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Attorney for Appellant  
Co-counsel Byron Bergeron, Esq.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TENNILLE RAE WHITAKER,

Docket No. 77294

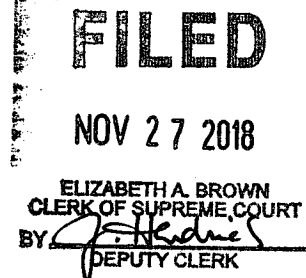
Appellant,

Case No. CR-FP-17-3893

vs.

THE STATE OF NEVADA,

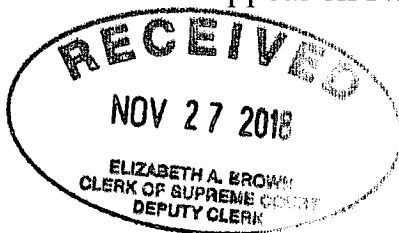
Respondent.



**PETITION TO REMOVE CASE FROM FAST TRACK SYSTEM &  
MOTION FOR FULL BRIEFING**

COMES NOW Appellant, TENNILLE RAE WHITAKER, by and through her counsel, KARLA K. BUTKO, Esq., KARLA K. BUTKO, LTD., and BYRON BERGERON, Esq., and hereby petitions this Court to remove this case from the Fast Track System and grant full briefing on the issues in this appellate litigation.

Counsel received a notice from this Court that the case was assigned as a Fast Track Appeal on November 1, 2018. This would make the Fast Track



Statement due on December 11, 2018.

This case arose in the Fourth Judicial District Court in Elko, Nevada. That courthouse utilizes the JAVS system for recording hearings. Transcripts are not completed of regular, ordinary business and there are no transcripts of the plea and sentencing transcript. Counsel had to order the JAVS CD, pay for that and has now retained a court reporter to transcribe the plea and sentencing hearings. Counsel has reviewed the case file and docket, the charging documents, plea memorandum and judgment of conviction. Upon this review, it is clear that there are serious appellate issues found in this litigation.

Ms. Whitaker was convicted for four felony counts of violation of NRS 201,540. This statutory scheme underwent an extreme change which was effective on October 1, 2015. The Information in this case charges the time period of September 1, 2015 and June 6, 2017.

The actual statute, NRS 201.540, does not have any case authority interpreting the generally vague terms found in the criminal allegations. Statutes similar to this one have been struck down as unconstitutional in other states. As in those statutory schemes, consensual sex between the teacher and a person over the age of consent has been criminalized. This is the only profession to be subjected to criminal sanctions for consenting sexual acts. The legal issue is whether this type

of statutory scheme violates the Equal Protection Clause because it only criminalizes consensual sexual conduct for the school professional.

Extensive legal research will be required to determine the status of the law in this arena, as well as the constitutional issues found in this statutory scheme. It is clear that Ms. Whitaker was not an actual teacher at the high school where the consensual age victims went to school.

The guilty plea memorandum in this matter stated that Ms. Whitaker waived the right to appeal the conviction, unless the appeal is based upon reasonable constitutional grounds. Mr. Bergeron argued at the sentencing hearing that the Court could not impose prison time as Ms. Whitaker did not violate the statute by having sexual contact with a “pupil”. There is no definition of the term pupil in the statute.

Additional language in the statutory scheme effective after October 1, 2015, may not apply to this case because the Information stated a time period prior to the statutory change to add “engages in sexual conduct with a pupil who is 16 years of age or older, *who has not received a high school diploma, a general educational development certificate or an equivalent document* . The legal effect of this will need to be determined once the transcripts have been received and reviewed. The District Court held that the constitutionality of this statutory scheme would only

be subject to constitutional attack in the federal court system.

Additionally, the sentencing hearing on this case appeared to rely upon suspect evidence. A letter was provided to the Court from the school district Board of Trustees. Letters were received against Ms. Whitaker from folks who do not qualify as victims by law. One letter was attached to the PSI report which contained over 78 signatures, illegible and it is unknown how they know a victim, if they know a victim, or if they know the defendant. There is no ability to confront 78 witnesses who sign a letter, prepare for a fair sentencing hearing, rather than a wild west lynching, and mitigate sentence. See attached Exhibit 1.

The sentencing court specifically argued with defense counsel over whether Stephen Ing, M.A., M.F.T. who prepared the psycho sexual evaluation and counseled with Ms. Whitaker for a lengthy period of time (at her expense of about \$19,000.00), was qualified to act as counselor and treat Ms. Whitaker. The transcript has been ordered but cannot be fairly reviewed for appellate purposes until filed and received by counsel.

This case does not belong in the Fast Track System. The issues found herein are serious appellate issues. The law in Nevada cannot be fairly reviewed unless appellate counsel is allowed to fairly and fully brief the issues suggested herein. There may be additional issues in this matter once the record is received

and reviewed.

NRAP 3 ( C ) (k)(2) provides;

(A) A party may seek leave of the court to remove an appeal from the fast track program and direct full briefing. A motion for full briefing shall be granted unless it is filed solely for purposes of delay. It may be filed in addition to or in lieu of the fast track pleading.

(B) The motion must identify specific reasons why the appeal is not appropriate for resolution in the fast track program. Such reasons may include, but are not limited to, the following circumstances:

(i) The case raises one or more issues that involve substantial precedential, constitutional, or public policy questions; and/or

(ii) The case is legally or factually complex.

(C) No opposition may be filed unless ordered by the court.

This is a very unique criminal charge. The fact setting presents public policy issues such as how to keep students safe but still insure the constitutionality of the possible criminal charge in teacher/student consensual sex contact. Does the conduct of Ms. Whitaker actually violate the criminal statute?

The sentencing issues are open law in the State of Nevada. Will this Court approve of a letter being given to a sentencing judge with 78 signatures (some illegible) in aggravation of sentence? Did that action by the State violate the plea bargain in which the State agreed to cap the case at a term of years of 4-12 years. Ms. Whitaker received the maximum possible sentences on the four counts, all sentences running consecutive, for a total of 96-240 months in prison. This serious sentence also requires registration as a sex offender and lifetime

supervision.

## CONCLUSION

This Court should grant the motion for full briefing. This case does not belong in the Fast Track System. The issues are complex and worthy of research and the writing of a quality Brief, not an abbreviated Fast Track Statement. Counsel should not have to write a fast track statement and then be granted full briefing, as this will be unduly burdensome.

When the Nevada Supreme Court was lobbied for an intermediate Court of Appeals, appellate attorneys were advised that the Fast Track System, that is so duly hated by appellate attorneys, would be repealed. Unfortunately, that has not happened and the Fast Track System has been resurrected from the dead. This attorney requests the ability to perform her appellate obligations to her client in the best way possible, by providing this Court a competent brief. It would deprive Ms. Whitaker of both effective assistance of counsel and due process if this case remained in the Fast Track System.

Dated this 26 day of November, 2018.

  
KARLA K. BUTKO, Esq.

Byron Bergeron, Esq.  
Attorney for Appellant  
P. O. Box 1249  
Verdi, NV 89439

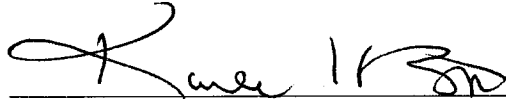
CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by United States Post Office, First Class Mail:

X addressed as follows:

Tyler Ingram, Esq.  
Elko County District Attorney's Office  
540 Court Street, Second Floor  
Elko, NV 89801

DATED this 26th day of November, 2018.

  
\_\_\_\_\_  
KARLA K. BUTKO

**EXHIBIT 1**

**EXHIBIT 1**



03.7.2018  
To District Attorney Ingram and Assistant. Deputy DA,

We are writing this letter, 1 week following, the arraignment, after settling our thoughts. Immediately, the dismay set in, about the possibility of a probation versus a prison sentence, if Tennille Whitaker is deemed, as not a threat to our community.

It had been our hope, that after the petition from our community, the DA's office had understood, that our community does not feel confident, that T. Whitaker will discontinue pursuing minors. We do not feel we can trust her, nor her spouse, for that matter.

In addition, since her arrest last Spring, we notified the DA's office, of her attempts to contact a victim, her driving around the Wells football field during practice times when victims were practicing, being in the park across from the high school at 3:00 when school lets out, reaching out to kids on social media, and a confrontation between her spouse, and a victim, after he had been drinking. HARDLY remorseful, safe, unthreatening behavior.

The families expressed their agreement for the plea to reduce 12 felonies to 4, and have the appropriate prison sentence. Even though, we were not pursuing the contributing alcohol to minors, and a pornographic video, as further charges. It is disturbing to have all of these charges, against T. Whitaker, minimized and marginalized, a reduction from 12 to 4 felonies, and still there is talk of a possible probation! It seems impossible to fathom, and is outrageous for our community to accept.

It seems ironic, that on 04/18/18 an Elko Daily Free Press headline stated, "Sending Child Sex Offenders to Prison", and the content of the following article was so strong against these crimes against our youth. Then the policy towards T. Whitaker is so weak in comparison. It seemed like a change of heart from the DA's office, as numerous comments on line, in response to the Elko Daily Free Press' reporting of the arraignment were posted, and also on Facebook. The public feels as though, the DA's office feels crimes against boys are not taken as seriously as against girls. Even taking into account, that the other perpetrators from 04/18, the victims were under 16, and they were rape charges. A mixed message was sent out for sure.

What else can be done to impress on the court that the community does not feel safe with her around our youth?

Sincerely,

*M. Bowers* (Madison Bowers)

Kirk + Jack Wagner

Kristy

*[Signature]*

Jessie Siler

Raymond

Rachel Morgan

John Tabor

Christina Luper

Rana

Alivia Sonora

Abby

Quinn

Judy

Wes C. Yelton

~~Port n. Hall~~  
Melissa Salta  
Alisa Safford  
Don Slr

James Higgs  
Hans Meyer  
Carly Jan  
Fred Leeds  
Melissa Peterson

Karen K Tate  
Telila Uhlig  
Heather Boyer

~~Ron Soudag~~  
Dana Battelfeld  
Peter Battelfeld

Luis Ruwas  
Hortencio Haerto

Cula Rodriguez  
~~Paula Rodriguez~~

Arcide Madison  
Ruth Usher

~~Karen MacArthur~~

~~Diana MacArthur~~  
~~Victoria~~  
Cyrus

~~Reginald M. Mar~~  
Chris Morris  
(Ryan Safford)

Marianne Johnson

Lisa Abbott  
Olivia D. Cerni

Rigoberto B.F.

Roder N. Granado  
Judy Rodriguez  
Tom Wells

Benito Casas  
Makia Casas  
LaDonna Barton

Richard Barton  
Jennifer Rodriguez

~~Myra~~  
Loreli Biv

Chyler T. Nt.  
Julia Moschetti

~~Karen MacArthur~~  
~~Erica~~  
~~Cheryl~~

Stacy Raybal  
Ron Raybal

Dee Dee MacArthur  
Kathryn L. Palacios  
Melissa Farmer  
Ann A. Abate  
Paula Otto  
Doree Lison