

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON RICHARD LOFTHOUSE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 70587

RESPONSE TO EMERGENCY MOTION UNDER NRAP 27(e)

Comes Now the State of Nevada, by Steven B. Wolfson, Clark County District Attorney, through his Chief Deputy, ALEXANDER CHEN, and files this Response to Emergency Motion Under NRAP(e). This response is filed pursuant to NRAP Rule 27 and is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 28th day of May, 2020.

Respectfully submitted,

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

BY */s/ Alexander Chen*

ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
RESPONSE TO EMERGENCY MOTION UNDER NRAP 27(e)**

STATEMENT OF THE CASE

On July 16, 2015, the State filed an Amended Information charging Jason Richard Lofthouse (hereinafter “Appellant”) with ten (10) counts of Sexual Conduct Between Certain Employees or Volunteers of School and Pupil and two (2) counts of First Degree Kidnapping. I AA 021-027. Appellant’s jury trial commenced on March 21, 2016. III AA 508. On March 25, 2016, the jury returned a verdict finding Appellant guilty of all charges. II AA 265-268.

On May 17, 2016, the district court sentenced Appellant to a minimum of seventy-two (72) months and a maximum of one hundred eighty (180) months in the Nevada Department of Corrections. VI AA 1448-1449. Appellant is also required to register as a sex offender within forty-eight (48) hours of his release from custody. VI AA 1449. Appellant received three hundred forty-seven (347) days credit for time served. The Judgment of Conviction was filed on May 20, 2016. II AA 380. An Amended Judgment of Conviction was filed on July 25, 2017, pursuant to Appellant’s Motion to Correct Illegal Sentence, changing his sentence to a minimum of seventy-two (72) months and a maximum of two hundred twenty-eight (228) months in the Nevada Department of Corrections. VII AA 1586-1588.

Appellant filed his Opening Brief with this Court on September 29, 2017. The State filed its Respondent's Answering Brief on April 9, 2018. This Court heard oral argument on October 1, 2018.

On May 22, 2020, Appellant filed the instant Emergency Motion Under NRAP 27(e) (hereinafter "Motion").

ARGUMENT

Appellant filed an Emergency Motion requesting his release due to the spread of Covid-19. Appellant alleges that he should be released on bail pending appeal because he is not a danger to the community, this Court has not issued a decision on his appeal, and he was born with a heart condition that was immediately corrected. Motion, at 4-6, 8-9, 11.

NRAP 27(e) allows for the filing of an emergency motion to avoid irreparable harm to the movant. NRAP 27(e)(3) further states:

A motion filed under this subdivision shall be accompanied by a certificate of the movant or the movant's counsel, if any, entitled "NRAP 27(e) Certificate," that contains the following information:

(A) The telephone numbers and office addresses of the attorneys for the parties and the telephone numbers and addresses for any pro se parties;

(B) Facts showing the existence and nature of the claimed emergency; and

(C) When and how counsel for the other parties and any pro se parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

As an initial point, the State notes that Appellant has not attached a NRAP 27(e) certificate to the instant motion. As such, this filing is procedurally deficient pursuant to the NRAP.

The factors this Court considers in deciding whether to release a defendant on bail pending appeal were thoroughly articulated in Bergna v. State, 120 Nev. 869, 872, 102 P.3d 549, 551 (2004). These considerations address whether the appeal is frivolous or taken for delay, and whether the applicant's release may pose a risk of flight or danger to the community. Id. As these factors shows, bail is not set because it would be more advantageous for the defendant, it is set when it would not be a detriment to the community or legal system. While the State is sympathetic to the ongoing issues caused by Covid-19, the fact remains that Appellant is a flight risk, a danger to this community, and has filed this appeal in an attempt to avoid his lawfully imposed sentence. As such, the Bergna factors do not support releasing Appellant on bail.

While there have been indications that jails are encouraging law enforcement entities to issue citations without bringing low level offenders into custody¹, the State would note that Appellant is not similarly situated to these individuals. Appellant is not a low-level offender. At trial, Appellant was convicted of multiple felonies. The

¹ Cite and Release, Not Jail, For Some Over COVID-19 Concerns, *The Union*, <https://www.theunion.com/news/cite-and-release-not-jail-for-some-over-covid-19-concerns/>

jury convicted Appellant of ten (10) counts of Sexual Conduct Between Certain Employees or Volunteers of School and Pupil and two (2) counts of First Degree Kidnapping. II AA 265-268.

First, Appellant alleges that he is not a danger to the community because he engaged in a sexual relationship with his 17-year-old student. However, the legislative history behind NRS 201.540 explains that the purpose of the crime is to “prevent this type of activity ... due to the influence these teachers have over the student.” Senate Judiciary Committee Minutes, 69th Session March 19, 1997, Page 676.² Clearly, the Nevada Legislature codified this law in order to protect students from teachers committing these types of crimes and taking advantage of their students. The Legislature made the important decision to codify this law in order to preserve the trusted teacher-student relationship. This is to ensure a parent can safely drop their child off at school and a student can learn in a trusted environment. Thus, while Appellant claims he is not a danger to the community simply because the 17-year-old student consented, he is even more dangerous because he took advantage of a student while in a trusted position. Appellant exhibited the exact predatory behavior the Nevada Legislature intended to protect students from.

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<https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1997/SB122,1997.pdf>

Second, Appellant has already been adjudicated guilty and had his sentence imposed. While his conviction is not final given that this Court has not ruled on his appeal, it is disingenuous to argue he is similarly situated to those individuals some jails are suggesting not be detained. Simply because this Court has taken Appellant's case under submission does not mean he should be released from a sentence that has already been imposed.

Finally, Appellant claims that he should be released because he is incarcerated at High Desert State Prison and was born with a "transposition of the greater right ventricle." However, Appellant acknowledges that he had surgery to repair this condition after his birth, thirty-seven (37) years ago. Appellant fails to provide any support that his health would be in jeopardy if he contracts COVID-19. Likewise, Appellant fails to provide support for his claim that simply being detained in prison presents increases the risk of contracting COVID-19, other than a series of internet articles, most of which reference prisons outside of the United States and Nevada.

CONCLUSION

For the foregoing reasons, the instant Emergency Motion Under NRAP 27(e) should be denied.

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Dated this 28th day of May, 2020.

Respectfully submitted,

STEVEN B. WOLFSON

Clark County District Attorney

BY */s/ Alexander Chen*

ALEXANDER CHEN

Chief Deputy District Attorney

Nevada Bar #010539

Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 28th day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

WILLIAM M. WATERS
Deputy Public Defender

ALEXANDER CHEN
Chief Deputy District Attorney

/s/ J. Garcia

Employee, Clark County
District Attorney's Office

AC/Brianna Stutz/jg