, LOFTHOUSE respectfully requests the Court deny the State's request and instead grant his request to reduce the minimum sentence to 60 months to comply with the Nevada Constitution's Double Jeopardy Clause.

DATED this 6th day of June, 2017.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By /s/ William M. Waters  
WILLIAM M. WATERS, #9456  
Deputy Public Defender



**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above and foregoing was made this 6<sup>th</sup> day of June, 2017, by Electronic Filing to:

District Attorneys Office

E-Mail Address:

PDmotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly

Secretary for the  
Public Defender's Office



1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 JASON RICHARD LOFTHOUSE,

10 Defendant.

CASE NO. C-15-307937-1

DEPT. NO. XX

11  
12  
13 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

14 THURSDAY, MAY 18, 2017

15 **RECORDER'S TRANSCRIPT RE:**  
16 STATUS CHECK: CLARIFICATION OF SENTENCE

17 APPEARANCES:

18 For the State:

STACEY L. KOLLINS  
Chief Deputy District Attorney

19  
20  
21 For the Defendant:

WILLIAM M. WATERS, ESQ.  
Deputy Public Defender

22  
23  
24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, MAY 18, 2017, 9:16 A.M.

2 \* \* \* \* \*

3 THE COURT: State of Nevada versus Jason Lofthouse, case number  
4 C307937.

5 MS. KOLLINS: Good morning, Your Honor, Stacey Kollins on behalf of the  
6 State, 5391.

7 MR. WATERS: William Waters, Public Defender's Office, on behalf of Mr.  
8 Lofthouse who's not present. He is at the Nevada Department of Prisons, and my  
9 bar number is 9456.

10 THE COURT: Okay. We got a request to clarify the sentence in regard to, I  
11 guess, his judgment of conviction. Did the parties have a chance to confer in regard  
12 to this?

13 MS. KOLLINS: I did not know that Mr. Waters was assigned to this matter,  
14 Your Honor. In fact, I just spoke to him this morning for about five minutes and  
15 received a motion from him.

16 MR. WATERS: So here's the thing, Judge, I got this last week. Mr. Wilfong,  
17 from our office, found out that I was the -- I was appointed to represent him on  
18 appeal. As you know, we didn't do the trial; it was an out-of-state attorney. Your  
19 Honor appointed us to do the appeal. A notice of appeal was filed, actually, in  
20 proper person about a year ago. I just received the transcripts from the trial on April  
21 7<sup>th</sup>. I'd ask the Supreme Court to -- once I got this -- prior to getting this notice, I'd  
22 asked the Supreme Court to -- for an extension of time to file his opening brief. It  
23 was originally due on May 2<sup>nd</sup>. Um, for a couple of reasons; one being the late  
24 receipt of transcripts; the other being that I'm getting married next week, so I'm  
25 going to be out of town. The Supreme Court said no, so I've got to file this opening

1 brief before I leave next week; this is really important. Um, I think we need to  
2 resolve this before the deadline to file the opening brief, and I understand that puts  
3 everyone in a tough spot. Um, but once I got this notice I was looking into the JOC  
4 a little bit more closely and I realized there was another problem with it. Um, so  
5 what I did was I, very rapidly, typed up a motion. If I could approach the bench, I  
6 already gave a copy to Ms. Kollins.

7 THE COURT: Okay.

8 MR. WATERS: Um, there's an issue with the imposition.

9 MS. KOLLINS: I'm going to need an opportunity to respond in writing.

10 MR. WATERS: Well -- I mean, it's a pretty simple issue. But --

11 THE COURT: Okay.

12 MR. WATERS: -- I don't know how much time she's going to need to  
13 respond, I guess maybe Monday or Tuesday. So here's the thing, Judge, with  
14 respect to the NDOC's notice. The way I understand that is, if you look at the  
15 aggregation statute which is 176.035(2)(b); it says when you're running sentences  
16 consecutive you got to aggregate the minimum and the maximum. Um, it appears  
17 what Your Honor did was, gave him 12 to 48 and then essentially a five to 15  
18 consecutive. So my reading of the aggregation statute would be -- that would be six  
19 to 19 years.

20 However, at the sentencing Ms. Kollins suggested that it was actually  
21 six to 15; Your Honor agreed; JOC was signed six to 15. So now the problem we  
22 have is that the sentencing is illegal. And I think that's why NDOC is concerned  
23 because it doesn't follow the statute. The problem is that, in order to correct the  
24 illegality -- you know, Nevada Supreme Court's been very clear, you can't -- once  
25 the JOC is signed; Double Jeopardy attaches, you can't increase the maximum end

1 of a sentence.

2 And there's a case on point, *Miranda versus State*, 114 Nev. 385. So  
3 what the *Miranda* said was, if you got an illegal sentence you can't -- and you're  
4 attempting to fix it, you can't increase the maximum term if there's a less onerous  
5 way to fix the sentence. So in *Miranda* what they did was they decreased the  
6 minimum term, and the Supreme Court said that's what you have to do. So in this  
7 case my suggestion would be, the only way to fix the illegal sentence without  
8 increasing the maximum term would be, you got to give him five on the bottom.  
9 So -- which would mean that the 12 to 48 has to run concurrent to the five to 15, so  
10 that's issue number one. That's the way I read it. That's the way I understand it.  
11 That's my position on it.

12 Um, with respect to the other motion that I just filed, I know Your  
13 Honor's -- I'm not trying to blindside Your Honor with that. The problem was I wasn't  
14 even aware of it until NDOC filed this notice. But essentially, I'll just give you a real  
15 quick brief synopsis of my opinion of lifetime supervision. Mr. Lofthouse committed  
16 his offenses in May of 2016.

17 THE COURT: Is that what this is?

18 MR. WATERS: Yes.

19 THE COURT: Well I'm not going to deal with it today. I've got other things to  
20 do.

21 MR. WATERS: I understand that, Your Honor.

22 THE COURT: So --

23 MR. WATERS: But I've got an appellate brief deadline coming up --

24 THE COURT: -- I'll give you -- I'll give the State a chance to respond to this  
25 and we'll go from there. We'll continue this until after the State -- the issue in terms

1 of clarification of the sentence -- until after the State has a chance to respond.

2 How long does the State need to respond?

3 MS. KOLLINS: Just a few days, Your Honor.

4 THE COURT: Okay.

5 MS. KOLLINS: When are you leaving?

6 MR. WATERS: Uh, Wednesday.

7 MS. KOLLINS: I can have something done by Friday.

8 MR. WATERS: Oh, thank you. I appreciate that.

9 THE COURT: Okay.

10 MS. KOLLINS: If you would have given it to me yesterday, I would have tried  
11 to have something.

12 MR. WATERS: I just wrote it yesterday, I'm sorry.

13 THE COURT: All right. I don't want to get into -- so do you think you can  
14 have something filed by -- well today's Thursday. When do you want to have  
15 something by?

16 MS. KOLLINS: I can get something by tomorrow afternoon.

17 THE COURT: And when do you have a deadline to file something with the  
18 Supreme Court?

19 MR. WATERS: So I'm leaving next week, I'm getting married.

20 THE COURT: Congratulations.

21 MR. WATERS: Thank you. I appreciate that, Your Honor. Um, the Supreme  
22 Court deadline is currently May 30<sup>th</sup>.

23 THE COURT: Okay. Well --

24 MS. KOLLINS: They won't keep that [indiscernible].

25 MR. WATERS: Do you have -- do you have calendar as of Tuesday of next

1 week? I could --

2 THE COURT: When are you leaving next week?

3 MR. WATERS: Wednesday.

4 THE COURT: No. I'm out of the -- I'm out of the district at a judicial  
5 conference all next week until Friday.

6 MR. WATERS: Okay. Well I mean --

7 THE COURT: You know I don't know what to say.

8 MR. WATERS: No, I appreciate -- I appreciate that, Your Honor.

9 [Colloquy between Counsel]

10 MR. WATERS: What I can do is -- you know, I had filed an -- just so you  
11 know, Your Honor, I did file an emergency motion with the Supreme Court after I  
12 received the notice in -- from NDOC; asking them to just extend the deadline to file  
13 the brief just so we could litigate this issue. I have not heard back from them, so  
14 hopefully maybe --

15 THE COURT: Where did you come up with six to 150 months?

16 MR. WATERS: In the -- well, the Judgment of Conviction says 72 to 180.  
17 Also, the transcripts from the sentencing hearing -- uh, says 72 to 180. I think  
18 it's -- yeah, it says right here -- um -- the Clerk says I need a total aggregate; Ms.  
19 Kollins says it's going to be 72 to 180, and then the Court says all right thank you for  
20 your mathematics there Ms. Kollins, and she says certainly.

21 THE COURT: Okay.

22 MR. WATERS: And then the rest of the sentence.

23 THE COURT: All right.

24 [Colloquy between Counsel]

25 MR. WATERS: So I'll be back the week after next. I know Monday the 29<sup>th</sup> is

1 a holiday, but I'll be back on the 30<sup>th</sup>. Um, I know that's -- as of right now that's my  
2 deadline to file a brief. You know, I kind of didn't want to be worried about this while  
3 I was getting married.

4 THE COURT: No, I understand.

5 MR. WATERS: The Supreme Court is going to do what they're going to do.  
6 So I guess if we -- if we just can accommodate, Your Honor, I'd appreciate you  
7 trying to.

8 THE COURT: I'm not -- your -- so the maximum sentence is 180 months and  
9 then parole eligibility at 72 months, so that's 40 percent of 180 months.

10 MR. WATERS: That is 40 percent, correct. But the problem is you have the  
11 aggregation statute which is 176.035, which --

12 MS. KOLLINS: Which should've tagged the smallest --

13 MR. WATERS: Which should've tagged four years on the back end of the 15,  
14 and that was passed in 2015 legislature -- or '13 legislature; it was actually  
15 supposed to benefit our clients, or -- so they didn't have to make two parole boards.  
16 That's why they came up with this idea of aggregating the sentences. The problem  
17 is though -- you know, as it stands right now it's not illegal and in the sense it  
18 violates the 40 percent rule; that's correct.

19 But the problem is, it's illegal because you have only the minimum and  
20 being aggregated, and you don't have the maximum and being aggregated. And  
21 that's the illegality, and I don't mean illegality in a pejorative sense. I just mean that  
22 it violates the statute. The sentence violates the aggregation statute. So then the  
23 case that I referenced from this in Court which is *Miranda*, says that in order to fix an  
24 illegality in a sentence you can't -- because of Double Jeopardy you can't increase  
25 the sentence if there's a less restrictive way to fix it. My suggestion would be that



1 it's got to be a five to 15, so the 12 to 48 would have to run concurrent. That's --

2 THE COURT: So you're saying we made a mistake and should've had more  
3 on the --

4 MS. KOLLINS: On the end.

5 THE COURT: -- maximum end?

6 MS. KOLLINS: Yes, sir.

7 THE COURT: And so to correct that, we should -- no, I'm going to deny that  
8 motion. How else do we need to correct this, what else is up?

9 MR. WATERS: Can I -- um --

10 THE COURT: No, I don't think -- I mean, I don't think that I'm required to  
11 lessen it because we made a mathematical mistake when the sentence is otherwise  
12 legal as 40 percent rule. And I don't think the *Miranda* case requires that to be  
13 done; that's my ruling.

14 MR. WATERS: Okay. May I just read this for the record?

15 THE COURT: So let's move on to the next thing.

16 MR. WATERS: May I just read this for the record?

17 THE COURT: No. You can put together something and file something.

18 MR. WATERS: Okay. So, can I order -- can I get a transcript from today's  
19 hearing then, because this does have to make it into the opening brief?

20 THE COURT: That's fine.

21 MR. WATERS: Okay.

22 THE COURT: All right. What else do we need to deal with then, in terms of  
23 this motion?

24 MS. KOLLINS: Just when the Court's going to be available to hear it and  
25 when Mr. Waters is going to be available. I can file something by Friday. But if the

1 Court's not here and he's gone, then that doesn't really make sense for me to do a  
2 24-hour turnaround. So do you want to set it on the 30<sup>th</sup>?

3 MR. WATERS: Are you here on the 30<sup>th</sup>, Judge?

4 THE COURT: No, I'm not here on the 30<sup>th</sup>. Because you said you're leaving  
5 on Wednesday --

6 MR. WATERS: Yes.

7 THE COURT: And why is he not subject to lifetime supervision?

8 MR. WATERS: Because the law changed in 2015 which made  
9 teacher/student sex offense charge applicable to lifetime supervision. But the  
10 problem is if you read the amendment -- the legislative history, it only made lifetime  
11 supervision -- or it only made sex between teacher and student subject to lifetime  
12 supervision for offenses occurring after October 1<sup>st</sup>, 2015. And Mr. Lofthouse's  
13 offense occurred in May of 2015, so the effective date was after his offenses and  
14 therefore, he wasn't -- and the thing is if you --

15 THE COURT: Do you have a quick response to that?

16 MS. KOLLINS: Well the State's position is, it's also subject to lifetime  
17 supervision on the first degree kidnapping but that's why I want to respond in writing.

18 THE COURT: Oh, okay. What's your -- do you have a quick response to  
19 that?

20 MR. WATERS: No, that's fine. I mean -- look, I understand that she needs  
21 her chance to respond. I didn't try to hijack her today.

22 THE COURT: No, no. But I'm --

23 MR. WATERS: I'm basically --

24 THE COURT: -- trying to meet your need to do --

25 MR. WATERS: Yeah.

1 THE COURT: -- to have you -- to have something --

2 MR. WATERS: Right.

3 THE COURT: -- before you have to file --

4 MR. WATERS: Sure.

5 THE COURT: -- so you aren't worrying about this while you're out --

6 MR. WATERS: I appreciate that.

7 THE COURT: -- while out getting married. And so --

8 MR. WATERS: I've been basically working 12-hour days trying to get this  
9 brief done. And so I didn't mean to like just spring on her last minute.

10 THE COURT: No, no, no. And I'm -- no one -- and I'm -- trust me, I'm not -- I  
11 just got a ton of these to deal with today --

12 MR. WATERS: Yeah.

13 THE COURT: -- and I do appreciate your situation. And I don't want to create  
14 any issue for you if I can avoid it with you going and getting married. And so that's  
15 why I'm trying to work through these issues with you as quickly as possible in that  
16 regard.

17 MR. WATERS: And I completely understand she needs to respond, and I'm  
18 willing to -- you know, set it on a date when the Court's available. If the brief is filed,  
19 I'll deal with that later.

20 THE COURT: Well let me just ask you -- I mean, does the first degree  
21 kidnapping trump the change in the law?

22 MR. WATERS: Well -- I mean -- and you know what, Ms. Kollins makes an  
23 interesting point; I would have to look into that. I didn't -- I didn't actually like look at  
24 the first degree kidnapping. Um, so I'd be interested to see what she comes up  
25 with, and -- you know -- if she's right, she's right; I'm not afraid of admitting that. But

1 I think --

2 THE COURT: I take it that first degree -- well, give a quick thumbnail on  
3 the -- I assume you have that already.

4 MS. KOLLINS: I don't have all of this laid out for the Court because I didn't  
5 anticipate this this morning. First degree kidnapping, when it's committed on a child  
6 for a sexual purpose, is subject to lifetime supervision pursuant to statute. I can't  
7 give you a citation for that now.

8 THE COURT: Okay. All right. I will deny the motion to correct the illegal  
9 sentence. You can take a look at it; if you want to, you can refile this.

10 MR. WATERS: Okay.

11 THE COURT: I'll deny it without prejudice. On that basis, I'll deny the motion  
12 to correct the illegal sentence. I will just reaffirm based upon everything; that the  
13 maximum sentence that should be utilized here is 180 months with minimum parole  
14 eligibility at 72 months.

15 MR. WATERS: And, Judge, I do not mean to burden your Reporter/Recorder,  
16 but I would really appreciate it if I could get a transcript expeditiously as possible.

17 THE COURT: Well prepare and submit a request and I'll sign off on it as  
18 quickly as possible.

19 MR. WATERS: Okay.

20 THE COURT: And for whatever purposes you need it for your appeal --

21 MR. WATERS: Brief, yeah.

22 THE COURT: -- brief, you can get --

23 MR. WATERS: All right.

24 THE COURT: I'm sure we'll cooperate in terms of getting you a disc. And  
25 this obviously isn't that long --

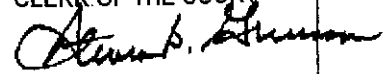
1 MR. WATERS: Yeah.  
2 THE COURT: -- of a proceeding --  
3 MR. WATERS: Thanks, Judge.  
4 THE COURT: -- that you can't pull some stuff out of.  
5 MR. WATERS: I appreciate it. Okay.  
6 THE COURT: Okay.  
7 MR. WATERS: Thank you.  
8 THE COURT: All right. Thank you everybody.

9 PROCEEDING CONCLUDED AT 9:29 A.M.

10 \* \* \* \* \*

11  
12  
13  
14  
15  
16  
17  
18 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
19 visual recording of this proceeding in the above-entitled case.

20 Angie Calvillo  
21 ANGIE CALVILLO  
22 Court Recorder/Transcriber  
23 District Court Dept. XX  
24 702-671-4436  
25



1 RTRAN

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 JASON RICHARD LOFTHOUSE,

10 Defendant.  
11

CASE NO. C-15-307937-1

DEPT. NO. XX

12  
13 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

14 THURSDAY, JUNE 8, 2017

15 **RECORDER'S TRANSCRIPT RE:**  
16 **DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE**

17 **APPEARANCES:**

18 For the State:

MICHAEL G. GILES  
Deputy District Attorney

19  
20  
21 For the Defendant:

WILLIAM M. WATERS, ESQ.  
Deputy Public Defender

22  
23  
24  
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 8, 2017, 9:20 A.M.

2 \* \* \* \* \*

3 THE COURT: State of Nevada versus Jason Loffhouse, case number  
4 C307937.

5 MR. GILES: Michael Giles for the State.

6 MR. WATERS: Good morning. William Waters on behalf of Mr. Loffhouse.  
7 He's not present. He's in department of prisons. Um, I don't think we need him  
8 here for this, so I'd ask to waive his presence.

9 THE COURT: You need to speak up, you're very soft, I'm sorry.

10 MR. WATERS: I'm sorry. Mr. Loffhouse is in prison. But for purposes of the  
11 motion today, I don't think he has to be here so we can waive his presence.

12 THE COURT: All right. Well, there was couple of issues that we were, I  
13 guess, dealing with. One was, your motion to correct illegal sentence that related to  
14 the lifetime supervision that was part of Mr. Loffhouse's sentence. It's my  
15 understanding the State now concurs with Defendant's position that the lifetime  
16 supervision should be removed from the sentence.

17 MR. GILES: It's my understanding from the response by Mr. Owens, Your  
18 Honor.

19 THE COURT: All right. So I'll go ahead and order that, and ask that a new  
20 Judgment of Conviction be prepared.

21 MR. WATERS: Well -- and I appreciate that, Your Honor, but -- because this  
22 is -- because we got the case pending in the Supreme Court, they're procedure that  
23 they've indicated they want done, and this is based on civil cases so I don't -- it's  
24 what they want so I'll do it, although I don't necessarily think that it's the correct  
25 mechanism to do it. But they want you to certify your intent to do that, and then I

1 have to file a motion in the Supreme Court for a limited remand; then they will  
2 remand the case to Your Honor.

3 THE COURT: Okay, that's fine.

4 MR. WATERS: I attach that -- and I don't know what the certification is  
5 supposed to look like, but I'm supposed to attach it to my motion for remand. Um,  
6 so I don't -- I don't know if Your Honor wants to come up with something that just  
7 says my intention is to --

8 THE COURT: I can't believe this is the first time in the history of Nevada that  
9 this has ever happened. I mean, your office doesn't have any format, or you don't  
10 have any format?

11 MR. GILES: I've never heard of this before, Your Honor. Typically, if it's an  
12 illegal sentence, the Court always has the authorities to modify a sentence.

13 THE COURT: That's what I've sort of read the underlying cases to --

14 MR. WATERS: That's what we thought. But when they entered their order on  
15 the 18<sup>th</sup> of May, they indicated that they wanted me to follow this procedure from the  
16 civil case. Again and internally, we've discussed it at the Public Defender's Office.  
17 We think they're completely wrong about that, but that's what they want and I'm not  
18 about to get in a fight with the Supreme Court.

19 So to answer Your Honor's question --

20 THE COURT: Well draft up -- draft up something --

21 MR. WATERS: Okay.

22 THE COURT: -- you know, to certify it.

23 MR. WATERS: All right.

24 THE COURT: We'll go from there. Now, the second issue was the request  
25 by the Department of Corrections in regard to the calculation of the aggregate for



1 the -- of the -- of the sentences. So I got the position of the State; you indicated you  
2 didn't feel that was before the Court today, although you did respond to the State's  
3 remarks.

4 Where do the parties think we stand on that one?

5 MR. WATERS: Here's the situation. Your Honor remembers we were here  
6 on the 18<sup>th</sup>, and it was a very hectic day because the Supreme Court hadn't entered  
7 the order allowing me to litigate this. My recollection -- and then -- you know -- um,  
8 your Court Reporter created the transcripts and that, Your Honor clearly and  
9 definitively ruled on that issue, the issue about the aggregation; then I filed the  
10 motion to correct the lifetime supervision which Your Honor denied but said if the  
11 Supreme Court grants your stay, go ahead and refile it.

12 So that's why when I -- when they did grant the stay and I refilled the  
13 motion, I only addressed the lifetime supervision issue because Your Honor had  
14 pretty clearly denied the other issue but left open this lifetime supervision. So  
15 number one -- I mean, I don't think the State when they're responding to a motion; if  
16 it's not their own motion, can't raise an issue that I didn't address. Nevertheless, I  
17 obviously threw out my argument because I was -- I was worried that -- you know if  
18 Your Honor was inclined to address it even though I don't think they should've been  
19 allowed to raise it, I wanted to have something on the record what my position is.

20 So I guess the issue comes down to, if Your Honor is inclined to  
21 address this aggregation, I'll argue my position. But if you're not, because you've  
22 already made your ruling on that, then I'll just let that -- let that go.

23 THE COURT: Well -- I mean, I guess sort of where we are -- I mean, clearly,  
24 if you go back and look at the sentencing record, I intended to run Count 1  
25 consecutive to Count 2. Count 1 was 12 to 48 months, and Count 2 was 60 to 180

1 months.

2 MR. WATERS: Correct.

3 THE COURT: And then at the very end I indicated that that would result in a  
4 total sentence at the low end of six years. And then at the high end, I made the  
5 mistake of saying gee, what's that calculate to and Ms. Kollins said a 180 months  
6 and I thanked her for her mathematics, which was way off; you know, it should've  
7 been 228 months. I mean I guess, I'm -- what I'm trying to find out is, what's your  
8 position in terms of -- you started arguing then that, somehow or another, we should  
9 go down to 60 months to make the sentence accurate. I don't see how doing -- and  
10 I remember the prior hearing I was like, well -- you know, I don't have any problem  
11 leaving it at 180 on the high end. But my minimum of 72 months -- I wasn't  
12 wanting -- inclined to change, and it still was within the 40 percent of the 180  
13 months.

14 So I guess what I'm asking you is, what's your position going to be on it  
15 going forward if you're going to say that, somehow or another, because we didn't  
16 modify the 180 up to 280; that somehow that 72 months need to be lower, then we  
17 do need to deal with it. And if you aren't prepared really, or you want -- you know,  
18 the State to do something more formal in that regard; or the Court to set a special  
19 hearing in that regard, I'm going to do it. But -- you know, I guess that's what I'm  
20 just sort of saying is, if your position somehow at the end should go down to five  
21 years, then we're going to need to have a hearing in reference to whether or not I  
22 can change the upper end. If you're happy with taking the low end at six years and  
23 keeping it at 180, I'm not in any great shape to add on another 48 months.

24 I think -- you know in the end, I'd be surprised if he's going to stay in jail  
25 180 months for this crime.

1 MR. WATERS: I'll accept the 72 to 180 at this point, Your Honor. That was  
2 your clear ruling at the last hearing and I'm prepared to accept that.

3 THE COURT: All right.

4 MR. GILES: Your Honor, I believe that would require resentencing. And the  
5 reason that the prison sends those requests to the Court is because they must  
6 comply with -- not only the JOC, but the order of the Court at the time of sentencing,  
7 and they're not the same; 180 is not what the original sentence was.

8 MR. WATERS: Yes, it was.

9 MR. GILES: When you aggregated the sentence it was 228 --

10 MR. WATERS: No.

11 MR. GILES: So --

12 MR. WATERS: He's wrong. I'm sorry; with all due respect, he's wrong. It  
13 was always 72 to 180. It was said twice at the sentencing hearing and that was  
14 confirmed in the written JOC. It's always been 72 to 180. He's just wrong about  
15 that. Now, the Department of Corrections might be confused about it but -- you  
16 know they -- it's in their hands now.

17 THE COURT: Well -- no. I mean -- you know, again it gets in --

18 MR. WATERS: And we don't need a resentencing. I mean, it is what it is.

19 THE COURT: The JOC does say 72 to 180. And -- you know, it was -- but I  
20 mean it clearly was a mathematical error. I think that the Court does have the  
21 authority to change it. I just don't have any -- I just -- I would prefer to not create any  
22 new issue as to whether or not I have the authority to change the upper end to  
23 create what was, in my mind, clearly a mathematical error.

24 MR. WATERS: Right. And that's what's --

25 THE COURT: So that's why I'm -- I don't have any real issue with just leaving

1 it at 180. But if we -- if the State's telling me, you feel that I do need to make that  
2 correction.

3 MR. GILES: Well -- and I'm relying obviously on the motions. I don't have the  
4 file here. I wasn't here for the sentencing. All I'm saying is the State is not taking --  
5 at this point, I am not taking a position on the 72 to 180 versus 72 to 228, the prison  
6 likely will. So regardless of what you do, it's likely to come back with another one of  
7 their letters saying we don't believe that this is accurate; that's all I'm saying.

8 THE COURT: Well -- I mean -- and I can understand why they would say that  
9 because the JOC does say Count 1 runs consecutive to Count 2, and if you were to  
10 add them all up it would be 72 to 228.

11 MR. GILES: And that's their problem; you either need to now make them  
12 concurrent, or restructure it to get to 72 to 180, or --

13 THE COURT: No, there's no way --

14 MR. GILES: -- alter the 72 to 180 to 72 to 228 because the math is never  
15 going to add up. And they cannot follow two separate sentences in the same JOC;  
16 that's the prison's problem; obviously the State's not taking a position on why they  
17 feel that way. We don't represent them, but that's what the issue is going to be.

18 So it either needs to be the sentence that says consecutive needs to be  
19 altered to comply with 72 to 180, or the aggregate sentence needs to comply with  
20 the sentences running consecutive.

21 THE COURT: So --

22 MR. GILES: It will just be a continuing problem.

23 MR. WATERS: No, it's not going to be a continuing problem.

24 THE COURT: Hold on just a second. Okay, I propose this, what I can -- I  
25 have to do a mandatory minimum of five years on the first degree kidnapping. I

1 don't -- I don't have the statute, do I have to do -- any -- other than 40 percent of  
2 whatever I go on the --

3 MR. GILES: It simply can't be within the 40 percent violation.

4 THE COURT: I mean the top end could be -- five years has to be 40 percent  
5 of whatever I pick the top end, correct?

6 MR. WATERS: Yeah.

7 MR. GILES: Yes.

8 MR. WATERS: No -- right.

9 THE COURT: All right. What if I change the sentence to 60 to 150 months on  
10 the kidnapping?

11 MR. WATERS: One hundred and eighty?

12 THE COURT: Huh?

13 MR. WATERS: A 180?

14 THE COURT: No. Fifty -- 60 to 150 months on the first degree kidnapping;  
15 and then change the second one to 12 to 30 months, and then they're consecutive  
16 and that would add up to the 180.

17 MR. WATERS: Yeah, I appreciate what you're trying to do and I think that we  
18 could probably -- the problem with that is that, the kidnapping is a term of years to  
19 five to 15 so you can't go --

20 THE COURT: It is a five to --

21 MR. WATERS: Yeah.

22 THE COURT: That's why I'm asking, is it --

23 MR. GILES: It has to --

24 MR. WATERS: Or five to life, which obviously I'm not -- we're not going that --

25 THE COURT: That's what I was asking, the --

1 MR. GILES: And that's correct, and I was doing the math wrong. Clearly,  
2 none of us on this side are mathematicians.

3 MR. WATERS: No, you can certainly --

4 MR. GILES: It would need to be five to 15, so 60 to 180 year of terms.  
5 And -- but it could also be six to 180 because six is less than 40 percent of 180 -- of  
6 15.

7 MR. WATERS: I'll take that.

8 THE COURT: That wasn't what I wanted to do here.

9 MR. GILES: I understand that. But if the ultimate goal is to keep the back  
10 end at 180 and the bottom at 72, then simply run Count 2 concurrent to it and that  
11 satisfies that requirement, 72 to 180 on Count 1.

12 MR. WATERS: You know, I wonder -- I don't know -- without having the  
13 benefit of the kidnapping statute right in front of me --

14 THE COURT: Let's kick this issue because I've got a ton of things to do  
15 today.

16 MR. WATERS: I understand.

17 THE COURT: And I don't want to be rushing on this one again. But I am  
18 beginning to think I'm going to have to -- because my intent was clear. My intent  
19 was for Count 2 to run consecutive to Count 1. I did not want it to be greater than  
20 six years total; low end on the sentence.

21 MR. WATERS: I mean, the other thing we can do --

22 THE COURT: And so that will let the parties ponder whether or not I have  
23 additional option other than to change the back end up to 228 because it clearly was  
24 a mathematical error on the part of the parties -- on the part of the Court.

25 MR. WATERS: Or we can just leave things as is, and I'll just make it an issue

1 on the appeal and the Supreme Court can settle it. I mean --

2 THE COURT: Well, let's --

3 MR. WATERS: Because as long as there's an order from Your Honor, then  
4 that's an appealable order. So -- and I understand that Mr. Giles is saying well  
5 NDOC is going to freak out. First of all, those letters they send are probably not  
6 even appropriate, quite frankly because -- you know, they shouldn't be sua sponte  
7 or -- you know, ex parte throwing things on calendar. I'm not worried about NDOC  
8 getting freaked out. I mean, they have a job to do and they can do it.

9 THE COURT: Well, there's still the statute that requires the aggregation. All  
10 right, I'm going to kick this off.

11 [Court and Clerk confer]

12 THE COURT: I'm going to kick this issue to the 22<sup>nd</sup>.

13 MR. WATERS: Okay. So --

14 THE COURT: Let the parties all sort of ponder whether or not they have any  
15 suggestions. I mean, my end position is I want Count 1 to run consecutive to Count  
16 2. And I want the bottom line to be six years. If I have to -- and my secondary point  
17 is, it's very clear that that was my intent at the time of sentencing, and that it was a  
18 mathematical error in me accepting Ms. Kollins's addition at the top end without  
19 thinking and it just got transferred then to the JOC. So I'll let the parties ponder how  
20 they really think I should come out of this at that point. And Ms. Kollins can --  
21 hopefully, you guys can talk or whatever. We'll -- one way or another, we'll resolve it  
22 on the 22<sup>nd</sup>.

23 MR. WATERS: Just one other thing, my motion in the Supreme Court is due  
24 on the 18<sup>th</sup>. So what I'm going to do is, is I'm going to submit the certification to  
25 Your Honor regarding the lifetime supervision.

1 THE COURT: Okay.

2 MR. WATERS: I'll file the motion to the Supreme Court by the 18<sup>th</sup> indicating  
3 that there's still one issue that's outstanding that we have another hearing for, and  
4 hopefully they'll just wait on that. Is that -- is that -- I just want -- you know --  
5 because this is going to become part of the record on appeal; I just want to make  
6 sure everyone understands I'm trying to comply with their weird order -- um, which I  
7 think -- I don't think is technically the way it should be done, but whatever.

8 THE COURT: All right. Submit something to me; run it by the State, so that --

9 MR. WATERS: Sure.

10 [Colloquy between Mr. Waters and Mr. Giles]

11 THE COURT: -- since this sounds like something new on both sides.

12 THE CLERK: So are we to do an amended?

13 THE COURT: No, not yet.

14 THE CLERK: Not yet.

15 THE COURT: Okay.

16 MR. WATERS: Not until the Supreme Court remands it, then we'll do it. In  
17 that instance, Mr. Giles may be correct because that is a sort of a new sentencing  
18 because we're removing a condition of a sentence. He may have to be present for  
19 that, but we'll deal with that down the road. So the next date is --

20 THE CLERK: June 22<sup>nd</sup> at nine a.m.

21 //

22 //

23 //

24 //

25 //



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25


MR. WATERS: Okay. Thank you, Your Honor.

THE COURT: All right. Thank you.

PROCEEDING CONCLUDED AT 9:37 A.M.

\*\*\*\*\*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of this proceeding in the above-entitled case.

  
ANGIE CALVILLO  
Court Recorder/Transcriber  
District Court Dept. XX  
702-671-4436

*Steven D. Grierson*

1 RTRAN

2

3

DISTRICT COURT  
CLARK COUNTY, NEVADA

4

5

6 THE STATE OF NEVADA,

7 Plaintiff,

8

9

10 JASON RICHARD LOFTHOUSE,

11

12

Defendant.

CASE NO. C-15-307937-1

DEPT. NO. XX

13

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

14

THURSDAY, JUNE 22, 2017

15

16

**RECORDER'S TRANSCRIPT RE:**  
**DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE**

17

18

**APPEARANCES:**

19

For the State:

ROBERT STEPHENS  
Chief Deputy District Attorney

20

21

For the Defendant:

WILLIAM M. WATERS, ESQ.  
Deputy Public Defender

22

23

24

25

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 22, 2017, 10:16 A.M.

2 \* \* \* \* \*

3 THE COURT: State of Nevada versus Jason Loffhouse, case number  
4 C307937. Counsel, please note your appearances for the record.

5 MR. STEPHENS: Rob Stephens for the State.

6 MR. WATERS: William Waters, Public Defender, on behalf of Mr. Loffhouse.  
7 He is not present. He's in the Department of Corrections.

8 THE COURT: All right. Did we get -- I think I remember seeing we got this  
9 remanded back to correct -- or did we not.

10 MR. WATERS: Well, I did file it.

11 THE COURT: I saw your filing of it.

12 MR. WATERS: Right. I did file a -- yeah, I filed a motion for limited remand in  
13 the Supreme Court; that was last Friday. They have not ruled on the motion yet. I  
14 presume that they're going to grant it. We just -- before we can take any action,  
15 they do actually -- technically have to grant it.

16 THE COURT: All right. Well, should we just vacate this until they grant it?

17 MR. WATERS: I can do that. As soon as I get notification from the Court  
18 whether they grant it or deny it, then -- I mean, I don't think they're going to deny it,  
19 but I guess that's a possibility. I can certainly notify your chambers, Your Honor.

20 THE COURT: Mr. Stephens.

21 MR. STEPHENS: I'll submit it.

22 THE COURT: I mean technically it is up on appeal, so I question whether I  
23 have authority to do anything, although I -- it would seem to me that correcting an  
24 illegal sentence is something I can do at any time under the statute the way it's  
25 worded. But if you're saying that the Court feels that it needs to do a limited

1 remand, well -- all right, we'll just take this off calendar for now; when you get the  
2 limited remand, we'll put it back on -- notify my Court, we'll put it back on calendar.

3 MR. WATERS: Perfect.

4 THE COURT: And we'll deal at that point in time with the correction of the  
5 lifetime supervision and the issue in terms of the calculation of the total sentence.

6 MR. WATERS: Perfect, Judge. Thank you.

7 MR. STEPHENS: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 PROCEEDING CONCLUDED AT 10:18 A.M.

10 \* \* \* \* \*

11

12

13

14

15

16

17

18 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
19 visual recording of this proceeding in the above-entitled case.

20


21

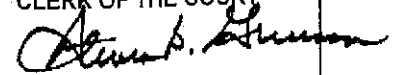
22

23

24

25

  
ANGIE CALVILLO  
Court Recorder/Transcriber  
District Court Dept. XX  
702-671-4436



1 RTRAN

2

3

DISTRICT COURT  
CLARK COUNTY, NEVADA

4

5

6 THE STATE OF NEVADA,

7 Plaintiff,

8

9

10 JASON RICHARD LOFTHOUSE,

11

12

Defendant.

CASE NO. C-15-307937-1

DEPT. NO. XX

13

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

14

THURSDAY, JULY 13, 2017

15

16

**RECORDER'S TRANSCRIPT RE:  
DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE**

17

18

**APPEARANCES:**

19

For the State:

STACEY L. KOLLINS, ESQ.  
Chief Deputy District Attorney

20

21

For the Defendant:

WILLIAM M. WATERS, ESQ.  
Deputy Public Defender

22

23

24

25

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JULY 13, 2017, 9:35 A.M.

2 \* \* \* \* \*

3 THE COURT: State of Nevada versus Jason Lofthouse, case number  
4 C307937. Counsel, please note your appearances for the record.

5 MS. KOLLINS: Good morning, Your Honor. Stacey Kollins, DA's Office,  
6 5391.

7 MR. WATERS: William Waters, Public Defender, on behalf of Mr. Lofthouse,  
8 9456.

9 THE COURT: All right. We've got the -- your order granting the motion for  
10 limited remand. It's my understanding; the State agrees that, lifetime supervision is  
11 not an appropriate sentence in this case.

12 MS. KOLLINS: Because we should've put them on notice when conducted a  
13 hearing. But that's never really come up on a kidnapping before, so that's correct.

14 THE COURT: But you're agreeing?

15 MS. KOLLINS: Yes.

16 THE COURT: Okay. I want to make sure that I -- that that's on the record.  
17 All right, I'll go ahead and grant defendant's request on that regard. The second  
18 thing we got to deal with is the calculation on the sentence because the high end  
19 was improperly added at the time of sentencing. What's the State's position?

20 MS. KOLLINS: We'll take the same position we did in our opposition; it was a  
21 miscalculation, it's not an illegal sentence. So we take the position that the new --  
22 the numbers were just added wrong by myself; I gave Court the numbers, so I take  
23 credit for that. But that doesn't mean it's --

24 THE COURT: You take credit for it?

25 MS. KOLLINS: Well --

1 THE COURT: Responsibility.

2 MS. KOLLINS: Responsibility.

3 THE COURT: All right.

4 MS. KOLLINS: Obviously, it doesn't fit in Miranda; it wasn't illegal, it was just  
5 a miscalculation. So we're going to stand on our response unless the Court has any  
6 more questions for me.

7 THE COURT: No. Mr. -- Counsel.

8 MR. WATERS: A couple of things, Judge. I disagree; I do think it was illegal.  
9 It was facially illegal because if you look at the aggregation statute, it does talk about  
10 how you have to aggregate the minimum and the maximum. I understand what  
11 she's saying, it was a math miscalculation. And I -- okay, that's fine, but that doesn't  
12 necessary alter the legality or illegality of the sentence itself. There can be an error  
13 occurring at sentencing which then could create an illegal sentence so I disagree, so  
14 I think it is governed by Miranda. I just -- I understand Your Honor's hesitancy and I  
15 understand that we've talked about this before, and Your Honor does not  
16 necessarily want to lower the front end. I do think the law requires that.

17 If I could just put on the record the pertinent section of Miranda so that  
18 everyone is on the same page. It does say that to comply with the Double Jeopardy  
19 Clause of the Nevada Constitution, a District Court may correct an illegal sentence  
20 by increasing its severity only when necessary to bring the sentencing to compliance  
21 with the pertinent statute; any correction that increases sentence severity is quote,  
22 necessary, only when there is no other less severe means of correcting illegality;  
23 then they go on and they say the sentence illegality in the presence case could've  
24 been corrected by lowering the minimum terms rather than increasing the maximum  
25 terms, and therefore the correction imposed was not necessary to bring the

1 sentences into compliance with the pertinent sentencing statute because the  
2 sentencing correction unnecessary increased the severity of the sentences; we  
3 conclude that the correction violated the Double Jeopardy Clause of the Nevada  
4 Constitution.

5           Additionally, Your Honor, you had mentioned I think, at one of our  
6 previous court dates, that because the intention was to give him six to 15 that you  
7 wanted to know if there's a way that you could do that. Um, I think you asked us to  
8 look into that; like if there's a possibility that you could give him six to 15, I did look  
9 into that. Um, there is -- unfortunately, there's an -- well, there's an unpublished  
10 case. It's not authority but its post January 1, 2016.

11           So when the rules changed, it's now persuasive authority. And it  
12 does -- it does sort of deal with this exact issue where the defendant was given a six  
13 to 15 on a kidnapping, and on appeal he argued that you can't do that. And what  
14 the Supreme Court said was yeah, that's a facially illegal statute because the plain  
15 reading of 200 F.3 20, talks about a minimum term of five. And so a Court cannot  
16 increase the minimum term beyond five. And that case is, again, it's unpublished so  
17 it's not binding authority.

18           MR. HART: It would be State v. Gonzalez.

19           MR. WATERS: Yeah, it's actually Mr. Hart's case. Yeah, so he knows, yeah.  
20 It's -- the citation is 2016 WL 2842932. So I know Your Honor was trying to sort of  
21 keep the sentence as is and I appreciate that; that's what I found when I was looking  
22 into ways to maybe accomplish that. So at this point, I understand the State's  
23 position, my position is -- you know, we should lower the front end to five. And --  
24 you know, whatever Your Honor decides; if you disagree with me, that's fine. We're  
25 currently pending appeal and I'll just wrap it up in the end.



1 THE COURT: I'm going to -- I've looked at Miranda; I don't think it's  
2 applicable here. That was a situation that the Court set out a bottom number that  
3 was more than 40 percent of the top number. And there was nothing on the record  
4 to suggest that there was any mathematical miscalculation, and so that's not the  
5 case here. I mean, it's very clear going back and looking at the transcript. The  
6 intent of the Court was to sentence the defendant on the mandatory to what he  
7 had -- to what the Court had to in terms of a minimum on the kidnapping. And then  
8 to have an additional one year, the kidnapping relating to the conduct occurring in  
9 the hotel room, and the one year relating to conduct occurring at the school. And it's  
10 very clear what the Court's sentence was as to each one of the two counts, and that  
11 it was the mathematical error at the end in terms of the calculation.

12 So without going -- what would be the correct addition at the back end;  
13 I'm afraid to ask Ms. Kollins.

14 MR. WATERS: It would be -- if --

15 MS. KOLLINS: Thank you for that, Judge.

16 MR. WATERS: If Your Honor is going to increase the -- aggregate the back  
17 end --

18 THE COURT: Yeah.

19 MR. WATERS: -- I think it's 19 of the --

20 THE COURT: Okay. How many months is that? Let's see. Fifteen years is  
21 180 months, right?

22 MR. WATERS: Fifteen is 180. That's correct.

23 MS. KOLLINS: My calculator says 228 months, which is consistent with  
24 what's in our motion.

25 THE COURT: That is what I'm adding up to. All right, so I will modify it to 228

1 months on the back end; front end is 72. I'll further note for the record in terms of  
2 prior hearings we've had, where I talked about leaving it at 180 months; it wasn't my  
3 intent at the time of the sentencing in this case that the top end be 15 years, it was a  
4 purely a mathematical mistake. I was interested in just seeing if we could leave it at  
5 180 to minimize the issues on appeal; it doesn't appear that the statutes allow the  
6 Court to do that. And so it wasn't a reflection that the Court had any intent at the  
7 time that it entered the sentence in this case to have a top end of 15 years. Again, it  
8 was just a mathematical error on the Court's part.

9 I'll ask the State to prepare the Judgment of Conviction and an  
10 order with those findings.

11 MS. KOLLINS: Thank you, Your Honor.

12 THE CLERK: She'll prepare the order and we'll do the Judgment.

13 THE COURT: Okay. We'll do the Judgment.

14 MR. WATERS: Oh, and I will -- I'll just prepare an order for transcripts for  
15 the -- a couple of the hearings that we --

16 THE COURT: Send a request to my Court Recorder and --

17 MR. WATERS: Yeah.

18 THE COURT: -- I'll certainly approve you getting that for purposes of your  
19 appeal.

20 //

21 //

22 //

23 //

24 //

25 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25


MR. WATERS: Thank you, Judge.

THE COURT: All right. Thank you.

PROCEEDING CONCLUDED AT 9:44 A.M.

\*\*\*\*\*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of this proceeding in the above-entitled case.

  
\_\_\_\_\_  
ANGIE CALVILLO  
Court Recorder/Transcriber  
District Court Dept. XX  
702-671-4436

*Steven D. Grierson*

1 ORDR.  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 WILLIAM M. WATERS, DEPUTY PUBLIC DEFENDER  
5 NEVADA BAR NO. 9456  
6 PUBLIC DEFENDERS OFFICE  
7 309 South Third Street, Suite 226  
8 Las Vegas, Nevada 89155  
9 Telephone: (702) 455-2799  
10 Facsimile: (702) 455-5112  
11 waterswm@clarkcountynv.gov  
12 *Attorneys for Defendant*

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 JASON RICHARD LOFTHOUSE,

13 Defendant,  
14

CASE NO. C-15-307937-1

DEPT. NO. XX

15 CERTIFICATION

16 THIS MATTER having come before the Court on Thursday, June 8, 2017, and based  
17 on argument, motions and pleading filed herein, and good cause appearing:

18 The Court certifies intent to grant Defendant's Motion to Correct Illegal Sentence  
19 upon limited remand from the Nevada Supreme court pursuant to Foster v. Dingwall, 126 Nev. 49,  
20 52-53, 228 P.3d 453, 454-56 (2010):

21 The Court finds State did not oppose Defendant's motion on the merits. The Court  
22 further finds that LOFTHOUSE is not subject to lifetime supervision pursuant to NRS 176.093.1  
23 because his alleged offense dates for violating NRS 200.540 predate the effective date of NRS  
24 176.0931's 2015 amendments. The Court further finds LOFTHOUSE is not subject to lifetime  
25 supervision by virtue of his conviction for violating NRS 200.310, because the State did not proceed  
26 under NRS 175.547.

27 Based upon the aforementioned, this Court believes a limited remand is necessary for  
28 the Court to grant LOFTHOUSE's requested relief.

111

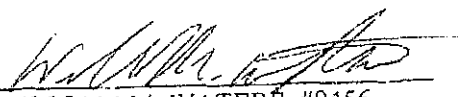
*SP*

DATED 15 day of June, 2017.

  
DISTRICT COURT JUDGE  
ERIC JOHNSON

Submitted by:

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
WILLIAM M. WATERS, #9456  
Chief Deputy Public Defender

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing  
was made this 16<sup>th</sup> day of June, 2017, by Electronic Filing to:

District Attorneys Office  
E-Mail Address:

PDMotions@clarkcountydac.com

Jennifer.Garcia@clarkcountydac.com

Eileen.Davis@clarkcountydac.com

/s/ Carrie M. Connolly  
Secretary for the  
Public Defender's Office.



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Electronically Filed  
Jul 27 2017 02:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Steven D. Grierson  
Clerk of the Court

Brandi J. Wendel  
Court Division Administrator

July 27, 2017

Elizabeth A. Brown  
Clerk of the Court  
201 South Carson Street, Suite 201  
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. JASON LOFTHOUSE  
**S.C. CASE: 70587**  
D.C. CASE: C-15-307937-1

Dear Ms. Brown:

Pursuant to your Order Granting Motion for Limited Remand, dated July 6, 2017, enclosed is a certified copy of the Amended Judgment of Conviction (Jury Trial) filed July 25, 2017 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,  
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, which appears to read "Heather Ungermann", is written over a horizontal line.

Heather Ungermann, Deputy Clerk

*Steven D. Grierson*

1 AJOC

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 Plaintiff,

CASE NO. C307937-1

6 -VS-

DEPT. NO. XX

7 JASON RICHARD LOFTHOUSE  
8 #7019775

9 Defendant.

10  
11 AMENDED JUDGMENT OF CONVICTION  
12 (JURY TRIAL)

13  
14  
15 The Defendant previously entered a plea of not guilty to the crimes of COUNTS  
16 1, 3, 4, 5, 6, 7, 9, 10, 11 and 12 – SEXUAL CONDUCT BETWEEN CERTAIN  
17 EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony) in  
18 violation of NRS 201.540; COUNTS 2 and 8 – FIRST DEGREE KIDNAPPING  
19 (Category A Felony) in violation of NRS 200.310, 200.320; and the matter having been  
20 tried before a jury and the Defendant having been found guilty of the crimes of  
21 COUNTS 1, 3, 4, 5, 6, 7, 9, 10, 11 and 12 – SEXUAL CONDUCT BETWEEN CERTAIN  
22 EMPLOYEES OR VOLUNTEERS OF SCHOOL AND PUPIL (Category C Felony) in  
23 violation of NRS 201.540; COUNTS 2 and 8 – FIRST DEGREE KIDNAPPING  
24 (Category A Felony) in violation of NRS 200.310, 200.320; thereafter, on the 17<sup>th</sup> day of  
25 May, 2016, the Defendant was present in court for sentencing with counsel JASON  
26 MARGOLIS, ESQ., and good cause appearing,  
27  
28



1 THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to  
2 the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including  
3 testing to determine genetic marks plus \$3.00 DNA Collection Fee, the Defendant is  
4 SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1 -**  
5 **a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of**  
6 **TWELVE (12) MONTHS; COUNT 2 - a MAXIMUM of FIFTEEN (15) YEARS with a**  
7 **MINIMUM Parole Eligibility of FIVE (5) YEARS, CONSECUTIVE to COUNT 1; COUNT**  
8 **3 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of**  
9 **TWELVE (12) MONTHS, CONSECUTIVE to COUNT 1, CONCURRENT with COUNT**  
10 **2; COUNT 4 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole**  
11 **Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 3; COUNT**  
12 **5 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of**  
13 **TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 4; COUNT 6 - a**  
14 **MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of**  
15 **TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 5; COUNT 7 - a**  
16 **MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of**  
17 **TWELVE (12) MONTHS, CONSECUTIVE to COUNT 3, CONCURRENT with COUNT**  
18 **2; COUNT 8 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility**  
19 **of FIVE (5) YEARS, CONCURRENT with COUNTS 2 and 7; COUNT 9 - a MAXIMUM**  
20 **of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)**  
21 **MONTHS, CONSECUTIVE to COUNT 7, CONCURRENT with COUNT 2; COUNT 10 -**  
22 **a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of**  
23 **TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 9; COUNT 11 - a**  
24  
25  
26  
27  
28

1 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
2 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 10; and COUNT 12 - a  
3 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
4 TWELVE (12) MONTHS, CONCURRENT with COUNTS 2 and 11; with THREE  
5 HUNDRED FORTY-SEVEN (347) DAYS credit for time served. The AGGREGATE  
6 TOTAL sentence is ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a  
7 MINIMUM PAROLE ELIGIBILITY OF SEVENTY-TWO (72) MONTHS. The  
8 AGGREGATE TOTAL sentence is TWO HUNDRED TWENTY-EIGHT (228) MONTHS  
9 MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF SEVENTY-TWO (72)  
10 MONTHS.  
11  
12

13 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender  
14 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any  
15 release from custody.  
16

17 THEREAFTER, on the 13<sup>th</sup> day of July, 2017, pursuant to Defendant's Motion  
18 to Correct Illegal Sentence; COURT ORDERED, Motion GRANTED in part and  
19 DENIED in part; the Amended Judgment of Conviction reflects the following  
20 corrections: The AGGREGATE TOTAL sentence is TWO HUNDRED TWENTY-  
21 EIGHT (228) MONTHS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF  
22 SEVENTY-TWO (72) MONTHS. SPECIAL SENTENCE OF LIFETIME  
23 SUPERVISION REMOVED.  
24

25 DATED this 21 day of July, 2017  
26  
27  
28

  
ERIC JOHNSON  
DISTRICT COURT JUDGE

16



*Clerk of the Courts*  
*Steven D. Grierson*

200 Lewis Avenue  
Las Vegas, NV 89155-1160  
(702) 671-4554

July 27, 2017

Case No.: C-15-307937-1

### **CERTIFICATION OF COPY**

**Steven D. Grierson**, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full, and correct copy of the hereinafter stated original document(s):

Amended Judgment of Conviction (Jury Trial) filed 07/25/2017

now on file and of

**In witness whereof**, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, at 2:44 PM on July 27, 2017.

  
STEVEN D. GRIERSON, CLERK OF THE COURT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3  
4  
5  
6  
7  
8

## 10

11  
12

13

15

14  
15

16

## 17

18  
19  
20

21

22

23

24  
25  
26

27