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JASON RICHARD LOFTHOUSE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
May 28 2020 04:23 p.m.
Elizabeth A. Brown
Case No. 70587
Clerk of Supreme Court

E-File

REPLY TO RESPONSE TO APPELLANT’S MOTION FOR BAIL
PENDING APPEAL

COMES NOW Appellant, JASON RICHARD LOFTHOUSE, by and through Chief Deputy Public Defender, WILLIAM M. WATERS, pursuant to NRAP 27(a)(4), NRAP 8(e), and NRS 178.488(3), hereby replies to the State's Response to his Motion for bail pending resolution of LOFTHOUSE's appeal.

This Reply is based upon the attached declaration of counsel, the briefing filed in this case, and any exhibits and appendix on file.

DATED this 28 day of May, 2020.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

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

REPLY ARGUMENT

I. **Lofthouse did not file an Emergency Motion under NRAP 27(e).**

The State claims Lofthouse's "emergency" motion is deficient because he failed to attach "a NRAP 27(e) certificate to the instant motion." This allegation makes no sense. Lofthouse filed his Motion pursuant to NRAP 27(a)(4), not NRAP 27(e). Therefore, Lofthouse was not required to attach a certificate under NRAP 27(e)(3).

II. **Lofthouse has satisfied the standards for bail pending appeal.**

While probably working from the comfort of his or her home, the Deputy District Attorney responding to Lofthouse's motion feigns sympathy "for the ongoing issues caused by Covid-19[.]" Nevertheless, that same Deputy argues this Court should deny Lofthouse's motion for bail pending appeal because Lofthouse is flight risk, a danger to the community and seeks to "avoid his lawfully imposed sentence."

The State supports its claim that Lofthouse is a danger to the community by arguing Lofthouse exhibited "predatory behavior" when he had consensual sexual relations with his 17-year-old student. However, it bears mentioning once again that, but-for Lofthouse's status as M.T.'s teacher, Lofthouse committed no crime by engaging in sexual relations with

1 M.T. Moreover, as M.T. testified at trial, Lofthouse never forced her to do
2 anything she did not want to do, and he never imprisoned her or attempted to
3 keep her from her parents. AA V 1057-58, 1125-27. Although there are
4 certainly instances in Nevada where a teacher has preyed upon a vulnerable
5 student, those facts simply are not present in Lofthouse's case. Moreover,
6 besides this bare assertion – which is belied by the record – the State offers
7 no other argument as to precisely how Lofthouse is a flight risk or danger to
8 the community.

12 Next, the State claims because Lofthouse has already been convicted,
13 he is not similarly situated to those whom authorities are releasing due to
14 Covid-19 concerns. Essentially, the State suggests once Lofthouse lost the
15 presumption of innocence he somehow forfeited his right to address any
16 conditions that might affect his health and safety in the prison. This is a
17 truly bizarre argument. The fact is a global pandemic, which has already
18 killed over 100,000 Americans, is spreading. The virus is particularly
19 susceptible to spread in prisons like High Desert where Lofthouse is housed.
20 The State's suggestion that jail inmates deserve more consideration than
21 non-violent prison inmates is disturbing. Indeed, contrary to the State's
22 insinuation otherwise, Covid-19 deaths for non-violent prison inmates is just
23 as unacceptable as deaths from inmates awaiting trial.

1 Finally, notwithstanding Lofthouse's conviction, he is **entitled** to
2 request bail pending appeal. Thus, Lofthouse filed a motion articulating
3 why he should be granted bail pending resolution of his appeal – which has
4 been pending in this Court for over five (5) years. In response the State
5 fails to offer any legitimate arguments to counter Lofthouse's claims.
6
7

8 CONCLUSION

9 Given how little health officials know about Covid-19, it begs the
10 question – why is the State willing to risk Lofthouse's death? Lofthouse is
11 not a flight risk nor a danger to M.T. or anyone else in the community.
12 Therefore, based upon the foregoing arguments, LOFTHOUSE respectfully
13 requests this Court grant his Motion for Bail Pending Appeal.
14
15

16 DATED this 28 day of May, 2020.

17
18 DARIN F. IMLAY
19 CLARK COUNTY PUBLIC DEFENDER

20 By /s/ William M. Waters
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28 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	WILLIAM M. WATERS
ALEXANDER CHEN	HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JASON RICHARD LOFTHOUSE
NDOC No: 1159974
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office