

IN THE SUPREME COURT OF THE STATE OF NEVADA

TENNILLE RAE WHITAKER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket Number 77294

Dist Ct. Case. CR-FP-17-3893

APPEAL FROM JUDGMENT OF THE HONORABLE JUDGE NANCY PORTER

FOURTH JUDICIAL DISTRICT COURT

APPELLANT'S APPENDIX

VOLUME 1

KARLA K. BUTKO, Esq.
Attorney for Appellant
P. O. BOX 1249
Verdi, Nevada 89439
(775) 786-7118
State Bar #: 3307
Byron Bergeron, Esq.

TYLER INGRAM, ESQ.
Elko County District Attorney
Attorney for Respondent
540 Court Street, Second Floor
Elko, Nevada 89801
(775) 738-3101
CHAD B. THOMPSON, ESQ.

INDEX TO APPELLANT'S APPENDIX

Volume One

<u>Document</u>	<u>Pages</u>
Criminal Information.	1-5
Memorandum of Plea Agreement	6-13
Offer of Proof with Respect to The Defendant Tennille Ray Whitaker's Proposed Plea of Nolo Contendere	14-15
Order Regarding Media Request	16-18
Psycho-Sexual Evaluation (Including Curriculum Vitae of Steven Ing, M.A., M.F.T.)	19-39
Transcript of Proceedings, Arraignment/Plea (04/30/2018)	40-57
District Court Docket -- Plea.	58-59
Additional Documents to be Considered at Time of Sentencing	60-76
Parole & Probation Victim Impact Evidence provided to Court Including a Petition dated 5/7/18	77-88
Correspondence (sentence mitigation letter)	89-91
Parole & Probation, Letter to court with victim impact letter	92-98
Parole & Probation, Letter to court with victim impact letter.	99-101
Notice of Victim Impact Statement.	102-104
Notice of Victim Impact Statement.	105-108
Notice of Victim Impact Statement.	109-112
District Court Docket -- Sentencing	113-115

INDEX TO APPELLANT'S APPENDIX


Volume One

<u>Document</u>	<u>Pages</u>
Transcript of Proceedings, Sentencing (10/04//2018)	116-218
Judgment of Conviction	219-224
Notice of Appeal	225-226
Docket of Case	227-232
Matrix of State Laws relating to Student/Teacher Re: consensual sex crimes	233-257

maul

FILED

CASE NO. CR-~~FP~~-17-3893
DEPT.NO. 1

2017 NOV 16 AM 10:24
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY 


IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA, **CRIMINAL**
Plaintiff, **INFORMATION**
vs.
TENNILLE RAE WHITAKER,
Defendant.

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, on or about or between the 1st day of September, 2015 and the 6th day of June 2017, at or near the location of the city of Wells and/or the surrounding areas near the city of Wells, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1
**SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER
AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540.
(NOC 51067)**

That the Defendant, a person older than 21 years of age, and while employed at or volunteering at a public or private school, did engage in sexual conduct with a pupil, one B.H., who was 16 years of age or older and had not received a high school diploma, a general educational development certificate or an equivalent document and: the student was attending the public or private school at which the Defendant was employed or volunteered; or the student had contact with the Defendant in the course of the Defendant performing his or her duties as an employee or volunteer.

Affirmation Pursuant to NRS 230B.030
SSN Does Appear
SSN Does Not Appear 

1 COUNT 2

2 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER**
3 **AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540.**
4 **(NOC 51067)**

5 That the Defendant, a person older than 21 years of age, and while employed
6 at or volunteering at a public or private school, did engage in sexual conduct
7 with a pupil, one O.C., who was 16 years of age or older and had not
8 received a high school diploma, a general educational development certificate
9 or an equivalent document and: the student was attending the public or
private school at which the Defendant was employed or volunteered; or the
student had contact with the Defendant in the course of the Defendant
performing his or her duties as an employee or volunteer.

10 COUNT 3

11 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER**
12 **AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540.**
13 **(NOC 51067)**

14 That the Defendant, a person older than 21 years of age, and while employed
15 at or volunteering at a public or private school, did engage in sexual conduct
16 with a pupil, one L.T., who was 16 years of age or older and had not received
17 a high school diploma, a general educational development certificate or an
18 equivalent document and: the student was attending the public or private
school at which the Defendant was employed or volunteered; or the student
had contact with the Defendant in the course of the Defendant performing his
or her duties as an employee or volunteer.

19 COUNT 4

20 **SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER**
21 **AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540.**
22 **(NOC 51067)**

23 That the Defendant, a person older than 21 years of age, and while employed
24 at or volunteering at a public or private school, did engage in sexual conduct
25 with a pupil, one C.M., who was 16 years of age or older and had not
26 received a high school diploma, a general educational development certificate
27 or an equivalent document and: the student was attending the public or
private school at which the Defendant was employed or volunteered; or the
student had contact with the Defendant in the course of the Defendant
performing his or her duties as an employee or volunteer.

27 ///

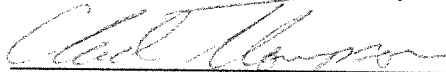
28 ///

2

1 All of which is contrary to the form of the Statute in such cases made and
2 provided, and against the peace and dignity of the State of Nevada.

3
4 Dated: November 13, 2017.

5
6 TYLER J. INGRAM
7 Elko County District Attorney

8 

9 CHAD B. THOMPSON
10 Chief Criminal Deputy District Attorney
11 State Bar Number: 10248

12 **Declaration By State's Counsel Estimating**
13 **The Number Of Days Needed For Trial**

14
15 **COMES NOW THE STATE OF NEVADA**, by and through its Counsel of Record the
16 Elko County District Attorney's Office and, specifically by the Deputy District Attorney
17 assigned the above-entitled matter, who, by his signature hereunder, would declare to the
18 above-entitled Court that it is State's Counsel's estimate that 4 days, including jury selection,
19 should be set aside for the trial of this matter.

20 

21 CHAD B. THOMPSON
22 Chief Criminal Deputy District Attorney
23 State Bar Number: 10248

24
25 Witnesses' names and addresses known to the District Attorney at the time of filing
26 the above Criminal Information, if known, are as follows.

27 B. H.: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801

28 3

1 C. M.: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
2 C/S 17-001: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
3 C/S 17-002: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
4 C/S 17-003: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
5 C/S 17-008: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
6 C/S 17-011: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
7 C/S 17-012: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
8 D. M.: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
9 MARIAH DRAKE: 775 WEST SILVER STREET ELKO, NV 89801
10 BILLY HOOD: 775 WEST SILVER STREET ELKO, NV 89801
11 MADISON HOOPER: U-3 RANCH WELLS, NV 89835
12 BETTY J KELLY: 1509 6TH ST WELLS, NV 89835
13 L. T.: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801,
14 MICHAEL LOUP: 775 WEST SILVER STREET ELKO, NV 89801
15 CHRISTOPHER MCANANY: 1378 LAKE AVE WELLS SCHOOL WELLS, NV 89835
16 PETE NIELSON: 1448 SILVER STREET ELKO, NV 89801-3924
17 O. C.: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801,
18 STEVEN RODRIGUEZ: 804 HOGAN STREET WELLS, NV 89835
19 MICHAEL SILVA: 775 WEST SILVER STREET ELKO, NV 89801
20 NICK STAKE: 775 WEST SILVER STREET ELKO, NV 89801
21 T. M.: C/O DETECTIVE STAKE, 775 WEST SILVER STREET ELKO, NV 89801
22 WES TALBERT: 508 MOOR AVE WELLS, NV 89835
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 11th day of November, 2017, I
4 hereby served a copy of the CRIMINAL INFORMATION, by delivering, mailing, faxing, or
5 causing to be delivered, faxed, or mailed, a copy of said document to the following:

6 By delivering to:

7 HONORABLE NANCY PORTER
8 FOURTH JUDICIAL DISTRICT COURT
9 ELKO COUNTY COURTHOUSE
10 ELKO, NV 89801

11 By mailing to:

12 BYRON BERGERON
13 ATTORNEY AT LAW
14 432 COURT STREET
15 RENO, NV 89501

16 Carisa Anchondo for:
17 ERIKA WEBER
18 CASEWORKER

19 DA # F-17-01609
20
21
22
23
24
25
26
27
28

1 CASE NO. CR-FP-17-3893

FILED
2018 APR 30 AM 9:02
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY 

2
3
4
5 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
6 NEVADA, IN AND FOR THE COUNTY OF ELKO
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 TENNILLE RAE WHITAKER,

12 Defendant.
13

MEMORANDUM OF
PLEA AGREEMENT

14 **NOLO CONTENDERE PLEA AGREEMENT**

15 I, TENNILLE RAE WHITAKER, hereby agree to enter pleas of Nolo Contendere (hereinafter
16 referred to simply as "no contest") pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970),
17 to 4 counts of SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER
18 AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540 as more fully
19 alleged in the CRIMINAL INFORMATION.

20 **RECITATION OF AGREEMENT**

21 My decision to plead no contest is based upon the following agreement between
22 myself, and the State of Nevada:

23 The District Attorney's Office will forebear prosecution on the 8 other charges of
24 SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A
25 CATEGORY C FELONY AS DEFINED BY NRS 201.540 originally plead in the Criminal
26 Complaint filed in the Elko Justice Court and will file no charges other than those agreed to in
27 the Memorandum of Plea Agreement and will file no further charges arising out of facts
28

1 related to this incident, now known to the District Attorney's Office either by a new Complaint
2 or Indictment.

3 At the time of sentencing in this matter both sides will be free to argue, except that the
4 State will be limited to arguing for a sentence that does not exceed an aggregate sentence of
5 4-12 years.

6 Both parties agree to waive the attachment of the Criminal Information.

7 **CONSEQUENCES OF THE PLEA**

8 I understand that by pleading no contest to 4 counts of SEXUAL CONDUCT
9 BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C
10 FELONY AS DEFINED BY NRS 201.540, I may be imprisoned for a term of 1 to 5 years in
11 the Nevada State Prison and that I may further be punished by a fine of up to \$10,000.00, for
12 each count to which I now plead. I understand that the law requires me to pay an administra-
13 tive assessment fee. I understand that the minimum term may not exceed 40 percent (40%)
14 of the maximum term of imprisonment. I understand that if granted probation I can be
15 required to serve jail time as a condition of probation.

16 I understand that I may be eligible for probation for the offenses to which I am
17 pleading no contest subject to the conditions set forth below. I understand that except as
18 otherwise provided by statute, the question of whether I receive probation is in the discretion
19 of the sentencing judge. I understand that pursuant to NRS 176A.110 the court cannot grant
20 probation or suspend my sentence unless an evaluation is conducted and the person
21 conducting the evaluation certifies that I do not represent a high risk to re-offend.

22 I understand that, if appropriate, I will be ordered to make restitution to the victim of
23 the offense to which I am pleading no contest and to the victim of any related offense which
24 is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
25 reimburse the State of Nevada for any expenses related to my extradition, if any.
26
27
28

1 I understand that if more than one sentence of imprisonment is imposed and I am
2 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
3 the sentences served consecutively or concurrently.

4 I understand that information regarding charges not filed, dismissed charges, or
5 charges to be dismissed pursuant to this agreement may be considered by the judge at
6 sentencing.

7 I have not been promised or guaranteed any particular sentence by anyone. I know
8 that my sentence is to be determined by the Court within the limits prescribed by statute.

9 I understand that if my attorney or the State of Nevada or both recommend a specific
10 punishment to the Court, the Court is not obligated to accept this recommendation.

11 I understand that if I am not a citizen of the United States, any criminal conviction will
12 likely result in serious negative immigration consequences including but not limited to the
13 following:

- 14 1) Removal from the United States through deportation;
- 15 2) The inability to reenter the United States;
- 16 3) The inability to renew and/or retain any legal residence status;
- 17 4) The inability to become a United States citizen;
- 18 5) The inability to establish legal residency in the United States;
- 19 6) Ineligibility for Deferred Action for Childhood Arrivals (DACA);
- 20 7) An indeterminate term of confinement with the United States Federal Government
21 based on my conviction and immigration status.

22 I understand that no one can promise me that this conviction will not result in negative
23 immigration consequences.

24 I understand that the Division of Parole and Probation of the Department of Public
25 Safety will prepare a report for the sentencing judge before sentencing. This report will
26 include matters relevant to the issue of sentencing, including my criminal history. I
27 understand that this report may contain hearsay information regarding my background and
28

1 criminal history. My attorney and I will each have the opportunity to comment on the
2 information contained in the report at the time of sentencing. Unless the District Attorney has
3 specifically agreed otherwise, the District Attorney may also comment on this report.

4 **REGISTRATION AS A SEX OFFENDER**

5 I understand that pursuant to NRS 179D.097 and NRS 179D.441 et. seq., I will be
6 required to register as a sex offender. I have discussed the registration requirements with
7 my attorney including the potential future penalties associated with any failure to comply with
8 the Sexual Offender Registration requirements.

9 Further, pursuant to NRS 176.0931, I will be subject to lifetime supervision. I
10 understand that in order to be released from lifetime supervision, I must:

- 11 1. Comply with the provisions of NRS 179D.010 to NRS 179D.550 (registration as a
12 sex offender), inclusive;
- 13 2. Not be convicted of any offense that poses a threat to the safety or well-being of
14 others for an interval of at least 10 consecutive years after my last conviction or
15 release from incarceration, whichever occurs later; and
- 16 3. To be deemed not likely to pose a threat to the safety of others, as determined by
17 a person professionally qualified to conduct psychosexual evaluations, if released
18 from lifetime supervision.
- 19 4. A person who is released from lifetime supervision remains subject to the
20 provisions of registration as a sex offender and to the provisions of community
21 notification unless the person is otherwise relieved from the operation of those
22 provisions.

23 **WAIVER OF RIGHTS**

24 By entering my plea of no contest, I understand that I have waived the following rights
25 and privileges:
26
27
28

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies, and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading no contest and accepting this plea bargain is in my best interest and that a trial would be contrary to my interest.

1 I am signing this agreement voluntarily, after consultation with my attorney, and I am
2 not acting under duress or coercion or by virtue of promises of leniency, except for those set
3 forth in this agreement.

4 I am not now under the influence of any intoxicating liquor, a controlled substance or
5 other drug which would in any manner impair my ability to understand this agreement or the
6 proceedings surrounding my entry of this plea.

7 My attorney has answered all of my questions regarding this plea agreement and its
8 consequences to my satisfaction and I am satisfied with the services provided by my
9 attorney.

10 DATED this 30th day of April, 2017.

11 Tennille Rae Whitaker
12 TENNILLE RAE WHITAKER
13 Defendant

14 Agreed to on this 27 day of April, 2017

15 Chad B. Thompson
16 CHAD B. THOMPSON
17 District Attorney's Office
18 NV Bar Number 10248
19
20

21 **CERTIFICATE OF COUNSEL**

22 I, the undersigned, as the attorney for the defendant named herein and as an officer of
23 the court hereby certify that:

24 1. I have fully explained to the defendant the allegation contained in the charge(s)
25 to which no contest pleas are being entered.

26 2. I have advised the defendant of the penalties for each charge and the
27 restitution that the defendant may be ordered to pay.
28

1 3. I have inquired of the Defendant facts concerning the her immigration status
2 and explained to the Defendant that if she is not a citizen of the United States that any
3 criminal conviction will most likely result in serious negative immigration consequences
4 including but not limited to:

- 5 a) Removal from the United States through Deportation;
- 6 b) The inability to reenter the United States;
- 7 c) The inability to renew and/or retain any legal residence status;
- 8 d) The inability to become a United States citizen;
- 9 e) The inability to establish legal residency in the United States;
- 10 f) Ineligibility for Deferred Action for Childhood Arrivals (DACA);
- 11 g) An indeterminate term of confinement with the United States Federal Government
12 based on my conviction and immigration status.

13 Moreover, I have explained that regardless of what the Defendant may have been told
14 by any attorney, no one can promise Defendant that this conviction will not result in negative
15 immigration consequences and/or impact her ability to become a United States citizen and/or
16 legal resident.

17 4. All pleas of no contest offered by the defendant pursuant to this agreement are
18 consistent with all the facts known to me and are made with my advice to the Defendant.
19
20
21
22
23
24
25
26
27
28

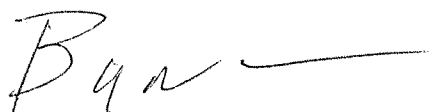
1 5. To the best of my knowledge and belief, the Defendant:

2 a. Is competent and understands the charges and the consequences of
3 pleading no contest as provided in this agreement,

4 b. Executed this agreement and will enter all no contest pleas pursuant
5 hereto voluntarily, and

6 c. Was not under the influence of intoxicating liquor, a controlled substance
7 or other drug at the time of execution of this agreement.

8
9
10 Dated this 27th day of April 2018
~~November 2016~~.

11
12 
13 _____
14 BYRON BERGERON
15 Defense Attorney
16 NV Bar # 7898

Letenbe

FILED

CASE NO. CR-FP-17-3893
DEPT. NO. 1

2018 APR 27 PM 3:58

ELKO DISTRICT COURT

CLERK _____ DEPUTY JS

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TENNILLE RAE WHITAKER,

Defendant(s).

OFFER OF PROOF WITH RESPECT TO

THE DEFENDANT TENNILLE RAE

WHITAKER'S PROPOSED PLEA OF

NOLO CONTENDERE

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J. INGRAM, District Attorney for the County of Elko, and CHAD B. THOMPSON, Deputy District Attorney, and by this pleading would make the following Offer of Proof with respect to the prospective evidence in this matter which the State believes and therefore avers it would have been in a position to adduce should the Defendant have elected to go to trial upon the charges pleaded against her in this matter:

The State would have called as witnesses B.H., O.C., L.T. and C.M., all of whom were students or pupils at a public school in Wells, NV and 16 years of age or older, but had not received a high school diploma and the public school they attended was a school at which the Defendant was employed or the Defendant had contact with the witnesses in the course of the Defendant performing her duties as an employee, and under the above circumstances and on or about or between the 1st day of September, 2015 and the 6th day of June 2017, in the County of Elko the Defendant did engage in sexual conduct with each of the above

JS

14

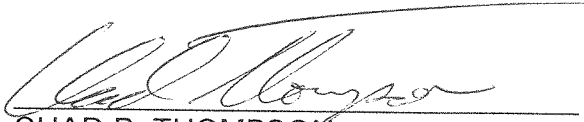
1 witnesses who were pupils at the school.

2 Based upon the above, the State believes and therefore avers that if the above
3 witnesses were believed by a jury it could prove beyond a reasonable doubt that Ms.
4 WHITAKER committed the offenses pleaded against her in the Criminal Information

5 Dated this 27 day of April, 2018.

6 TYLER J. INGRAM
7 Elko County District Attorney

8
9 By:


10 CHAD B. THOMPSON
11 Chief Criminal Deputy District Attorney
State Bar Number: 10248

12 CERTIFICATE OF SERVICE


13 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
14 Elko County District Attorney's Office, and that on the 27th day of April, 2018, I served the
15 foregoing OFFER OF PROOF, by hand delivering, mailing or by facsimile transmission or
16 causing to be hand delivered, mailed or transmitted by facsimile transmission, a copy of said
17 document to the following:

18 By hand delivery:

19 THE HONORABLE NANCY PORTER
20 FOURTH JUDICIAL DISTRICT COURT
21 ELKO COUNTY COURTHOUSE
ELKO, NV 89801

22 By mailing to:

23 BYRON BERGERON
24 ATTORNEY AT LAW
25 432 COURT STREET
RENO, NV 89501

26 
27 ERIKA WEBER
28 CASEWORKER

DA # F-17-01609

Case No. CR-FP-17-3893

Dept. No. 1

FOURTH JUDICIAL DISTRICT COURT
FILED IN OPEN COURT

Date: 4-30-18

Time: 3:19 pm

Clerk: [Signature]

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

V.

TENILLE RAE WHITAKER,

Defendant.

**ORDER REGARDING
MEDIA REQUEST**

This Court is in receipt of an oral Media Request submitted by Lori Gilbert on behalf of the Elko Broadcastin Company, on April 30, 2018, regarding the arraignment in this matter, which is scheduled to commence on April 30, 2018, at the hour of 3:00 p.m., at the Elko County Courthouse.

Pursuant to S.C.R. 230, this Court shall grant access to all portions of trial which are available to the public. This Court, under S.C.R. 230(2), will not permit any photograph or video to be taken of any victim in this matter without the victim's express permission. Media are restricted from all instantaneous broadcast of court proceedings, e.g. "streaming," "blogging," "live broadcast," or any form of social media.

Furthermore, according to S.C.R. 238(2):

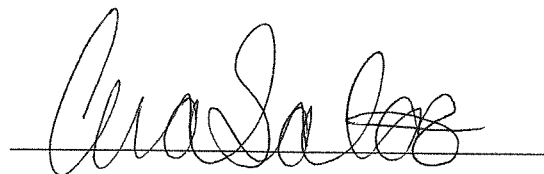
News reporters will not deliberately photograph the jury or individual jurors. However, it is recognized that, because of the physical layout of some courtrooms and the general trial activity in any courtroom, it may be impossible not to photograph some jurors as part of the proceedings. To the extent possible, news reporters shall locate and focus their equipment in such a manner as to minimize photographs

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 30 day of April, 2018, I personally hand delivered a file-stamped copy of the foregoing **ORDER REGARDING MEDIA REQUEST** addressed to:

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

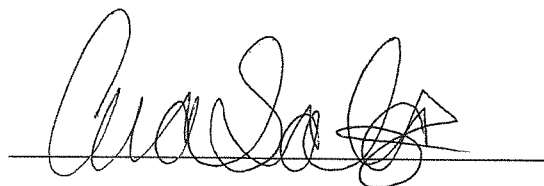
Lori Gilbert
via e-mail: lori@elkoradio.com



CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 30 day of April, 2018, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a copy of the foregoing **ORDER REGARDING MEDIA REQUEST** addressed to:

Byron Bergeron, Esq.
432 Court Street
Reno, NV 89501



1 **BYRON BERGERON, ESQ.**
2 Nevada Bar No. 7598
3 432 Court Street
4 Reno, Nevada 89501
5 Telephone: 775.229.3736
6 Facsimile: 775.786.5573
7 *Attorney for Defendant*

FILED
2010 APR 30 PM 4:46
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

8 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
9 NEVADA, IN AND FOR THE COUNTY OF ELKO

10 STATE OF NEVADA,

Case No. CR-FP-17-3893

11 Plaintiff,


12 vs.

13 TENNILE RAE WHITAKER,

14 Defendant.

15
16 **PSYCHO-SEXUAL EVALUATION TO BE FILED UNDER SEAL**
17

18 Dated this 27TH day of April, 2018.
19
20
21

22
23 
24 _____
25 BYRON BERGERON, ESQ.
26
27
28



Psychosexual Evaluation

Client: Tennille R. Whitaker
Date of Birth: February 12, 1977
Evaluation Date: April 20, 2018
Report Date: April 21, 2018
Evaluation Requested by: Byron Bergeron, Esq.

[N.B., This writer has served as treatment provider to Ms. Whitaker since July 5, 2017. She has been seen by this writer for 13 one-hour sessions, 7 ninety-minute sessions, and one two-hour session to conduct the interview for this evaluation. Her husband attended some of these sessions to aid in her treatment. The contact prior to the two-hour interview for this evaluation definitely aided in her assessment. Cumulatively, she has been in 25.5 hours of treatment and assessment.]

Materials Reviewed Prior to Evaluation: The complete file as furnished by Ms. Whitaker's attorney was reviewed including: a crate containing three three-ring binders and assorted DVDs collectively containing Elko County Sheriff's Office Reports, Witness Statements, investigatory items, the ECSO Booking Sheet, transcripts of several interviews, Declaration of Probable Cause, Application for a search Warrant, and so forth.

Evaluation Issues: Ms. Whitaker was arrested and has apparently been charged with eight violations of NRS 201.540, all felonies, described as Sexual Conduct Between Certain Employees or Volunteers At School and Pupil. What is the psychosexual makeup of this woman? What does this offense indicate about her? What, if any, are her treatment needs? What interventions would most effectively reduce the likelihood of future, similar offenses? To what degree is she at risk for committing another sexual offense?

Present Offenses: On September 30, 2016 the Elko County Sheriff's Office received a report of a 4th grade elementary school teacher, Tennille Whitaker, who was alleged to have had sex with more than one student in her district. After an investigation spanning the better part of a year, four male victims were found. All were between the ages of 16 and 18 inclusively and all made statements to authorities. Each student stated that they had had sexual intercourse and oral sex with Ms. Whitaker. They had also received sexual images or videos from her.

Previous Offenses: Ms. Whitaker has no prior history of sexual crimes. Indeed, she has no criminal history whatsoever.

20

History and Present Situation: Tennille Whitaker was born in Elko on February 12, 1977. Her family lived in Battle Mountain at the time. Her father, William Horn, age 67, continues to live in Starr Valley, Nevada with her mother, Rita, age 70. Tennille was their only child in this, their first and only marriage of 44 years duration so far. Her father was "a rancher, a cowboy," and her mother worked as "a bookkeeper, a homemaker." The family lived a lower middle-class lifestyle due to her father's working for his father at subpar wages. From age six to age eight Tennille "was mostly on [her] own" as they worked. At age eight, Tennille and her parents moved to Wells, Nevada and they have lived in the local area ever since.

Tennille's mother was Catholic and she attended weekly Mass with her parents and became confirmed when the time came. She tried to bring her faith into her marriage but he never became fond of Catholic services. The two have since joined a nondenominational church, Lighthouse Christian Fellowship, in Elko.

Neither of Tennille's parents had a problem with the problems commonly associated with modernity such as drug abuse, problem drinking, criminal activity, or gambling. But families can have other problems and Tennille remembers that hers did too.

"They fought a lot about money. When I was 16 my mom found out my dad had an affair. My parents were an embarrassment to me; sexual comments were being made all the time. [That kind of behavior] makes you think it's normal. My parents never really approved of me. Even my favorite teacher in high school accused me of not earning the high award I'd gotten. He said I'd gotten it only by flirting with the elderly judges. I've never had a teacher who supported me."

At age 15 Tennille began rodeo competition and to go frequently for horseback rides with her father. These two activities formed a bright spot in her otherwise unhappy years at Wells High School. Her parents didn't allow her to participate in sports. They did, however, allow her to participate in Future Farmers of America and one year she won the Agricultural Sales Contest. Sadly, her faculty advisor from high school discounted her accomplishment by stating she'd only won because she'd flirted with the judges.

21

Q: Was school pleasant for you?

A: No. It was horrible; the only good thing was rodeo. I was picked on and called horrible things.

Q: How was that?

A: I had red hair and all the boys would say really mean things, sexually explicit names and putdowns. It got so bad that I avoided the hallway at school. I was in tears daily.

Despite her then undiagnosed Attention-Deficit/Hyperactivity Disorder, Tennille graduated from high school with a 3.0 GPA. She then went to Twin Falls where she studied one year at the College of Southern Idaho before attending Great Basin College in Elko for five years before getting her B.A. in Elementary Education at age 28.

During her youth and for most of her adult life, Tennille did not abuse drugs, have gambling problems or drink excessively. While in high school she met her future husband Walter Whitaker (known in the community as "Willie"), who was one year older than she. The two have been married some 19 years.

They've been a somewhat rough 19 years.

"We're both hot-tempered. We've yelled and screamed at each other and called each other names. We've guilt-tripped each other."

But the relationship also had its upside: two children, a boy named Hank (now 14) and a girl, Molly (now 10). The couple has worked hard to build up their lives financially and they now run some 300 head of cattle in addition to the work they've found in the community.

Her preferred forms of recreation in the last five years consist of "going shopping, going to lunch with friends, hanging out with [her] family, or going on family trips."

She has never served in the military.

She worked for the Elko County School District for 11 years.

She has never received mental health care at any time in her life prior to her contact with this writer.

She states that she has "five close friends" with whom she shares meaningfully on a regular basis ("twice a month and regular phone contact"): "I'm an open book

22

with them now. I've told them about my offense." She has confided about her suicidal feelings with two of them.

Approximately one month prior to initiating her behavior in the instant offense, Tennille and her husband had what turned into a most serious crisis for them. They'd both been drinking and one night he asked if there'd ever been anyone else before him in a sexual and romantic sense. This brought up a years long history of Tennille's not disclosing her one previous boyfriend which she finally, that night, revealed. The results were as painful as they were dramatic.

"He felt as though his marriage had been a lie. He and I were both upset. I was having a hard time because I had two friends going through divorces and I'd never experienced that [crying]. I had 32 kids in my 4th grade class and 7 of them had serious behavior problems, so besides what was going on with Willie I had a lot going on. I had no one in my life because Willie had shut down. He'd get angry, silent, super-depressed. We'd go three days without talking. I was beating myself up because I'd told him about the other boy in high school. After disclosing to Willie I began drinking a lot. A bottle of wine a day, three shots of Crown Royal. That went on for a year or more."

Sexual History & Present Sexual Orientation: Due to the nature of the present evaluation, considerable attention was devoted to Ms. Whitaker's sexual history and present adjustment. She states that she was sexually abused as a child (ages five to six) by a female babysitter (approximately 20 years of age) who would insist on bathing her and touched her genital area some "four or five times."

She recalls that she did engage in the sort of childhood play of a sexual nature at the age of 12 when she played "Truth or Dare." Developmental experts consider this sort of play to be normal. She recalls that she learned about sex as a child from "some sex ed and the other kids at school" and that there were no "birds and the bees" types of parental teachings.

Tennille's parents modeled a style of affection and love that was appropriate and warm including hugs and statements of affection. They indicated their love of her in a similar manner.

At approximately 13 years of age, Tennille discovered masturbation, apparently from simply touching herself in her bedroom. She recalls, regarding masturbation, "I was private about it and no one ever told me anything like it was wrong or OK." She considers masturbation to be what it is, simply a normal sexual behavior.

Her first sexual experience was at age 16 with a 16-year-old male peer in his car. She has had a total of four sexual partners, all male adults. With her victims in the instant offense this number would rise to eight.

Ms. Whitaker denies ever having sexual interest in or engaging in voyeurism, exhibitionism or any of the other "isms" which make up the panoply of clinically significant sexually deviant behaviors. (Note: These tend to be quite rare among women.) Her history and her unguardedly disclosed sexual fantasies confirm this impression. She credibly denied any homophobia.

Ms. Whitaker reports that currently she and her husband have a sex life that has reduced significantly from happier times when they would normally have relations "four or five times a week." She explains that she is so depressed that she has lost her interest.

She states that she and her husband can "kind of" talk freely when it comes to sexual topics, although they've never discussed masturbation, sexual thoughts or (as was disclosed) sexual histories freely. Thus, they have sex of course, but they really don't have sexual intimacy, that is, the safe sharing of their sexuality with one another.

General Assessment: Tennille Whitaker is a 41-year-old woman who is currently living with her children and her husband, Willie, aged 42 at their home in Starr Valley, near Wells, Nevada. She appeared for the present evaluation in a timely fashion. She was socially appropriate throughout the clinical interview and was overtly willing to discuss all topic areas raised by the evaluator. She clearly evidenced signs of depression and it appears that her symptoms of depression have been present for the last three years. She is receiving treatment for this problem in her contact with this writer. She has avoided the medical consultations recommended by this writer as her condition, Major Depressive Disorder, is quite serious and, in her case, includes suicidal fantasies, thoughts, and acting out behaviors. Her avoidance of contact with a medical doctor who could prescribe antidepressant medicine is both of concern and typical of those struggling with depression.

24

She was well-oriented, denied hallucinations or paranoid thinking and was able to track complex concepts easily. While formal intelligence testing was not part of the present evaluation, she clearly falls within the normal range of intelligence, as evidenced by her life accomplishments, vocabulary and fund of knowledge. There was no evidence of cognitive impairment in the general sense of that term but since the time of her arrest her mental health has been in a serious state.

Her symptoms of Major Depressive Disorder include:

1. A depressed mood most of the day, nearly every day.
2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day.
3. Insomnia nearly every day.
4. Feelings of worthlessness nearly every day.
5. Recurrent thoughts of death with suicidal acting out and plan.

As one might expect from her culture and upbringing she tends to believe that she "should just tough it out." Although this writer has not seen immanent risk there is certainly regular and pervasive risk. This risk level is exacerbated by her other diagnoses including Attention-Deficit/Hyperactivity Disorder. Her Depressive Disorder and AD/HD represent the most common and the second most common mental health conditions in the U.S. AD/HD is a condition that is genetic.

Her inattentive symptoms of AD/HD include:

1. Makes careless mistakes and often fails to give close attention to details.
2. Often has difficulty sustaining attention in tasks.
3. Often does not follow through with tasks.
4. Often has difficulty organizing tasks and activities.
5. Is often distracted by extraneous stimuli or unrelated thoughts.

Her hyperactive and impulsive symptoms include:

1. Often fidgets with or taps hands or feet.
2. Often leaves seat in situations when remaining seated is expected (as was described of her in the statements of other teachers).
3. Is often "on the go" acting as if "driven by a motor."
4. Often talks excessively.
5. Often interrupts or intrudes on others (taking over what others are doing).

Thus, she has the combined presentation of the disorder. An additional concern here includes profoundly painful boredom. Although we can all remember being bored, for those with AD/HD, boredom is more regularly like a "7" on a scale of "1 to 10." Their impulsivity is often an attempt to assuage this boredom.

25

Lastly, there is an additional mental health concern: Borderline Personality Disorder. She has a number of the traits including:

1. Frantic efforts to avoid real or imagined abandonment.
2. A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of devaluation and idealization.
3. An unstable sense of self.
4. Impulsivity (as with sex in the instant offense).
5. Recurrent suicidal behavior, gestures, etc.
6. Affective instability.
7. Chronic feelings of emptiness.

Regarding this last trait, Ms. Whitaker made the following comments in our interview:

"I feel like I've never had a mind of my own."

"Do you ever feel empty inside?"

"Yeah. A lot. It's a common thing. I think I've always had that."

Those with Borderline Personality Disorder have the highest risk of suicide of any diagnosis. Mitigating this risk is that the condition is ego dystonic, that is, those with it are unhappy and know something is wrong and they are the most active seekers of mental health care, as opposed to other personality disorders like that of Narcissism in which the afflicted "knows" that he has no problems except for the people who complain about him. Borderline patients respond very well to the proper treatment. Like AD/HD, this disorder too is genetic.

An important trait of all personality disorders, including Borderline, is the lack of a functioning observing ego, that is, our ability to step outside ourselves for a moment of self-reflection in order to correct one's course in life. When asked about what type of marital problems she might have she made a comment supportive of this trait,

"I haven't been a reflective person but that is changing."

A truism of any personality disorder is that, rather than the range of adaptive traits that most people have, the 19% of the general population with personality disorders are limited to very few and often just one trait. For Ms. Whitaker, that trait is the fear of abandonment. That fear was triggered when her husband, upon hearing the bad news about her having had another boyfriend before him nearly two decades prior to the disclosure, rejected her and ignored her for days on end.

26

Her disclosure, ironically, was a move toward authenticity and mental health but the rejection activated and strengthened her childhood theme of abandonment.

Her frantic efforts to avoid real or imagined abandonment were reflected in some of the comments from the victims in the instant offense when they described her as becoming "angry" when she sensed rejection of any kind. For these individuals, feelings often determine reality so that if they feel insulted, for example, then you did, in fact, insult them. Borderline individuals are also known for coquettish or flirtatious behaviors in their attempts to gain attention. They typically use attention as a substitute for the love craved by others. Consider the stressors of her seeing her two friends go through the break-up of their marriages: very few adults in the U.S. would have been so profoundly affected except for those for whom divorce (and the resulting sense of abandonment) represented an existential threat.

To understand Ms. Whitaker's present psychosexual makeup and the deficits which led to her behavior with her victims, one must appreciate the severely stark emotional landscape of emotional deprivation, neglect and failure to nurture she perceived that she received as a child. She grew up feeling utterly unsupported and this feeling became the reality of her life. This, combined with her parents' inappropriate sexual remarks, her early childhood sexual abuse at the hands of her babysitter, her isolation as a child and as an older teen contributed to a great deal of debilitating early childhood trauma.

Upon realizing that she'd shattered her husband's perception of their Disney-like perfect romance, Ms. Whitaker did what she'd often done in the past in trying to curry favor and to be supportive of her husband. In effect, she became his caretaker in the codependent sense, that is, that she was taking better care of him than she was of herself.

When we examine the mental health components of the offense we see an example of the "perfect storm" of criminogenic variables: Chronic feelings of emptiness creating a very needy person who gets rejected by her primary support and becomes depressed. This leads to increased drinking which lowers the inhibitions and increases the depression that, in turn, accelerated the impulsivity related to both the AD/HD and the Borderline conditions. As bad as these sexually impulsive crimes were, for all but a minority they would represent a choice preferable to suicide.

Once Ms. Whitaker had crossed one boundary into inappropriate and illegal sexual behavior she took on a fatalism typical of those with her three mental health problems. Once she'd realized that she'd again ruined her storybook romance, she became discouraged to the point of surrender, saying in our

27

interview for this evaluation, "What was the point I'd already screwed up everything." This sort of thinking is common to Major Depressive Disorder, Borderline Personality Disorder, and individuals with AD/HD. This way of thinking made the behavior all the more needful of community intervention. As is the case with most sexual crimes, secrecy is what made the offense possible and when the secrecy ends, the criminal behavior ends with it.

After the criminal behavior, many experience remorse, contrition, and guilt for what they have done. Some, like those with Narcissistic Personality Disorder pay only lip service to these reactions that are normal for those who have the capacity for conscience. Ms. Whitaker has that capacity as was observed in the evaluation interview:

Q: How do you think that this has affected the boys in this matter?

A: I've thought about it a lot and I think they feel awful.

Q: How did that make you feel?

A: Regretful, guilty, empathic.

Q: How do you see yourself in light of the issues we've talked about today?

A: I see myself as not a good person...awful...[tears] a failure.

We are all different. The same familial phenomenon of one family may cause different results in another family. For example, for many, the notion of two friends going through divorce would have been upsetting but not particularly traumatic. For most of us, the idea of a Disney themed marriage would be as unsatisfying as it was unreal. But, for the two of them, the notion of some sort of Disney themed marriage seemed perfectly normal. For Ms. Whitaker the experiences with her family, her high school, her marriage all exacerbated her underlying and untreated mental health issues. The perfect storm indeed.

DSM-5 Diagnostic Impression:

Readers of diagnostic impressions in these reports may be unfamiliar with the new DSM-5 recommendations that eliminate the familiar multi-axial format of the DSM-IV. Instead, the DSM-5 encourages the use of a paragraph to describe the diagnoses. The DSM-5 eliminates the "global assessment of functioning" axis, for example, and substitutes a more integrated description of the individual's health from a holistic perspective. Ms. Whitaker has no physical health issues that affect a possible diagnosis (although she does have chronic stomach upset from her anxiety). She has two conditions that used to fall under Axis 1: Major Depressive Disorder (DSM-5, 296.22, with anxious distress) and AD/HD (314.01). Axis 2 referred in the past to

28

personality disorders but these two are more properly addressed holistically. She suffers from Borderline Personality Disorder (301.83). Since these have all been discussed in detail above it may be appropriate to discuss and dismiss other concerns. She does not have a substance abuse problem and she has been able to return to her normal consumption of alcohol (two drinks per week). She had a temporary problem with excess consumption but this was a symptom of self-medicating her depression and anxiety and not a normal life pattern. Lastly, at least some of have opined (from an amateur perspective) that Ms. Whitaker is a "pedophile." This is simply not the case. She has no diagnosis whatsoever related to sexual deviancy. For the record, pedophilia refers only to those cases involving a sexual attraction to prepubescent children. Research has conclusively indicated that all adults who like adults have attraction to adolescents. Attempts to pathologize this attraction are counterproductive in that they lead us astray from responsible decision-making.

Recommendations: This writer realizes that it is not his responsibility, but that of the court, to make any decisions regarding the sentencing phase of the judicial process. Knowing that sometimes alternative sentencing, rather than incarceration, is a possibility or even the better choice, it is in the event of such a possibility being that choice in sentencing that the following recommendations are made. In this case, the idea of incarceration makes sense only from the perspective of those in whom the need to punish is strong. This is generally only true when, failing to understand the criminogenic variables that erode the decision-making capacity of an offender, especially a sex offender, a moral diagnosis is made: thus, a bad person needs to be thoroughly punished. Ms. Whitaker's risk to the community is as low as she could possibly score using the actuarial tables described below. At the same time her need for treatment is as high as it is overdue. Prisons in nearly all 50 states offer very low levels of treatment and that assessment is a kind one as they are usually abysmal. In Nevada, where our taxes are low, our level of mental health services (especially for the prison population) are quite poor. Ms. Whitaker will simply not get helpful treatment in any prison. Because of this, the following suggestions are offered regarding individual treatment only as group treatment would be largely unhelpful for all of her problems: a) cognitive restructuring (to address cognitive distortions used to rationalize criminal behavior to oneself), b) a cognitive-behavioral approach to solving her current depression, c) an emotive based approach to address her early childhood trauma and to equip her to cope with her need for approval (as a Borderline client) in an adaptive manner and to eventually reduce this need to normal levels, d) both a medical and a cognitive-behavioral approach to treating her AD/HD which is a lifelong condition. Only

29

this latter condition is not curable, but it is treatable and is considered normal in the modern sense of neurodiversity. There are many benefits from AD/HD along with the more modern downside of having AD/HD in the last few thousand years of our species' development.

Ms. Whitaker's early childhood trauma, in combination with her isolation, her AD/HD, and her Borderline Personality Disorder traits, set her up for failure as an adult. While this explanation does not excuse her behavior, it is helpful in explaining how we might be able to help her and how she might be able to direct her own search for help. She has the emotional and intellectual capacity to be responsive to treatment. This comprehensive intervention has great potential for her to gain the necessary insight, courage and healing to prevent her committing future sexual offenses. Upon completion of such a program, her risk of recidivism would be significantly reduced from its already low level.

To paraphrase from Jared Diamond's 2005 work, Collapse, How Societies Choose to Fail or Succeed,

"Any 'explanation' of why...can be misconstrued as 'excusing' it. However, regardless of whether we arrive at an oversimplified one-factor explanation or an excessively complex 73-factor explanation...doesn't alter the personal responsibility of the perpetrators...for their actions. This is a misunderstanding that arises regularly in discussions of the origins of evil; people recoil at any explanation, because they confuse explanations with excuses. But it is important that we understand...origins...--not so that we can exonerate...but so that we can use that knowledge to decrease the risk of such things happening again...."

Risk of Dangerousness to the Community: No psychological tests can determine risk or paraphilia. As quoted from the 1997 Association for the Treatment of Sexual Abusers Ethical Guidelines,

"There is no known set of personality characteristics that can differentiate the sexual abuser from the non-abuser."

"Psychological profiles cannot be used to prove or disprove an individual's propensity to act in a sexually deviant manner."

30

Thus, two actuarial instruments were used, the Static-99R and the Rapid Risk Assessment for Sexual Offense Recidivism, or RRASOR. These are two of the most widely used instruments of their kind and perhaps *the* most widely used. The first considers only the unchanging factors that could influence outcome; the second instrument is derived from the Static 99, but has been identified as having high independent value in prediction of recidivism. Neither of these instrument predicts what a given individual will do, rather his score is compared to the scores of others who have scored similarly and a percentage of risk is translated into a word score (e.g., low, medium, high, etc.). The RRASOR rating for Ms. Whitaker indicates she has a 14.2% likelihood of reoffending in the next five years. At this time Ms. Whitaker is not considered to be at high risk to reoffend based upon the currently accepted standards of assessment. Her risk factors include the fact that her victims were not relatives and that they were males. These risk factors are mitigated by her age.

Static-99R Score Summary

Risk Factor	Yes=1, No=0	Scores
Age at Release? (Score range is -3 to 1)		
18-34.9=1		
35-39.9=0		
40-59.9= -1		
1 60+ = -3		-1
2 Ever lived with lover for at least two years?		0
3 Index non-sexual violence, any convictions?		0
4 Prior non-sexual violence, any convictions?		0
5 Prior sex offenses? (score range is 0-3)		0
6 Prior sentencing dates (excluding index)?		0
7 Convictions for non-contact sex offenses?		0
8 Any unrelated victims?		1
9 Any stranger victims?		0
10 Any male victims?		1
TOTAL SCORE = 1		
RISK CATEGORY = Low		

Some wonder why more sex offenders are not rated as "high risk to reoffend." Our collective emotional reactions to the nature of the crime (including anger, disgust, and fear) and individual evaluator opinions (i.e., "clinical assessments") have no scientific, that is, replicable basis for determining the rate of recidivism. A number like "14.2%" and ratings like "Low" have been made possible by the development and analysis of numerous studies of recidivism in which the recidivism rate was shown to be highest during the first five years following conviction. Recidivism continues after the first five years of course, but only at about half the rate of the first five years. Recidivism following 15 years post release is considered statistically negligible. Despite all TV drama to the contrary, Karl Harris, the most prolific writer on the subject states, "there is only a small subgroup of sex offenders (2%-8%) who are at substantial risk for sexual recidivism over the long term."¹ The same source adds,

"Given the low accuracy of clinical assessments, prudent evaluators will be exceedingly cautious about diluting actuarial predictions with irrelevant information. Many of the 'standard' clinical risk factors, such as denial or a history of child sexual abuse, have not been found to predict sexual offense recidivism."

Identification of Risk Population(s): When considering her behavior with her victims, her history, and her future that includes her never teaching again, it is believed by this writer that no special part of the population is at risk.

Amenability to Treatment: Ms. Whitaker states that she is open to the idea of getting help for his problems and her behavior over the better part of the last year confirms this.

Treatment Prognosis: A study conducted by the Justice Department of 9,691 men who were released in 1994 found 43 percent were arrested for any type of crime *within three years* compared with 68 percent for all other former inmates. The national study (also available on the Center for Sex Offender Management website) also found that criminals who are not sex offenders were rearrested for a sex crime at a rate of 1.3 percent. Nationally, sex offenders were arrested for another sex crime after their release at a rate of 5.3 percent.

32

In northern Nevada, the rate of sexual recidivism of all offenders in sex offender treatment is about two per cent. The risk of reoffending of those in treatment while under supervision has been extremely low for the last five years while in at least some treatment programs. Those who fail normally fail with a "status offense" like testing "dirty" for drugs or alcohol long before any sexual criminality.

Respectfully submitted,


Steven Ing, M.A., M.F.T.

¹Hanson, R.K. (1997-2004) The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism

33



Steven P. Ing, M.A., M.F.T. Curriculum Vitae

Education:

M.A., 1990, University of Nevada, Reno, Counseling & Educational Psychology

B.A. 1976, University of Nevada, Reno, Philosophy & French

Licensure:

Marriage & Family Therapist, #554, State of Nevada

Professional Experiences: 1990-present, Private Practice:

The private practice consists of treating individuals, couples, families and groups with a variety of problems ranging from mental health issues to normal human development concerns. Mr. Ing began his professional career by working in hospitals and Transition (halfway) House with substance abuse clients in the 1980s while still a grad student. He continued working with the substance abuse population in the years following his becoming an MFT intern. He transitioned to mostly working with forensic clients upon receiving his licensure as an MFT. To this day some 30 percent to 40 percent of his clientele have substance abuse issues that require attention in any holistic treatment program.

Mr. Ing's practice is spent working exclusively with families (victims and perpetrators, adults and children) struggling with sexual abuse and misconduct, criminal and otherwise. Since 1999 our sex offender treatment program has offered counseling to both Nevada and California patients including self-referred clients, parolees and probationers. The adult sex offender program now serves clients from the northern Nevada and northern California areas with offices in Carson City and Reno. Since 2007 the U.S. Probation Office in northern Nevada refers to Mr. Ing exclusively all sex offenders supervised in northern Nevada. Since 2010 the U.S. Probation Office in northern California also refers sex offenders on supervised release to Mr. Ing. Since 2012, clients awaiting adjudication and sentencing for sex crimes in the federal system in northern Nevada have been referred to our office. In 2015 Mr. Ing entered into contract with the State of Nevada Division of Child & Family Services to conduct and submit Psychosexual Evaluations. His sex offender treatment program offers a cognitive/behavioral approach with individual, family, and group modalities using a text authored by Mr. Ing. Since 1999, Mr. Ing has been one of the few providers of pre-sentence psychosexual evaluations for the Nevada State

Department of Parole & Probation. In addition Mr. Ing provides psychosexual evaluations for clients referred by their attorney.

Mr. Ing has served as consultant and trainer for the Nevada State Parole Board on assessment and treatment of sex offenders. He has provided training to the Nevada Division of Parole and Probation on how counselors and law enforcement can better manage sex offender cases by regular staffing and other form of interfacing. He was the featured speaker at Nevada's First Annual Sex Offender Summit held in October 2005—the state's first statewide interagency addressing sexual criminality--on the topic of the typical profile of a sex offender in the area. At the 2006 Association of Paroling Authorities International Training Conference he presented on the topic of Community Management of Sex Offenders. He has also provided training to the staff of the Nevada State Sex Offender Registry on establishing and maintaining an abuse-free workplace. Mr. Ing presented a continuing education class on "Managing Sexuality Intelligently in the Therapy Session" in 2016 to Nevada State MFTs that focused on overcoming counselor resistance to assessing clients' sexual needs and how to find the appropriate language to talk to comfortably engage clients in sexual discussions. Beginning in 2017 Mr. Ing began writing a column on human sexuality that has been published by the Reno Gazette/Journal, Huffington Post, and USA Today.

Mr. Ing has qualified as an expert witness on sex offender evaluation and treatment in both Nevada and California and in federal court.

Continuing Education:

2018--Profile of a Pedophile: Identifying Child Sex Predators

2018--Couples with Sexual Health Concerns

2018--Extending (Ethical) Boundaries

2017--Suicidal Thoughts (Parts 1 and 2)

2017--Treating Problems with Pornography

2017--Motivational Interviewing

2017--Developmental Approaches in Treating Addiction

2017--Treating Borderline Personality Disorder

2016--Motivational Interviewing

2016--Bipolar: An Updated Slant on the Disorder

2016--Ethics in Behavioral Health

2015--Law & Ethics

2015--The Couples Conference 2015

35

2014—Personality Disorders & the DSM-5
 2014—Completing the Mental Status Exam
 2014—Profile of a Pedophile: Identifying Child Sex Predators
 2014—When Children Sexually Offend Against Children
 2014—Current Trends in Counselor Education
 2014—Ethics & Professionalism
 2014—Reality Therapy
 2014—Mind-Body Connection: Practices & Techniques

 2013—Adult AD/HD: Help Your Clients Thrive
 2013—DSM-5 Classification, Criteria and Use
 2013—How War Impacted Troops & Their Families
 2013—Avoiding Ethical & Legal Pitfalls in Mental Health Practice
 2013—Bipolar Disorder: Update

 2012—Therapeutic Techniques for Prevention of PTSD from Abuse
 2012—Social Problem Solving Techniques in Cog. Beh. Therapy
 2012—Emotional Manipulation: Manipulators & Their Victims
 2012—Ethics

 2011—Building a Foundation for Ethical Practice
 2011—Memory Seminar for Health Professionals
 2011—Asperger's Disorder vs. Nonverbal Learning Disorders
 2011—Psychological & Neurological Effects of Anxiety Disorders
 2011—Bipolar: An Updated Slant on the Disorder

 2010—Pedophilia & Sexual Offending Against Children: Theory, Assessment, and Intervention
 2010—Ethics and Endings
 2010—The Ever-Changing Brain
 2010—Personality Disorders in Social Work & Health Care

 2009—Deepening Psychotherapy with Men
 2009—Ethical Issues
 2009—Obsessive Compulsive Disorders
 2009—Personality Disorders

 2008—DSM-IV
 2008—Adults with Attention Deficit/Hyperactivity Disorder
 2008—Borderline Personality Disorder and PTSD
 2008—Clinical Supervision Skills in Behavioral Health
 2008—Personality Disorders in Social Work and Health Care

36

2007—Cognitive-Behavioral Therapy: Helping People Get Better
 2007—Psychopharmacology & Psychotherapy: Ethical Considerations
 2007—Sex on the Brain with Dr. Daniel Amen, M.D.
 2007—Treating Compulsive Sexual Behaviors

 2006—Conducting Effective Mental Status & Risk Assessments
 2006—AD/HD for 2006: The Forward Edge
 2006—Suicide

 2005—Counseling Victims of Sexual Trauma
 2005—Family Therapy: Savannah Family Institute Model
 2005—Engaging the Uncooperative & Confrontational Child
 2005—Counseling HIV

 2004—Borderline Personality Disorder
 2004—Relationship Therapy: Theory & Practice of the Imago Model
 2004—Suicide Prevention
 2004—Counseling Victims of Sexual Trauma

 2003—Sex Offenders: Evaluation & Treatment
 2003—HIV/AIDS Update
 2003—Understanding, Assessing and Treating Sexual Offenders

 2002—DSM-IV TR Seminar
 2002—Behavior, Typology, and Motivation of the Adult Rapist
 2002—Inter-American Conference on Sexual Abuse
 2002—Assisting & Managing the Statutory Rape Victim/Witness
 2002—ERASOR Risk Assessment of Adolescents Workshop
 2002—Current Trends in Child Sexual Abuse
 2002—The Sexually Violent Offender

 2001—DSM-IV TR Seminar
 2001—Clinical Dilemmas
 2001—Confidentiality
 2001—Logo Therapy
 2001—Sex Crimes-Sex Offenders, current issues in assessment

 2000—Understanding Depression: Diagnosis, Treatment and Prevention
 2000—Deviant Sexual Behavior: Assessment & Treatment
 2000—Teaching & Managing Students with Problem Behavior
 2000—Therapeutic Morality: Philosophy, Ethics, and Practice

1999—"Identification, Profiling and Supervision of the Sex Offender"
1999—Wisconsin Sex Offender Treatment Program Training
1999—The Wonder of Boys (training on early male development)

1998—DSM-IV Workshop
1998—American Red Cross HIV Prevention Specialist Training

1997—DSM-IV Workshop
1997—Patient or Pretender (training on psychosomatic illness)

1996—The Evolution of Desire (gender behavior)
1996—Sex, Love & Violence (treatment of sexual abuse)

1995—Women in Context (multicultural training on women's issues)
1995—Mental Status Exam Training

1994—National Judicial College, domestic violence training

Professional Associations:

American Counseling Association—professional member
International Assoc. of Marriage & Family Counselors—professional member
Association for Specialists in Group Work—professional member

Publications:

2009—"Get Busy Living," Giant Publishing, (sex offender treatment manual)

2015--"We're All Like This," Giant Publishing, (subtitled "Learning to talk about our human sexual needs"), used as a text in Human Sexuality classes at the university level.

Videography:

2015--Tell Me About Your Sex Crime (a video production currently used for adolescent educational programs in public schools)

2009—Tell Me about Your Sex Crime (Interviews with sex offenders available on www.youtube.com; enter “SOTVpresents” at the youtube.com site)

39

FILED

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ELKO
THE HONORABLE NANCY PORTER

DEC 10 AM 11:45
ELKO CO DISTRICT COURT
CLERK DEPUTY

-o0o-

STATE OF NEVADA,)	
)	
Plaintiff,)	Case No:
)	CR-FP-17-3893
vs.)	
)	
TENNILLE WHITAKER,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
Arraignment
April 30, 2018
ELKO, NEVADA

Transcribed By: RANDI LEE WALKER, CCR #137

40

1 APPEARANCES:

2
3 For the State:

4 ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
5 By: CHAD B. THOMPSON, Chief Criminal Deputy
6 ELKO, NV. 89801

7
8 For the Defendant:

9 LAW OFFICE OF BYRON BERGERON
10 By: BYRON BERGERON, Esq.
11 432 COURT STREET
12 RENO, NV. 89501

13 Parole and Probation:

14 MS. MACIAS
15
16
17
18
19
20
21
22
23
24

41

1 ELKO, NEVADA, APRIL 30, 2018 4:27 P.M.

2 -oOo-

3
4 THE COURT: This is Case CR-FP-17-3893, the
5 State of Nevada versus Tennille Rae Whitaker.

6 The defendant is present in court, represented
7 by Mr. Bergeron.

8 Mr. Thompson is here, on behalf of the State.

9 A criminal Information was filed in this matter
10 on November 16, 2017. This is the time for an
11 arraignment on those charges.

12 Are the parties ready to proceed?

13 MR. THOMPSON: The State is, Your Honor.

14 MR. BERGERON: Yes, Your Honor.

15 THE COURT: Ms. Whitaker, please face the Clerk
16 and raise your right hand.

17 (The defendant was sworn in.)

18 THE COURT: Ms. Whitaker, you need to speak up.
19 That box with the red light is recording you. You make
20 sure you get your voice on there.

21 The record will reflect that the Court Clerk is
22 handing defense counsel a certified copy of the
23 criminal Information.

24 Ms. Whitaker, about half way down that first

42

1 page it says Tennille Rae Whitaker. Is that your full
2 name? And is that spelled correctly?

3 THE DEFT: Yes, it is.

4 THE COURT: All further proceedings shall be
5 had under the name of Tennille Rae Whitaker.

6 Mr. Bergeron, do you waive a formal reading of
7 the Information?

8 MR. BERGERON: We do, Your Honor.

9 THE COURT: Ms. Whitaker, do you read and speak
10 English?

11 THE DEFT: Yes.

12 THE COURT: How old are you today?

13 THE DEFT: 41.

14 THE COURT: How much education have you
15 completed?

16 THE DEFT: (Unintelligible.)

17 THE COURT: Are you in good physical health
18 today?

19 THE DEFT: Yes, I am.

20 THE COURT: Are you in good mental health
21 today?

22 THE DEFT: (Unintelligible.)

23 THE COURT: Are you taking any medication or
24 under the influence of any substances?

43

1 THE DEFT: No, Your Honor.

2 THE COURT: Has your attorney advised you that
3 if you are not a citizen of the United States, a
4 conviction in this case could affect your ability to
5 remain in or re-enter this country?

6 THE DEFT: Yes, Your Honor.

7 THE COURT: You are charged with four counts,
8 Counts I, II, III and IV. They are all the same
9 charge: Sexual Conduct Between School Employee or
10 Volunteer and a Pupil, Category-C felony.

11 Mr. Thompson, will you please explain the
12 elements of the crimes, the maximum potential
13 penalties, and whether they are probationable.

14 MR. THOMPSON: The State would have to show
15 that on or about or between the 1st day of September of
16 2015, and the 6th day of June, 2017, within the County
17 of Elko, State of Nevada, that the defendant, a person
18 older than 21 years of age, while employed at or
19 volunteering at a public or private school, did engage
20 in sexual conduct with a pupil who was 16 years of age
21 or older, and had not received a high school diploma, a
22 general education development certificate, or an
23 equivalent document, and that the student was attending
24 the public or private school which the defendant was

44

1 employed or volunteered, or that the student had
2 contact with the defendant in the course of the
3 defendant performing her duties as an employee or
4 volunteer, a Category-C felony, punishable by up to
5 five years in the Nevada State Prison, with a minimum
6 period of one year.

7 She may further be punished by a fine of up to
8 \$10,000. She would be eligible for probation if she's
9 found, pursuant to an evaluation, not to be a high risk
10 to re-offend.

11 THE COURT: Thank you.

12 Ms. Whitaker, do you understand what you've
13 been charged with, including the elements of the crime?

14 THE DEFT: Yes, Your Honor.

15 THE COURT: Do you understand the potential
16 penalties for these crimes?

17 THE DEFT: I do.

18 THE COURT: Have you discussed this entire
19 matter of the plea agreement and your plea with your
20 attorney before coming to court?

21 THE DEFT: Yes, Your Honor.

22 THE COURT: Are you satisfied with your
23 attorney and confident in his ability to represent you?

24 THE DEFT: Yes, Your Honor.

45

1 THE COURT: How many times have you talked with
2 him about this case?

3 THE DEFT: Several. I'm not sure how many.

4 THE COURT: Can you give me an estimate?

5 THE DEFT: As many as forty. (Muffled and
6 unintelligible on the amount given.)

7 THE COURT: Have you had an opportunity, to
8 your satisfaction, to discuss with your attorney the
9 possible defenses that may be available to you on the
10 charges if you were to go to trial?

11 THE DEFT: Yes, Your Honor.

12 THE COURT: In light of those discussions and
13 the information that's been given to you, do you feel
14 this negotiated plea is the best thing for you to do?

15 THE DEFT: Yes, Your Honor.

16 THE COURT: Do you understand that sentencing
17 is entirely within the discretion of the Court? Do you
18 understand that no matter what the negotiations were,
19 the Court will determine what type of sentence you
20 receive and whether you will receive probation?

21 THE DEFT: Yes, Your Honor.

22 THE COURT: Do you understand that any sentence
23 imposed by this Court may be consecutive or concurrent
24 to any other sentence?

46

1 THE DEFT: Yes.

2 THE COURT: Do you understand that you will
3 have to undergo a psychosexual evaluation?

4 THE DEFT: Yes, Your Honor.

5 THE COURT: Do you understand that to be
6 eligible for probation that evaluator will have to find
7 that your are not at a high risk to re-offend?

8 THE DEFT: Yes.

9 THE COURT: Do you understand that you will
10 have to register as a sex offender?

11 THE DEFT: Yes, Your Honor.

12 THE COURT: Do you understand that you will be
13 subject to lifetime supervision as a result of the
14 conviction of these charges?

15 THE DEFT: Yes, Your Honor.

16 THE COURT: Do you understand that you may be
17 ordered to pay restitution, if that's appropriate?

18 An eight-page memorandum of plea agreement was
19 filed on April 30, 2018. A certificate of counsel is
20 attached to that agreement, signed by Mr. Bergeron,
21 counsel for the defendant. On page 6 is the signature
22 line for Tennille Rae Whitaker, with the signature
23 above that line. Is that your signature, Ms. Whitaker?

24 THE DEFT: Yes, it is.

47

1 THE COURT: The agreement on page 6 is signed
2 by Ms. Whitaker, and Mr. Thompson indicates it was
3 signed in the year 2017. I'm assuming that was
4 supposed to be 2018; is that correct, counsel?

5 MR. THOMPSON: That is correct.

6 MR. BERGERON: It is, Your Honor.

7 THE COURT: Okay. I'm going to correct that,
8 then.

9 Ms. Whitaker, did you sign that document
10 earlier today, April 30th, 2018?

11 THE DEFT: Yes.

12 THE COURT: Before you signed it, did you have
13 an opportunity to read it?

14 THE DEFT: Yes.

15 THE COURT: Did you consult with your attorney
16 before you signed the document? Did your attorney
17 allow you to ask questions about the document?

18 THE DEFT: Yes.

19 THE COURT: Did you sign the memorandum of plea
20 agreement freely and voluntarily?

21 THE DEFT: Yes, Your Honor.

22 THE COURT: Did anybody threaten you with the
23 use of force or violence against your person to get you
24 to sign the agreement, or to get you to plead no

48

1 contest?

2 THE DEFT: No.

3 THE COURT: Were there any promises of
4 leniency, other than those contained in the memorandum
5 of plea agreement, that were made to you to get you to
6 sign the document, or to get you to plead no contest?

7 THE DEFT: No, Your Honor.

8 THE COURT: Is the entire agreement that you
9 have reached with the State of Nevada contained within
10 that memorandum of plea agreement?

11 THE DEFT: Yes.

12 THE COURT: I would ask Mr. Bergeron to explain
13 on the record the essential terms and conditions in the
14 agreement. You need to listen carefully, because I'm
15 going to come back to you and ask you if that's also
16 your understanding of the agreement. Mr. Bergeron.

17 MR. BERGERON: Your Honor, in exchange for my
18 client's no contest plea, the State will be not
19 pursuing the other charges of sexual conduct between a
20 school employee or volunteer. She will be pleading no
21 contest to four counts of a Category-C felony, a
22 violation of 201 -- NRS 201.540. In exchange, the
23 State will not ask for a sentence to exceed 4-to-12
24 years. The defense is free to argue for probation.

49

1 THE COURT: The State will not pursue any
2 charges arising out of these?

3 MR. BERGERON: Any additional charges, as well.

4 THE COURT: Based on facts --

5 MR. BERGERON: Correct.

6 THE COURT: Mr. Thompson, is that your
7 understanding of the plea agreement?

8 MR. THOMPSON: It is.

9 THE COURT: Ms. Whitaker, is that your
10 understanding of the agreement?

11 THE DEFT: Yes, Your Honor.

12 THE COURT: I need to advise you of some of the
13 rights you have under the Constitutions of the United
14 States and the State of Nevada.

15 You have the right against self-incrimination;
16 meaning, nobody can make you be a witness against
17 yourself. Do you understand that right?

18 THE DEFT: Yes.

19 THE COURT: You have the right to a speedy and
20 public trial. If you wanted to go to trial within
21 60 days, we would have to try to do that. And that
22 would be a public trial. Do you understand that right?

23 THE DEFT: Yes, Your Honor.

24 THE COURT: You have the right to the

50

1 assistance of an attorney, either appointed or
2 retained. Did you retain Mr. Bergeron, or did the
3 Court appoint him for you?

4 THE DEFT: (Unintelligible.)

5 THE COURT: So do you understand, then, your
6 right to the assistance of an attorney?

7 THE DEFT: Yes, Your Honor.

8 THE COURT: You have the right to require that
9 the State prove each element of the charges against you
10 beyond a reasonable doubt. If the case went to trial,
11 the State would have to prove, beyond a reasonable
12 doubt, that you did these things. You wouldn't have to
13 prove you didn't do them. Do you understand that
14 right?

15 THE DEFT: Yes, Your Honor.

16 THE COURT: You have the right to confront and
17 cross-examine the witnesses against you. If the case
18 went to trial, the State's witnesses would come into
19 court, and they'd be placed under oath, and your
20 attorney would have the opportunity to question them.
21 Do you understand that right?

22 THE DEFT: Yes.

23 THE COURT: You have the right to subpoena
24 witnesses on your behalf. Do you understand that

51

1 right?

2 THE DEFT: Yes, Your Honor.

3 THE COURT: You have the right to testify in
4 your own defense. That would be your decision to make.
5 If you chose not to testify, no one could hold that
6 against you. Do you understand that right?

7 THE DEFT: Yes, Your Honor.

8 THE COURT: You have the right to appeal the
9 conviction. Do you understand that right?

10 THE DEFT: Yes.

11 THE COURT: Have you talked with your attorney
12 about your Constitutional Rights?

13 THE DEFT: Yes.

14 THE COURT: Is there anything about any of
15 these rights you do not understand, or you would like
16 to ask me?

17 THE DEFT: No, Your Honor.

18 THE COURT: Knowing you have those rights, do
19 you wish to voluntarily waive them -- that means give
20 them up -- and ask me to accept your plea to the
21 charges?

22 THE DEFT: Yes, Your Honor.

23 THE COURT: Do you need any more time to talk
24 with your attorney before you enter your plea?

52

1 THE DEFT: No.

2 THE COURT: How do you plead to Counts I
3 through IV, all charges of Sexual Conduct Between
4 School Employee or Volunteer and a Pupil? Guilty? Not
5 guilty? Or no contest?

6 THE DEFT: No contest.

7 THE COURT: Let the record reflect that the
8 defendant has entered a plea of no contest to Counts I
9 through IV. Are you entering your no-contest plea
10 freely and voluntarily?

11 THE DEFT: Yes.

12 THE COURT: Do you understand that the effect
13 of a no-contest plea is the same as a guilty plea, for
14 all criminal purposes?

15 THE DEFT: Yes.

16 THE COURT: Located in the Court file is what's
17 called an Offer of Proof. That is the evidence that
18 the attorneys believe would be produced at trial. Have
19 you had an opportunity to read that?

20 THE DEFT: Yes.

21 THE COURT: Mr. Bergeron, do you agree that the
22 State could prove its case beyond a reasonable doubt?

23 MR. BERGERON: Your Honor, I would stipulate,
24 for the purposes of this negotiation, the State could

53

1 prove the case beyond a reasonable doubt. I don't
2 necessarily believe it's appropriate to be in agreement
3 with that on the record. I would say these
4 negotiations -- (Unintelligible.)

5 THE COURT: And you've advised Ms. Whitaker of
6 your opinion?

7 MR. BERGERON: I have.

8 THE COURT: Is that your understanding, as
9 well, Ms. Whitaker?

10 THE DEFT: Yes.

11 THE COURT: The Court finds that there is a
12 factual basis for the defendant's plea.

13 Is there anything further that either of the
14 attorneys would like me to canvass the defendant on?

15 MR. THOMPSON: The State would not.

16 MR. BERGERON: No, Your Honor.

17 THE COURT: Ms. Whitaker, do you have any
18 questions about this process that's taken place so far
19 that you would like to ask me?

20 THE DEFT: No, Your Honor.

21 THE COURT: Do you still request that I accept
22 your plea?

23 THE DEFT: (Unintelligible.)

24 THE COURT: The Court finds that the defendant

54

1 has entered her plea freely and voluntarily, with full
2 understanding of her Constitutional Rights, the nature
3 of the charges, and the consequences of the plea.

4 The Court accepts your no-contest plea based
5 upon the memorandum of plea agreement that you signed,
6 a certificate of counsel attached to that agreement,
7 the offer of proof, and your statements in court today.

8 A pre-sentence investigation shall be conducted
9 and a report submitted to the Court on or before
10 June 29th.

11 Will sentencing work on July 23rd for you, Mr.
12 Bergeron?

13 MR. BERGERON: Your Honor, that's the one day
14 that won't work. July 30th? And any Monday in August.

15 THE COURT: Let's see what I've got.

16 Mr. Thompson, are we going to need something
17 other than a law-and-motion day?

18 MR. THOMPSON: I expect there will be --

19 THE COURT: What we're going to do, then, Mr.
20 Bergeron, is Court staff will contact you and the
21 District Attorney's Office to schedule sentencing. I
22 won't be hearing this on a Monday, because I expect
23 we -- (unintelligible) -- will have testimony and will
24 need more time.

SS

1 Is there anything further, counsel?

2 MR. BERGERON: No, Your Honor. Thank you.

3 THE COURT: Ms. Whitaker, make sure you stay in
4 touch with your attorney.

5 We're adjourned.

6

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

56

1 STATE OF NEVADA)

2)

3 COUNTY OF WASHOE)

4
5
6 I, RANDI LEE WALKER, Certified Shorthand
7 Reporter of the Second Judicial District Court of the
8 State of Nevada, in and for the County of Washoe, do
9 hereby certify:

10 That I transcribed from a visual/audio disk
11 the above proceedings into typewriting, as herein
12 appears;

13 That the foregoing transcript is a true and
14 correct transcription, to the best of my ability to
15 transcribe from the visual/audio disk.

16 DATED: At Reno, Nevada, this 2nd day of
17 December, 2018.

18
19 /s/ Randi Lee Walker
20 RANDI LEE WALKER, CCR No. 137
21
22
23
24

57

**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA**

RECORD OF COURT PROCEEDINGS

Present - Honorable NANCY PORTER, District Judge,
and Officers of the Court.

STATE OF NEVADA,

VS.

Plaintiff,

Date: 4/30/18

Case No.: CR-FP-17-0003893

Dept: 1

TENNILLE RAE WHITAKER,

Defendant.

State of Nevada represented by Mark Mills, Esq.
Defendant present, not in custody, and represented by
Byron Bergeron, Esq.
Division of Parole and Probation represented by Marni Pool.
Court Clerk, Faye Fleury, present.

ARRAIGNMENT – NO CONTEST – PLEA AGREEMENT

The Court noted the presence of the parties.

The matter was before the Court for an arraignment on the charges alleged in a Criminal Information filed on November 16, 2017. All parties indicated they were ready to proceed.

The Court noted that a Memorandum of Plea Agreement was filed.

A certified copy of the Criminal Information was presented to the Defendant and the formal reading was waived by the defense.

The name of the Defendant was correctly stated.

The Defendant was sworn.

The Court inquired if the Defendant had been advised by Counsel regarding non citizenship.

Defendant advised he had been advised by Counsel.

The Court read the charging portion of the Criminal Information.

The State cited the elements of the crimes and the potential penalties involved.

58

The Defendant understood the charges, was satisfied with the legal services rendered to date, understood that sentencing was wholly within the discretion of the Court and was ready to proceed.

The Court noted that a 8-page Memorandum of Plea Agreement with an attached Certificate of Counsel was filed on April 30, 2018. The Court canvassed the Defendant concerning execution of the document.

Defense counsel placed the terms of the Plea Agreement on the record. Both parties agreed to waive attachment of the Criminal Information. All parties concurred.

The Court reviewed the Defendant's Constitutional Rights and the Defendant waived the same.

The Court asked the Defendant to enter pleas to COUNT 1: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 2: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 3: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 4: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) The Defendant entered pleas of no contest following the terms of the Plea Agreement.

The Court advised it had reviewed the Offer of Proof in this matter.

The Court advised a no contest plea has the same effect as guilty plea for all criminal purposes.

Defense agreed the State could prove its case beyond a reasonable doubt.

The Defendant understood and agreed.

The Court found there was a factual basis for the Defendant's pleas and canvassed the Defendant regarding the pleas.


The Court stated its findings and accepted the Defendant's no contest pleas based upon the Memorandum of Plea Agreement, Certificate of Counsel and statements made in open Court.

The Court **ORDERED** a Presentence Investigation Report due on or before June 29, 2018. Sentencing date would be set at a later date.

Court adjourned.

59

1 **BYRON BERGERON, ESQ.**
2 Nevada Bar No. 7598
3 432 Court Street
4 Reno, Nevada 89501
5 Telephone: 775.229.3736
6 Facsimile: 775.786.5573
7 *Attorney for Defendant*

FILED
2018 APR 30 PM 4:44
ELKO DISTRICT COURT
CLERK _____ DEPUTY 

8 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
9 NEVADA, IN AND FOR THE COUNTY OF ELKO

11 STATE OF NEVADA,

12 Plaintiff,

13 vs.


14 TENILLE RAE WHITAKER,

15 Defendant.

Case No. CR-FP-17-3893

16
17
18 **Additional Documents To be Considered at Time of Sentencing Under Seal**
19

20
21 Dated this 27TH day of April, 2018.
22

23
24
25 
26 _____
27 BYRON BERGERON, ESQ.
28

60

April 25, 2018

To Whom It May Concern:

Tennille Whitaker is my sister in law. She is a dear friend and someone whom I love. I will never understand the choices that she made, which got her into this predicament, but I do know this: from the beginning Tennille has taken full responsibility for her actions, she has worked daily to improve herself, seeking professional and spiritual guidance, she is fully aware that her actions affected many lives and she is remorseful, without a doubt. Tennille 's life has been shattered, she has been completely publicly exposed, for all to condemn. Her life, as it was, will never be the same. We live in a broken world, so no matter how wonderful of a person Tennille was and is, she will forever be judged.

Unfortunately, her husband and children are ultimately along for this hard ride too. This is where my plea comes. Justice is what is due, in all cases, and removing Tennille from her family will cause her pain and suffering but the ones that will most certainly be affected the greatest, are her children. These children's lives have already been thrown for a loop. Yet, the one who caused this, is the same person that they need now, more than anyone and more than ever before. Tennille is a good and loving mother. Hank and Molly desperately need her.

A life forever scorned, forever blemished, that is lasting; that is what Tennille is, will and justifiably speaking, should face. But please, please spare her children. Keep her at home, with her family, so that they can learn to heal and love and move on the best that they can. Tennille will daily feel the sting of her choice but her children shouldn't have to. Please consider them.

Sincerely,

4/23/2018

To Whom it May Concern:

I have been married to Tennille for 19 years. We have built a life together with hard work and love. Tennille and I have been through a lot together during our marriage from the loss of loved ones to the birth of our two children, Hank and Molly. We have been a loving, caring, happy family through the years. We've made many memories together and we are teaching our kids the importance of hard work, respect, and love.

The past ten months have been the hardest I've ever had to go through in my 42 years of life. I have had sleepless nights when I have felt so hurt and upset by what has happened that I thought I might not be strong enough to get up and face another day. I've cried more than I ever have in my life these past months. I have felt humiliated and heartbroken to put it simply. We've had to see our kids hurting and worried about things that they should not have to worry or stress about.

I have also witnessed Tennille in so much pain and regret for what has happened and how remorseful and repentant she is. Tennille is trying and doing so much to make up to our family. I know she has done the worst thing a wife can do to her husband in my opinion. I am not being naïve or hiding from that at all, but I also know how much that I love Tennille and how much our kids love their mother.

We are working hard on our marriage and doing everything we can to keep it together because of what happened. Our marriage is important to us not only to each other, but for our kids as well. Tennille is a great mother to our kids and always has been. That's never been an issue. She has caring motherly love and compassion that means so much to me and our kids. This last school year Tennille has been homeschooling our kids and has done a great job with them.

I am writing this letter to ask for probation and a chance for our family to stay together like a family is meant to do. I am asking this not only for my sake, but our kids as well. The hurt I described earlier for myself would be nothing compared to what it would do to our children. If they didn't have their mom around to do the things only a mom can do for them. I worry about how Tennille being gone away from them will affect their lives in the future. I feel the healthiest option for our family is to raise our kids with their mom and dad being together.

62

In my opinion, our kids have been hurt worse than anyone in this whole situation and they would be getting the biggest punishment out of this if their mom is taken away from them. Our kids don't deserve that.

Tennille is a very caring and loving person who made a big mistake in life that has already taken so much from her and our family. She has lost her reputation, respect, and her career. Please don't let us lose our family. We still have a chance to raise up some awesome kids together with respect, family values, and work ethic by keeping our family together. So please consider this and give us this chance.

Thank you for your time in reading this.

To who it may concern:

My name is Linda Cignew and my husband is Ron. We have lived in Star Valley for seventeen years and have known Lenelle and her husband for ten years and have found her to be a loyal friend a good wife and mother. They have run cows on our place for the last 8 years, as we have a small ranch here in the Valley.

The last six years my husband has had a job in California and at least twice a week would call and ask if I was all right and if I needed anything, they made me feel safe and every taken care of, I trust her with my life.

Ron & Linda Cignew

Ken or Catherine Tipton
P.O. Box 764
Winnemucca, NV 89446
April 23, 2018

To Whom It May Concern:

Our names are Ken and Catherine Tipton; we are the aunt and uncle and godparents of Tennille Whitaker. We own a Western retail store in Winnemucca, Nevada and Ken serves as the Humboldt County Commissioner. We have known Tennille her entire life as our family is close, and she has always been known to family and friends to be a kind and charitable individual. She has done an amazing job of raising two children whom themselves are loving and considerate.

She has been a highly dedicated and compassionate teacher for many years. Growing up she excelled in school and participated in many extracurricular activities such as high school rodeo, in which she represented the state of Nevada as the high school state rodeo queen and FFA winning awards in excellence. After attending college in Twin Falls, Idaho, she returned home to serve as an educator and give back to her hometown community by improving education and promoting bright futures for her students.

We would ask that you please consider to allow Tennille to remain at home to finish raising her wonderful children in a most positive way and also to save her marriage. We all know the importance of having both parents at home to provide a stable environment for the children as family is everything. Tennille has never been in any trouble in her past.

If you have any questions, or would like to discuss this further, please feel free to contact us. Our home phone number is (775) 623-2961. Thank you for your consideration.

Sincerely,

The block contains two handwritten signatures in black ink. The first signature is 'Ken Tipton' and the second is 'Catherine Tipton'. Both are written in a cursive, flowing style.

Ken or Catherine Tipton

Dr. and Mrs. Daniel C. Jones

HC 64 Box 70

Mountain View Ranch

Deeth, NV 89823

Phone: 775.340.3286, 775.340.3285

E-Mail: jonesranch@mac.com

April 29, 2018

Honorable Nancy Porter

Nevada Fourth Judicial District Court, Dept. I

571 Idaho Street

Elko, NV 89801

Your Honor,

We are writing to you on behalf of our friend and neighbor, Tennille Whitaker, who will appear in your court on April 30.

We have known Tennille for nearly 13 years; in fact, she was the first neighbor to greet our four children and us upon our arrival to Starr Valley in 2005. She has since become a dear friend. She has honored us with her presence at our children's graduations, wedding celebrations and other events. As we are often away from home, Tennille is the neighbor we go to first for help with the care and feeding of our animals and for watching over our home. She has proven reliable and trustworthy in this, and it is a relief to us to know Tennille is looking out for our interests when we are traveling.

Although we are not privy to the in-depth details of her case, it is our understanding that Tennille recognizes and accepts responsibility for her wrongdoings. While we generally have avoided querying Tennille about the specifics of the charges against her, we have had opportunities to discuss the various repercussions she and her family have felt due to her erroneous behavior, including, but not limited to, the need to remove her children from public school. Throughout, we have continued to love and encourage Tennille, and to support her in friendship and prayer. This has been easy to do, as we have known Tennille to be steadfast, dependable and honest.

Over the years, we have shared with Tennille several of our personal passions, including financial responsibility, excellence in home education, and faith. Tennille and her husband faithfully attended and completed a Financial Peace University course we led in our home, learning valuable principles, which have helped them in their ongoing pursuit of financial independence. More recently, we have had lengthy discussions about homeschooling. Tennille has invested many hours of research in going forth with this new endeavor, and she has attentively listened to us share some of the wisdom we have gained from our own experiences in home education. Tennille has begun to

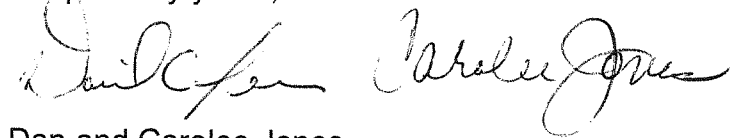
66

explore her faith in greater depth. We have been heartened to see Tennille and her family regularly attending church services and seeking counseling.

Again, it is apparent to us that Tennille understands and regrets her serious and unfortunate lapses in judgment. Since the day of her arrest, we have watched as Tennille has demonstrated, without fail, a conscious and determined effort to own up to her errors and to move forward in a positive and dignified manner, doing all she can to preserve her family and their futures.

As you evaluate Tennille's case, we humbly ask you to consider the person and character of this dear friend who we have known and respected these many years.

Respectfully yours,

Handwritten signatures of Dan and Carolee Jones. The signature on the left is 'Dan' and the signature on the right is 'Carolee Jones'.

Dan and Carolee Jones

4/23/18

To Whom it May Concern:

I am writing this letter on behalf of Tennille Whitaker. I have known Tennille for over 25 years and have witnessed first-hand the changes that have occurred in her life over the past several years. Though I was completely unaware of her involvement in the crime she committed, I wish I had caught on to the warning signs of her loneliness. Perhaps I could have been a better friend and shown her a better way. The crime that she has committed is in no way excusable and I believe that she knows that. Lonely, hurting people do the unthinkable and unfortunately, many people were hurt because of this incident.

Tennille and her family are going to counseling on a weekly basis and I have seen a dramatic change in her for the better. I truly believe that she is remorseful for what she has done and the regret and shame that she carries will be with her till death. Living with that, along with the fact that she must face a society who does not have compassion because they do not see her transformation, will be a lifelong sentence that she will carry no matter where she is.

I would humbly ask that you consider pardoning Tennille, not only for the reasons mentioned above, but also for the sake of her family. Typically in these types of situations, the family is broken for obvious reasons and there is very rarely a chance for the family to heal. This is not so in this family. Through Godly council, much prayer and effort, they have maintained their family unit, despite the situation. A sentence to prison will only destroy what they have worked so hard to rebuild in the past year. I truly believe that Tennille is well on her way on the right path and that prison time will only hinder her progress.

If Tennille had not shown the positive changes that I have seen this past year, nor shown the regret for what she has done, I would not be writing this letter. I believe that people who are not remorseful should pay for their crimes, but I also believe that mercy triumphs over judgment for those who have sorrow over their sins.

Sincerely,

Riata Brown

68

April 24, 2018

To Whom It May Concern:

This letter is in regards to Tennille Whittaker.

My name is Becky Romans. I have lived in Spring Creek, NV for 23 years. I am a wife and mother of 2 grown children, both boys. My husband, Dan Romans, is the pastor of Lighthouse Christian Fellowship of Elko.

I met Tennille Whittaker last summer in 2017 when she contacted me asking to meet and talk.

Some of my first impressions of her were: she was pleasant, soft-spoken, sad, embarrassed, confused, seeking God, friendly, open to advice, and remorseful. She was repentant and accepted responsibility for her own actions. Also she was very sorrowful for the pain and embarrassment she had caused her husband, children and family.

My Husband and I began meeting with the Whittakers as a couple once a week. We are continuing to meet with them regularly.

I have seen positive changes in them as a couple and individually. Their relationship has strengthened and continues to heal and be restored.

Tennille is very involved with her children, their activities and home schooling them this past year. The kids seem well adjusted and happy. They are a close family, regularly attending church. Tennille also has support from extended family and friends.

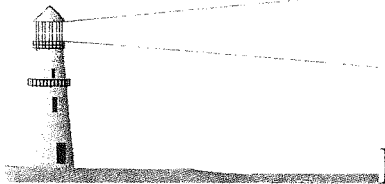
I believe she should be punished, but I do not believe jail time would accomplish beneficial results. For the sake of her children and her husband and for her sake please consider probation rather than incarceration.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Becky Romans".

Becky Romans
890 Spring Valley Pkwy
Spring Creek, NV 89815



Lighthouse Christian Fellowship

2225 Industrial Way
Elko, Nevada 89801
Daniel Romans Senior Pastor
Marsh Miers Associate Pastor

Telephone (775) 778-9502
aea@lcfelko.org
lcfelko@frontiernet.net

April 24, 2018

To Whom It May Concern:

I am writing this recommendation regarding the sentencing of Tennille Whittiker.

I recommend probation for Tennille. My wife and I have been meeting with Tennille every week with few exceptions since July of 2017. From our many meetings I am convinced that she is truly remorseful for her actions. I have seen many people in my years of ministry that have been sorry because of consequences. I have seen many that pretended to be remorseful to try to alleviate their own suffering. But Tennille's conscience is pained by what pain her actions have caused others.

I have been involved in ministry as an ordained Pastor since 1992 and been involved with jail/prison ministry since the late 1980's. Before moving to Elko County, I was the head chaplain for Twin Falls County Jail ministry and was one of three that comprised the chaplaincy team for the Twin Falls County Sheriff's Office.

I see no benefit to anyone for her to be incarcerated. Certainly not her children, her husband and even herself. I see no benefit to society either. I believe Tennille is already being rehabilitated. She has suffered and continues to suffer. My desire is to see healing for all concerned.

Thank you for your consideration.

Pastor Daniel Romans

70

To Whom it May Concern:

Tennille is our daughter in law and we love her like we would our own daughter. Tennille is a kind and beautiful person. She is a caring person who puts others before herself and wants very much to always help those in need. The people that cross her path are always drawn to her warm personality and her love of life. She's always been the type of person who people turn to when they have problems because she's a great listener and tries to always help out in any way she can. She truly cares for others welfare.

Tennille has never been in trouble for anything until this last year. She has been an upstanding citizen her whole life, always choosing to do the right thing. There were times during this period where she had withdrawn from family and friends and was deeply stressed and depressed in her job as a teacher. She stated that she had reached out to her administration for help on more than one occasion, requesting assistance for the oversized classroom she was dealing with. She had several students who were a behavior problem in the class of 32 students. She was struggling, and it seemed as if nobody would/could help her.

In this last year there have been many consequences. Tennille has had to face many family and friends and has taken responsibility for her actions. She knows all of our lives will never be the same. She is deeply remorseful for what has happened and knows that her consequences will be lifelong. She has lost her career, her reputation, and the respect of many in her community.

Tennille has spent this last year home schooling Hank and Molly, getting extensive counseling, attending bible studies and spiritual counseling, and attending church on a weekly basis.

If Tennille would have to go away it would be devastating to all of us that are so close to her. We have seen great progress in her through her therapy and being able to refocus her life on making positive changes. Hopefully, she will be given the opportunity to remain in therapy and continuing with her healing so she can be with her family so they can continue their healing together.

Sincerely,

Will and Sherry Whitaker

71

April 26, 2018

**Jerry L Jones
Robyn Johnson Jones
10190 Haven St
Las Vegas, NV 89183**

TO WHOM IT MAY CONCERN:

We have known Tennille Whitaker for more than 20 years. We feel that Tennille has always been a good person and an asset to her community.

Her family comes from the first pioneers in Elko County and has always demonstrated good judgement. She has always been a part of Elko's community and has contributed to many students lives as a teacher.

We do not feel that she should be severely punished for a one time lapse in judgement.

Tennille has never been in legal trouble in her life. We do not think incarceration would be justified in this case.

Sincerely,

Jerry and Robyn Jones

April 29, 2018

To Whom It May Concern,

I have known Tennille for over twenty years. I am her brother in law and we are a very close family. The choices that Tennille made do not reflect the person that I have known and loved for many years.

Since Tennille has started her therapy, she has become refocused on her family, as a wife, mother, and a daughter. Throughout this extremely hard time for our family, Tennille has shown remorse. She has worked diligently in her therapy and through church to become a better person, all the way around.

I am asking today, that you consider that she does not go to prison, so that she can continue her therapy and actually correct, whatever has made her make these poor decisions. Those decisions were not of her character or the person she truly is. Please consider my request, as prison will not correct the state of mind that made her make these choices. Being at home among her loved ones and continued therapy, that has already started changing her for the better, that is what she needs.

Sincerely,

Trent Whitaker

4/19/2018

To whom it may concern:

I am writing this letter in reference to my daughter Tennille Whitaker. I know my opinion is from a more biased perspective, but I feel I can give her the closest character description you need in order to know her better.

Tennille grew up knowing a hard work ethic being a ranch kid. We had her working on the ranch full time when she wasn't attending school from the age of 12 helping do various jobs. She is a kind person with a strong love for animals and people. She was such a successful child all through high school earning first in the nation for Ag Sales in FFA at the National Convention her junior year, as well as representing the state of Nevada as the High School Rodeo Queen during those years. She has always worked hard to achieve her goals in whatever she set her mind to. She has the warm and inviting personality that has always drawn people to her.

She is an only child, but coming from a middle class family, she wasn't spoiled because frankly we didn't have the money to give her everything she wanted. We didn't have the money to send her to college, so she spent the summer working construction to pay for her first year, rent and everything. She continued going to school to pursue her degree in elementary education attending night classes at GBC and working full time as a bank teller at Nevada State Bank for 9 years. She was well liked in the town of Wells and enjoyed being around people and helping them. She soon became a loan officer and was always so excited to help people and just make their day better with a smile and kind words.

She couldn't wait to become a teacher so she could make a difference in the world. She said she wanted a rewarding job that would make her feel like she was the light in some child's world who didn't have such a great home life. In Wells, there are plenty of children who fit that bill. She always spent extra time listening to her students, because she felt that they maybe needed some extra attention that maybe they weren't receiving from home. Her students meant a lot to her and she was very passionate about her job. The past year and a half I seen Tennille stressed, depressed, and full of anxiety. She had a huge class with several problem students, and she wasn't getting the help she needed from her uppers. She felt like she was drowning, failing, but didn't know what to do. She was the typical full time working mother who had way too much on her plate and fell into making some bad decisions. Decisions that aren't part of her character, I assure you. She has no criminal record, and has always strived to be a good citizen in this country.

I knew something wasn't right with Tennille for this time period, she had withdrawn and pulled away from family and friends and was trying to be strong by handling everything on her own and not asking for help. I wish so badly that I would have been more responsive to her depression and anxiety. She has an awesome support system of family and friends by her side and they all continue to be here for her today.

She has been completely run through the mill with the media, not just in Elko, but

74

nationwide. Humiliation for her and all of us. This is a consequence she'll have to deal with for the rest of her life. She has been so remorseful about her crime that there were times when she didn't think she could make it through. She has taken the responsibility and initiative to address her problem and seek counseling since her arrest. She has been very serious about admitting she was wrong and fixing it fast. She is not a threat to society, she'd never hurt anyone. She actually the opposite, always offering a helping hand and dropping her own needs to ensure others are taken care of. Since this happened 10 months ago, our family has suffered immensely. We've seen her attend church regularly, seek spiritual guidance from her pastor and his wife weekly, and attend therapy sessions in Reno. She is homeschooling her children and using this time to completely refocus on her children and husband. He has stood by her because he knows she isn't a bad person and he loves her dearly. This is something because most would not have stayed by her side. This says a lot about her and her relationships. She has several good friends who visit her often and have not left her side during this awful time. That also says that those who know her, know the type of person she is.

I will never understand what happened to cause all of this, but I do know that this is not who my daughter is. She has talked about a future of helping others and maybe becoming something such as a christian life coach. She wants to be able to help people who are facing dark times and redirect them. The truth is, everyone makes mistakes in their life, some bigger than others. I am not excusing what Tennille did, I am only humbly asking for you to have leniency on our one and only daughter whose mistake will haunt her the rest of her life. She has once said to me that nobody can punish her as much as she punishes herself daily. She has so much guilt, blame, and shame, plus the pain she's caused so many others, that I know she will face lifetime consequences for her actions.

Thank you for your time and consideration in reading this letter.

Sincerely,

Rita Horn

4/25/2018

To Whom it May Concern:

I am writing this letter for Tennille Whitaker, my daughter. Tennille is a wonderful loving lady. She is our only child and we realize she has made an error in life and we understand she must face consequences for her actions. This crime is not the girl I have known since she was seconds old. I know what she did wasn't right, but I also know life can be difficult at times. She has owned up to this mistake and has done nothing but try to improve herself since her arrest. She knows that she's hurt many people in this and blames herself for what has happened.

I, however, do not feel like she is the only party to blame in this. I feel that teenage young men are animals and that they had knowledge of what they were doing was wrong as well. This is a small town and everyone has been very supportive of our daughter and our family. We've received constant phone calls and support from neighbors, friends, and family. Our family has been in Nevada for generations and we have built a reputation of being good, honest people. I am asking that you consider the fact that this is her first crime and give her the opportunity to continue her therapy and counseling so that she can be a contribution to her community once again. I humbly ask that you consider probation in her case.

Thank you,

Bill Horn

76

DATE: MAY 7, 2018

OFFENDER TENNILLE WHITAKER

CC#: CR-FP-17-3893

INVESTIGATING OFFICER MARNI POOL

VICTIM (BUSINESS/INDIVIDUAL) V2253143

SOCIAL SECURITY # _____ TAX ID # _____

PO Box 1890 Elko NV, 89803
MAILING ADDRESS CITY STATE/ZIP CODE

03 Ranch, Welcome Exit, Starr Valley Rte, NV, 89823
PHYSICAL ADDRESS CITY STATE/ZIP CODE

HOME TELEPHONE # (775) 752-0606 WORK TELEPHONE # (775) 752-0606

A. INSURANCE CLAIM SUBMITTED? YES _____ NO ☒

COMPANY _____

ADDRESS _____

CITY/STATE/ZIP CODE _____

TELEPHONE # (____) _____

CLAIM # _____ POLICY # _____

DEDUCTIBLE \$ _____ CLAIM AMOUNT \$ _____ SETTLEMENT \$ _____

TOTAL OUT-OF POCKET LOSS \$ _____ *(Not To Include Lost Wages)*

B. Have you applied for or received County compensation? YES _____ NO ☒ AMOUNT _____

Have you applied for or received State compensation? YES _____ NO ☒ AMOUNT _____

C. Do you intend to address the Court in person? YES ☒ Family member NO _____

IMPORTANT: NRS 176A.630 and NRS 209.392, allow a victim the ability to "opt in" for future offender notification(s) by the Division; specifically, instances when an offender is being returned to Court by the Division for modification of their underlying sentence and when imprisoned, and notification if an offender has been approved for a Residential Confinement (House Arrest) program by the Division. The Nevada Department of Corrections (NDOC) is responsible for additional notification if an offender is in their custody. You can sign up for NDOC notification on their web-site info@doc.nv.gov.

Yes, I would like to "opt in" for future P&P offender notifications: _____

****If you move, please provide your new address by calling the Division at (775) 684-2614****

77

PLEASE DESCRIBE HOW YOU WERE IMPACTED BY THIS CRIME. Note extent of injuries, property damage or loss, physical disabilities, funeral expenses or psychological/adjustment problems. Attach documentation (i.e. estimates, insurance claims, medical bills, etc.). You may use the back of this page or attach additional pages for your comments.

We have attached 2 letters. The #1 first is to be inserted here, & relates to the psychological/adjustments problems. Page #2 we added to demonstrate how our community feels about her possibility of probation, & it illustrates her character. We are still obtaining signatures on the 2nd letter in hopes of demonstrating to the District Attorney's office how effected the community is, & how devastated the families involved are, as a result.

112253143
Signature

Print Name

78

To Whom It May Concern,

Mrs. T. Whitaker, was a beloved family-friend, and neighbor to all of our 5 children. Her impact on my son began at a very early age. Mrs. Whitaker was his 4th and 6th grade teacher. Eventually, we pulled him from her class in 6th grade, because she allowed his teacher's pet status to disrupt the entire class. Pulling him from her class was emotional for him, but extremely emotional for her, as the Principal, at that time, and another party witnessed. She had made him feel special from an impressionable age. We had no idea to what extent this unhealthy relationship would become, or to what level it would escalate.

The effects of these incidents on these boys is, and will manifest itself in many different ways. She set out to ruin proms, stalk them at activities, taunt girlfriends, threaten, and ruin relationships for these boys. I feel awful for many boys, and girls that experienced her extreme level of manipulation. It has effected their families, friends, and relationships, and they will forever be effected.

There were also other detrimental crimes carried out by Mrs. T. Whitaker; such as, contributing to minors, to the extent that, they were dangerously inebriated. Minors, as young as 14, circulated a pornography video featuring Mrs. T. Whitaker. Seeing a video of that nature, of their teacher, neighbor, friend's parent, is deeply disturbing. it has effected the moral fiber of the kids in our community, and was a source of shame and guilt. Those can be life changing issues, and it is hard to say what might have been, had he not been a victim of her manipulative, and destructive behavior.

Please see the attached letter, as to how our community, and families feel about these crimes against our children, which were carried out for years, and our opposition to her probation. We do not feel probation would be a good option.

05.7.2018

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)

Kim & Jeff Heger *Ruby A. [unclear]* *[unclear]*

[unclear] *Ray [unclear]* *Rachel Meyer*

Heather [unclear] *[unclear]* *ChenTeth [unclear]*

[unclear] *Rae Marie [unclear]*

[unclear] *Abby [unclear]* *[unclear]*

[unclear] *[unclear]* *[unclear]*

Carol & Rhaas

Melissa Dalton

Alisa Safford

Sam Safford (Ryan Safford)

Michelle
Hans Meyer

Carly Jan
Fred Leeds

Michelle Peterson

Karen K Tate

Felicia Uhlig

05.7.2018

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 Hooper

Rusty & Jo

David

Jessie & Alex

Ray & Ruth

Rachel Meyer

at 1400

Christina L. Lumbroso

Rana Main alibria Sonono

Abby & Piersen

Quannah Stuyvesant

Judy Chapin

Wes C. T. [unclear]

~~Carol~~ ~~1~~ ~~1~~ ~~1~~
~~Port~~ ~~u.~~ ~~North~~

Melissa Dalton
Alisa Safford
Sam Sl

Anna Figo
Randy Figo
Carly Jan
Fred Leeds
~~Melissa Peterson~~

Karen K Tate
Felicia Uhlig
Heather Boyer
~~Rosa Sautag~~
Janne Batterfeld
Peter Batterfeld

Luis Ruas
Hortencia Haerto
Cula Rodriguez
~~Paula~~
Aida Madison
Rita Usher
~~Karen Marshall~~

~~Debra~~ ~~1~~ ~~1~~ ~~1~~
~~Alison~~
Cynthia

Jacqueline Mai
Joe Morris

(Ryan Safford)
Marianne Johnson
Lisa Abbott
Olivia D. Cebrian

Rigoberto
Rosa N. Arango
Pedro Rodriguez
Tom Wells

Benito Casas
Maria Casas
LaDonna Barton
Richard Barton
Jennifer Rodriguez

~~My~~
Loreli Blair
Clyde T. Nt.
Julia Moschetti
~~Martha~~ ~~Moschetti~~
~~Becky~~ ~~Cajon~~
~~Cheryl~~ ~~Moschetti~~

Stacy Raybal
Ron Raybal

Calvin Kuyler
Dee Dee MacArthur
Kathryn L. Alarzi
Melissa Farmer
Ann A. Albrite
Paula Otto
Dore Dison

DATE: MAY 7, 2018OFFENDER TENNILLE WHITAKERCC#: CR-FP-17-3893INVESTIGATING OFFICER MARNI POOLVICTIM (BUSINESS/INDIVIDUAL) VC 225314

SOCIAL SECURITY # _____ TAX ID # _____

MAILING ADDRESS _____ CITY _____ STATE/ZIP CODE _____

PHYSICAL ADDRESS _____ CITY _____ STATE/ZIP CODE _____

HOME TELEPHONE # (____) _____ WORK TELEPHONE # (____) _____

A. INSURANCE CLAIM SUBMITTED? YES _____ NO X _____

COMPANY _____

ADDRESS _____

CITY/STATE/ZIP CODE _____

TELEPHONE # (____) _____

CLAIM # _____ POLICY # _____

DEDUCTIBLE \$ _____ CLAIM AMOUNT \$ _____ SETTLEMENT \$ _____

TOTAL OUT-OF POCKET LOSS \$ 0 (Not To Include Lost Wages)B. Have you applied for or received County compensation? YES _____ NO X AMOUNT _____Have you applied for or received State compensation? YES _____ NO X AMOUNT _____C. Do you intend to address the Court in person? YES _____ NO X _____

IMPORTANT: NRS 176A.630 and NRS 209.392, allow a victim the ability to "opt in" for future offender notification(s) by the Division; specifically, instances when an offender is being returned to Court by the Division for modification of their underlying sentence and when imprisoned, and notification if an offender has been approved for a Residential Confinement (House Arrest) program by the Division. The Nevada Department of Corrections (NDOC) is responsible for additional notification if an offender is in their custody. You can sign up for NDOC notification on their web-site info@doc.nv.gov.

Yes, I would like to "opt in" for future P&P offender notifications: _____

****If you move, please provide your new address by calling the Division at (775) 684-2614****

PLEASE DESCRIBE HOW YOU WERE IMPACTED BY THIS CRIME. Note extent of injuries, property damage or loss, physical disabilities, funeral expenses or psychological/adjustment problems. Attach documentation (i.e. estimates, insurance claims, medical bills, etc.). You may use the back of this page or attach additional pages for your comments.

Please see Attached

Signature

Print Name

V2253147

86

How I was affected by this crime was all psychologically. After everything started with Tennille, I was a nervous wreck. Knowing that it is was a very wrong thing that happened, I did not want to tell anyone about any of it. Being manipulated into thinking that it was okay, made it even worse for me after. Not knowing what would or what could happen to me was a very scary feeling for myself. My parents were always asking me if everything was okay and what was wrong but I could never tell them what really was going on. It was a constant worry of what would really happen if I told someone. They told me after I finally confessed to them, that I was never the same after what happened and they could tell something was up. Tennille was always texting me making sure that I would never tell anybody or anyone what happened. When I talked with the detectives and told them everything I was really nervous about having to go to court and be put on the stand, having to tell the court exactly what happened. It really did ruin mostly all of my senior year, because I always had that vision in the back of my mind about being on the stand in front of Tennille and the court getting questions drilled at me. It still does affect me to this day knowing that most of the town of Wells knows what happened and it brings me a lot of shame and despair knowing that people are shameful of me for what I did.

VC 2253147

6-5-18

HONORABLE NANCY POTER
FORTH JUDICIAL DISTICT COUTT
Elko County Courthouse
Elko, Nevada 89801

RE: STATE OF NEVADA VS. TENNILLE RAE WHITAKER.
Case No. CR-FP-17-3893

DEAR JUDGE NANCY PORTER:

We are victims in the above named case currently set for sentencing before you on the 4th day of October, 2018, at 1:30 P.M. We are writing to you regarding the impact the crime had on us. Our son L was involved with the crime Tennille committed with the children in Wells. Being a parent these days is hard, from keeping your kids away from inappropriate thing on the TV, internet and social media and trying to teach your children from right and wrong and to be respectful. A parent shouldn't have to also worry about if their child is safe at school with teachers or the administration. Although we have found out the hard way that this is not the case with our son. Tennille took advantage of our son and many others and made the think that having sexual encounters with her and sneaking around was ok. She made him lie to us, his parents, and think that sleeping with a teacher, a married woman was ok. What's even harder about all this, is Tennille was not only a teacher in our community but our friend and yet she is such a manipulative person we had no idea of what she was doing to our child and the other children in Wells.

When we heard about all of this we couldn't believe it and thought, no way could this be true. Then when we heard our son could be one of the victims, we really had a hard time believing this. NO Way could our friend, a teacher in Wells and someone that came from a wonder family be a part of this crime and especially doing this to our son. So we talked to our son and he denied it and said "it wasn't true" so we didn't think this could be true. Well after about a week of it eating at our son and his conscience getting to him, L came to us and said he lied and told us what had happened. Our hearts felt heavy, sad, hurt and angry, hearing what Tennille had done to our son. Hearing that my friend that I trusted had sexual encounters with my son!! How could someone do that??

We, Wes and Cherie T: , L's parents are asking you to not have remorse for Tennille, to please punish her with the max possible. We truly believe she has no care in the world but for herself and is a threat to children. Tennille has not only torn apart and disgraced her own family, she has destroyed many families in the community that she grew up in. She didn't care that she was having sexual encounters with children as a teacher, as a friend to the child's parents or as a community member. All she cared about was her sexual game over the phone, texting, snap chatting, videos and whatever other way she could communicate with the children and manipulate them into doing inappropriate things and thinking that it was ok. If she can do this to children in a small community and to her friend's child, and not think she is doing anything wrong, then she has no morals and needs to be punished.

Sincerely,

Cherie T

Wes C. T

PT

1 Case No. CR-FP-17-3893

2 Dept. No. 1

FILED
2019 MAY 17 PM 2:32
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY *JS*

3
4
5
6 IN THE FOURTH JUDICIAL DISTRICT COURT

7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

8
9 THE STATE OF NEVADA,

10 Plaintiff,

CORRESPONDENCE

11 V.

12 TENILLE RAE WHITAKER,

13 Defendant.
14 _____ /
15
16
17
18
19
20
21
22
23
24
25
26

Demar Dahl
Starr Valley
Deeth, NV 89823

May 7, 2018

Honorable Nancy Porter
Elko County Courthouse
571 Idaho Street
Elko, Nevada 89801

Dear Judge Porter,

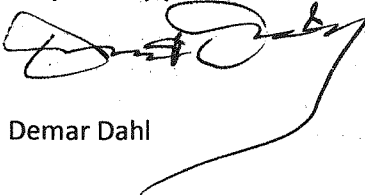
I'm writing due to my concern for one of my neighbors. The Horn family has been my nearest neighbor here in Starr Valley for nearly forty years and I have great respect for them. It's their daughter Tennille Whitaker that is my concern now.

My daughter Sarah is the same age as Tennille and they were together in school until they graduated from the twelfth grade and my daughter Leslie Anne is just two years older than Tennille. Those girls spent a lot of time together growing up and that gave me the opportunity to get to know Tennille well. We all loved Tennille and still do. Knowing her like we do, what happened to her that caused her to be in your court, is hard to believe. The only answer I can find, is that most of us, myself included, have done things that, in varying degrees, have caused us to ask ourselves what have I done and how did I let myself get here.

Tennille has two darling kids, a great husband that is standing by her and parents that love her dearly. She has suffered greatly from the guilt she carries for what she has done and for the suffering she has caused those that are the closest to her.

I have always had respect for you as a judge and I know that whatever you determine in this case, it will be that justice is served. I respectfully suggest that justice can be served without Tennille having to spend time in prison. She is repentant and I would say there is a zero chance of any behavior in the future that will be anything close to what put her in the position she is now in. Without going to prison, she will pay for the rest of her life for what she has done and I ask for mercy on her behalf that she and her family can be together to tackle the challenge that lies before them.

Respectfully yours,

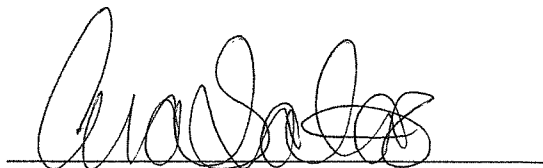


Demar Dahl

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
Department 1, and that on this 17 day of May, 2018, I personally hand delivered a true file-
stamped copy of the foregoing **CORRESPONDENCE** addressed to:

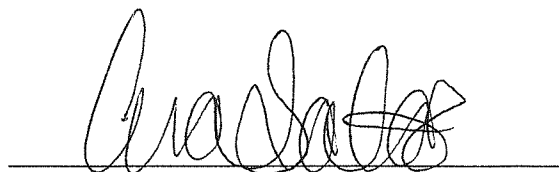
Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]



CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court,
Department 1, and that on this 17 day of May, 2018, I deposited for mailing in the U.S. mail at Elko,
Nevada, postage prepaid, a file stamped copy of the foregoing **CORRESPONDENCE** addressed to:

Byron Bergeron, Esq.
432 Court Street
Reno, NV 89501



Brian Sandoval
Governor

James Wright
Director

Natalie A Wood
Chief



NORTHERN COMMAND

3920 E. Idaho Street
Elko, NV 89801
Office: (775) 753-1305
Fax: (775) 753-1306

Division of Parole and Probation

September 25, 2018

Honorable Nany Porter
Fourth Judicial District Court
Department I
Elko County, Nevada

RE: Tennille Rae Whitaker
CC# CR-FP-17-3893

Dear Judge Porter:

Please see attached victim impact statement. The Division received the statement on 09/25/2018

Respectfully submitted,

Sara Macias, P&P Specialist III
DPS/Nevada Parole and Probation
Northern Command, Rural, Elko

cc: Elko County District Attorney's Office
Byron Bergeron, Esq.,

92

Cover Sheet

Attention: Probation + Parole

775-753-1306

of pages including this cover sheet - 3

From: Jana ...

- mobile

Fax:

Please call if you have any questions.

Thank you

93

Impact Statement
In the case against Tennille Whitaker

September 24, 2018

Your Honor,

I am starting this letter by stating that I have some trepidations about even writing this letter about my opinions. I worry about the safety of myself and my family and am concerned that this letter may spark an unwarranted retaliation against us. But I do feel that we must have the courage of our convictions, especially when it is scary or uncomfortable, so I will continue. I would like to take this opportunity to explain how the actions of Tennille Whitaker have affected so many people in this small community of Wells-especially her victims. I am a mother of children that attend/attended Wells Combined. My son is/was best friends with 3 of the 4 boys. I believe that these boys were manipulated, seduced, bribed and even threatened by Mrs. Whitaker. She seemed so pathological in the pursuit of her victims, that she even befriended their families and friends and girlfriends. She made a pornographic video that was shared with the boys and then of course was shared with many others beyond just the Wells community. I feel that these boys had to endure her constant barrage of demands. The boy's friendships with each other became strained; and so did their friendships with other boys and girls within the high school.

She was in a position of power when she victimized these boys. Some of them were her teacher's aid. If she gave them a bad grade as her aid, they would have been benched from their sports. I feel she probably started grooming many of her victims when they were elementary students. My son and his best friend were in her class in 6th grade. When the two boys got in trouble for playing a prank in her class, the parents of the other boy pulled their son out of her class. She told me that she was angry that she lost that student. She took it out on my son, and tried to hand down extra punishment on my son, but not on his best friend (whom she had been favoring since 4th grade). She would offer to take young teenage boys to the store, or drive them to the baseball game. Even though she was supposed to be at the school (per her teaching contract) she would often be seen at the baseball games before school was even out (her students would have "specials" like library, music, PE or art and would be dismissed from the special class). She befriended one of her victims 6th grade sister. Without the permission or even knowledge of her parents, Tennille Whitaker would take her to lunch and question her about her brother's whereabouts. She texted my younger child and tried to get her to convince her big brother go to her house. She told my son that if he ever wanted to come over and get help on his work, she would be willing to help him, all as a ploy, I believe, to victimize him.

Tennille Whitaker was so pathological that she even had her 4th grade class make posters and signs for the volleyball team, she even bought the team candy (and I can only assume) in hopes of getting in the good graces of the high school girls. Even though her 2 children were only in elementary/jr, high, she showed up to help decorate for the prom and some of us thought it was odd that she was acting like a jealous girlfriend and wanting to chaperone. Now, I can only surmise, that she must have just wanted to keep an eye on her victims. One of her victims had a date for prom and Tennille Whitaker went so far as to tell the date's mother why she shouldn't let her daughter go with the boy.

94

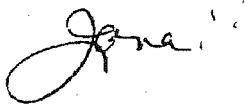
One of my son's best friends and Tennille Whitaker's victims, just took his own life. He was such an amazing, kind, wonderful person. And now he will never go on to be married or have children of his own. He will never be there again for my son and their friends, to celebrate each other's successes and help them through the bad times. He is lost forever, and I believe that Tennille Whitaker's actions may have played a large role in that! My son told me that his friend was never the same after he was victimized by her.

The worst thing is that Tennille Whitaker, in my opinion, does not ever seem to make the rules apply to herself. It would seem that without regard for her own husband and children, she is willing to victimize young high school boys just for her pleasure. She is willing to become best friends with her victim's parents and siblings. When told that she cannot attend 4-H events for the safety of the community's children, she shows up anyway with no intention on leaving (county fair 2017) (cemetery clean-up 2018), or sneaks in when the lights go down (fashion revue 2018). I've been told that even a restraining order against her, didn't stop her from going to the county fair Cowboy Bar this year. She doesn't seem to have any regard for her own children or any of the children in our community. I believe that even after her arrest, she continued to text her victims and I know that she was still reaching out to teenagers on social media. She was seen driving around the football field during homecoming a year ago. I worry that she is relentless and will not stop!

So many of us (adults and children) felt like mere pawns in her schemes. So many of us trusted the school and her in her position. So many of these children were used and manipulated by Tennille Whitaker. So many knew and hid the information out of fear. Others knew and got no answers from the school administration and didn't know where else to turn. This entire community has been horribly affected by Tennille Whitaker's selfish, reprehensible actions, none more so than her victim that took his own life and his devastated family.

We have all been affected in this community by the heinous actions of Tennille Whitaker. Our children's childhoods have been forever tainted. Please, I beg of you, please sentence Tennille Whitaker to the full amount of prison time. Please put her away, so that her 3 victims, that are left, can go on with their lives; so that these boys can start to grow and become the fine young men they should become, without the concern of seeing her at a rodeo, 4-H event or county fair or even at the grocery store or driving around the football field. We suspect she had more victims, but these 4 boys were the only ones courageous enough to come forward. Please, please reward the courage of these boys and give them the chance they deserve to move on and the justice that they should be entitled to. Please give Tennille Whitaker the toughest sentence you can, otherwise, I truly worry that she will not stop!

Thank you for your time and consideration in this matter,



95

To Whom It May Concern,

The last year and a half have been agonizing for the victims, and their families, and many in our community. I have written prior letters, but after the tragic loss of C ^{VC2253148} M, 1 of the 4 victims, I needed to express our devastation over his loss.

His loss impacted our family greatly. He was one of my 3 boys best friends, and like another big brother to my daughter. He stayed in our home, on our ranch in the summer, and worked with us, and put up hay, and loved to ride to move cows. He was a wonderful kid, and was always happy in our home, and a member of our household summer time, and many nights on the weekends. Our family's hearts aches for him. His loss is a sorrow we are all struggling through.

The loss of C, clearly illustrates the fragility of our youth, and adolescence, in particular. Especially adolescent boys, minds are still maturing, and are struggling to find their way into the adult world. While I do not know that his being manipulated, and a victim of T.Whitaker, a teacher, in a position of power over him, was the entire cause of our loss of C. It was likely, a contributing factor, at the least. It added stress, confusion, guilt, and frustration to his journey into his adulthood, and trying to find his way in the world. A very vulnerable time for these young men. It was our greatest fear realized for the boys.

Please consider C's permanent, and final loss from our lives, as another casualty of these unfortunate events that began in our school through the manipulations of these victims by T.Whitaker. Again, fortifying our convictions, that we do not want her in our community, as she has been.

Thank you for your time,

Kirk and Jennifer VC2253143

Your Honor,

Sept. 24, 2018

I am writing this letter in an effort to express how Tennille Whitaker's actions have affected myself and members of my family, including my teenage son. She was one of my closest friends and I dumbfounded to hear that she was manipulating young boys into having sex with her. As a local resident of Wells NV, my children have attended Wells schools for the past 10 years. All of my children had Ms. Whitaker as their 4th grade teacher. It is very disheartening to know that myself as a parent entrusted the safety, security, and morality of my children to this "so called" qualified educator. She took my daughter to lunch off of school property without my consent on several occasions. My children have been affected in numerous ways, trust for instance. I have always taught my children to be trusting and respectful of authoritative figures such as their teachers, coaches, and administrative staff. These people work in an environment where students being safe and secure should never be compromised, not for any reason at all. My children began hearing about inappropriate activity/behavior going on between Ms. Whitaker and other students (whom are also their friends). My son was exposed to a sexually graphic video that quickly spread from one student to the next.....thanks to this selfish person we used to call our friend. My minor children began to question all that I have taught them about being protected at school and I naively allowed this person to violate their trust, both on and off of school property. If the School District is not able to assure parents that my children whom spend 30+ hours/week with their teachers are in an ethical environment then what policy do we as parents have to stand on? As a result, every day that they go to school I feel uneasy and ask myself whether the possibility exists that they will be exposed to this type of behavior again. I look at each and every teacher and question if they are who they say there, or is it all just a front to mislead us parents into their manipulative ways. They can be married and have children that participate in school activities such as sports, rodeo, and 4H, yet more exposure to our children. I am grateful that my children know to come to me if they have questions or concerns about things that happen, right or wrong.

Sexual misconduct in schools will not be tolerated, it is 100% inexcusable! School staff that preys on our young children should be prosecuted to the highest extent. Ms. Whitaker should not only be terminated from her job as an educator, but also required to register as a tier 3 sex offender, given jail time, and fined appropriately! The future of these victims has forever been affected; their self-esteem, confidence, security, and trust have been violated because of this horrific betrayal. How much is your child's innocence worth? Ms. Whitaker has humiliated these children and stripped them of personal integrity! A predator like this only deserves one thing and that is to be in prison, locked up where she can no longer be a threat not just to my children, but any children for that matter. She is likely to repeat again, she has demonstrated that her behavior is obsessive. Male as well as the female students have been relentlessly stalked and harassed by her.

97

Looking at past teachers that have sexually preyed upon innocent children, the sentencing that they were given was far too lenient. "Reports of teachers accused of unlawful sexual relationships with their underage students continue to make the headlines." (CBSNews.com 2018, "Notorious Teachers Sex Scandals"). Stacey Rambold, a former Montana High School teacher for instance, was charged in 2007 with the rape of a 14 year old girl. The teen later committed suicide in 2010 while the case was still pending, as did one of Tennille Whitaker's victims just this past month, a 2018 Wells High School graduate. This type of behavior is detrimental to young students, some unfortunately unable to cope with being sexually raped. Haelie Wey of Texas, a former math teacher, who pleaded guilty to sexual misconduct with two 17 year old students, was sentenced to 10 years probation, as was Megan Crafton of Indiana, a part-time assistant cheerleading coach, whom also engaged in sexual relations with a 17 year old student. Probation & registration as a sex offender should be automatically a given sentence to any and all sexual assault/rape cases of young children. Mandatory jail time and fines should be part of the sentencing, no exceptions! These teachers are not getting adequate punishment for the physical and emotional scars that they cause, set an example of Tennille Whitaker and give her the proper sentencing that she deserves. These kids deserve to feel liberated, safe, and not constantly looking over their shoulder.

Thank you for your time and consideration!



Heather

98

Brian Sandoval
Governor

James Wright
Director

Natalie A Wood
Chief



NORTHERN COMMAND

3920 E. Idaho Street
Elko, NV 89801
Office: (775) 753-1305
Fax: (775) 753-1306

Division of Parole and Probation

September 26, 2018

Honorable Nany Porter
Fourth Judicial District Court
Department I
Elko County, Nevada

RE: Tennille Rae Whitaker
CC# CR-FP-17-3893

Dear Judge Porter:

Please see attached victim impact statement. The Division received the statement on 09/26/2018

Respectfully submitted,

Sara Macias, P&P Specialist III
DPS/Nevada Parole and Probation
Northern Command, Rural, Elko

cc: Elko County District Attorney's Office
Byron Bergeron, Esq.,

99

To whom it may concern,

I am writing concerning the upcoming sentencing of Tenille Whitaker. I would like to voice my opinion about the matter. I have young boys the same age as the victims in this case. My boys were not victims of a sexual crime, for which I am very grateful. They were, however, victims to very inappropriate interactions between a teacher and student. On more than one occasion, Mrs. Whitaker bought alcohol for my older son. He was also sent a pornographic video from her cell phone. In my opinion, my younger son was being groomed at the time of her arrest. She was texting and asking him to go running with her and taking him for cold drinks after track practice. Of course, all of these incidences have been reported to the authorities. But the point is that Mrs. Whitaker had an impact on many boys in our community, not just the ones with whom she had sexual encounters with. She had a history of inappropriate behaviors with young boys that has went on for some time.

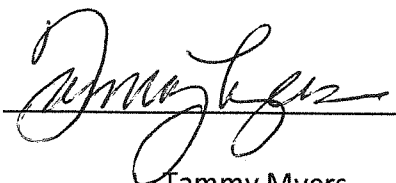
It is my concern that Mrs. Whitaker may get off with just probation and I feel that would truly be an injustice not only to the young men she had inappropriate relations with, but also to the people in our community. No one should be able to get away with those kinds of behaviors. It is unacceptable for any man or woman to have inappropriate relations with a minor. Mrs. Whitaker was in a position of authority and trust and definitely abused both.

In the Elko Daily Free Press dated April 29, 2018, Elko County District Attorney Tyler Ingram said, "A message has been sent to sexual offenders who harm children." He also went on to say the following, "Those sentences should send a message to the people in this wonderful community that Elko County will not tolerate child abuse in any form."

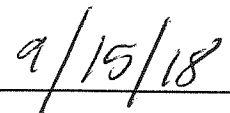
I sure hope that this same message will apply to Mrs. Whitaker and that this case is not taken lightly because she is a female offending young boys rather than a man offending young girls. There should be no difference. The community of Wells shares the same view as Mr. Ingram. That is, we will not tolerate child abuse in any form.

This case has been drawn out long enough and Mrs. Whitaker needs to be accountable for her unlawful actions. It has taken a tremendous amount of courage for all of these young boys to come forth. Please make the right choice and give Mrs. Whitaker more than probation. I fear that with no time served, she will be a repeat offender.

Thank you for your time and consideration in this matter,



Tammy Myers



Date

Your Honor,

I am writing to you as a concerned member of the Wells community regarding the upcoming sentencing of Tennille Whitaker. I am a mom of two boys and one of them is the same age as the victims. I have been told by him that he has seen the pornographic video, that I believe is (or should have been) part of the evidence submitted in the case, showing the defendant in a very sexually explicit way. This video was sent to my son via another student, and from my understanding has circulated among the boys here in Wells as well as boys at other area schools.

I was surprised at the last court hearing that probation was even a possibility due to the serious nature of the crimes committed. According to the Elko Daily Free Press (April 30, 2018), she agreed to a plea deal of four counts of sexual conduct between a school employee and a pupil so that the State would not pursue additional charges related to the case. This plea enabled her to avoid other charges that could/would have led to a possible longer sentence. I can't believe that probation is even being considered an option--more charges could have been brought forth in court. She, as a teacher, had authority over students--these boys. A couple of the boys were her student aides. She abused her position and violated the sanctity of teacher/student and teacher/parent relationships. This type of egregious, inappropriate behavior cannot be tolerated. No person, male or female, should be allowed to get away with this behavior. She is an adult and knows right from wrong.

I know some people may say that she is a mom and what about her kids. She should have thought about her husband, kids, and family before she committed these illegal, morally reprehensible actions. My questions would be: What about the kids and the families affected by her deviant actions? Mrs. Whitaker is not the victim--she is the culprit. I have also heard that she has "found" God and God forgives. I am a practicing Christian and I am truly glad that she has found God; however, I was taught that even though you may find comfort through Him, it does not negate that fact that she did these horrible things and that these boys' lives have been altered forever through her selfish actions. Many Christians believe there needs to be actual and sincere repentance and contrition for their sins and then you can begin on your road to forgiveness. In order for the community of Wells to find closure, we need to have faith that our legal system will work and justice will prevail. This is important for all those affected to be able to forgive and to move on.

These four boys were victims, but they should be commended for their courage in coming forward and speaking with police. This was not a lone incident nor was it a lapse in judgement. This was a grown woman that used her authority to prey upon young boys. I feel that she did not worry about the consequences of her actions or the toll it would take on the boys involved. In my opinion, a probation sentence would not be a deterrent for Mrs. Whitaker and she will be likely to re-offend. She needs to experience the ramifications of her actions and get a dose of reality as to what her future will be if she keeps pursuing young boys. These boys deserve justice and need to know that our community will not tolerate this type of behavior. There is a quote by Dietrich Bonhoeffer that I feel captures what is at stake right now in our community. It is "The true test of the morality of a society is what it does for its children." Please, think of the boys, their families, and the Wells community when you are ready to pass sentencing.

Thanking you in advance for your time and assistance with this matter.

Anne Battenfeld

09/24/18

101

Deigun

FILED

2010 SEP 26 PM 2:43

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *AS*

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TENNILLE RAE WHITAKER,

Defendant

NOTICE OF VICTIM IMPACT
STATEMENT

Affirmation Pursuant to NRS 288B.030
SSN Does Appear
SSN Does Not Appear *EW*

102

CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 21st day of September, 2018, I served the foregoing NOTICE OF VICTIM IMPACT STATEMENT, by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

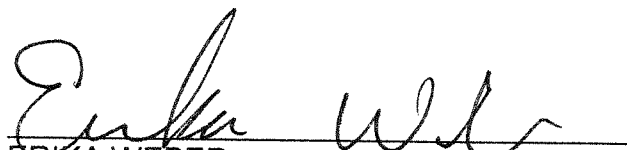
By delivering to:

HONORABLE NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

PAROLE AND PROBATION
3920 E. IDAHO ST.
ELKO, NV 89801

By mailing to:

BYRON BERGERON
ATTORNEY AT LAW
432 COURT STREET
RENO, NV 89501


ERIKA WEBER
CASEWORKER

DA# F-17-01609

103

My 2018 8/22/2021 AM 9:40S Terry Madison Father
of C. RECEIVED
SAC, COVINGTON, LA ATTORNEY I would like
to tell you a little bit about my
son. He was a hard working young
man. He loved working on the Wright
and Hooper Ranches also he was a
4 year letterman in 3 sports as well
as FFA and Senior class vice president.
He wanted to stay in wells he
loved the small town life. But after
what Mrs. Whitaker did to him he
was embarrassed to be around town
what people always asking him about
it. He graduated on June 9th and
packed up and moved to Reno on
June 12th and went to work for Tesla
on June 14th. After 2 months he hated
Reno and his job. The demons she
put in his head he just could not
find a way to cope and took his
own life rather than come home
and have to deal with this court
case and all the questions about
his service class voted him the
most unforgettable and now he is gone
forever thanks to Mrs. Whitaker. Please
find some justice for my son. 104
THANK YOU Terry Madison

Bergerson

FILED

2018 SEP 28 PM 2:47

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *[Signature]*

CASE NO. CR-FP-17-3893
DEPT. NO. 1

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

TENNILLE RAE WHITAKER,
Defendant

NOTICE OF VICTIM IMPACT
STATEMENT

Information Pursuant to NRS 200B.030
SSN Does Appear
SSN Does Not Appear *[Signature]*

1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 25th day of September, 2018, I
4 served the foregoing NOTICE OF VICTIM IMPACT STATEMENT, by delivering, mailing or by
5 facsimile transmission or causing to be delivered, mailed or transmitted by facsimile
6 transmission, a copy of said document to the following:

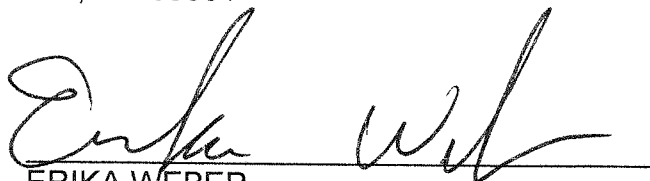
7 By delivering to:

8 HONORABLE NANCY PORTER
9 FOURTH JUDICIAL DISTRICT COURT
10 ELKO COUNTY COURTHOUSE
11 ELKO, NV 89801

12 PAROLE AND PROBATION
13 3920 E. IDAHO ST.
14 ELKO, NV 89801

15 By mailing to:

16 BYRON BERGERON
17 ATTORNEY AT LAW
18 432 COURT STREET
19 RENO, NV 89501

20 
21 ERIKA WEBER
22 CASEWORKER

23 DA# F-17-01609
24
25
26
27
28

September 28, 2018

The Honorable Nancy Porter
Fourth Judicial District Court, Department 1
571 Idaho Street
Elko, Nevada 89801

Dear Judge Porter,

RE: Sentencing for Tennille Whitaker

By pleading "no contest" Ms. Whitaker has spared the young men, their families, and our community, the heartache of reliving these atrocities in court. While prudent in that respect, her plea clearly demonstrates her continued efforts to conceal the full scope of her crimes, to silence her victims and her determination to shield herself from the consequences of her transgressions.

Ms. Whitaker has certainly been well served by her legal counsel. However, his competence perpetuates the harm to the victims. Restitution is now out of reach for many victims without protracted, humiliating and expensive legal battles in the civil courts. The delay between her entry of plea and the sentencing has preserved Ms. Whitaker's freedom at the expense of some measure of closure for her victims.

While Ms. Whitaker's plea acknowledged four victims, there are undoubtedly others, as the presence of numerous parents at the arraignment attested. Those parents themselves are victims. Their relationships with their children have been damaged by this ordeal. Some couples found themselves at odds with one parent wanting to shield their child from public exposure and the other believing that cooperating in the investigation was the best way to protect their son, and others. Some parents sought, and were granted, temporary protective orders illustrating their concern that this predator would assault their child or find additional victims.

Others victims may not fit the criteria set forth in Nevada Revised Statute 176.015(5)(d) but they are victims nonetheless.

Ms. Whitaker's children, husband and parents are victims in every sense of the word. While I am loathe to add to their already horrific burden, I believe that Ms. Whitaker should be punished to the full extent of the law, for the sake of the other victims and to protect our children.

Every student is a victim as this scandal ripples through our school.

Every parent is a victim when they question whether or not their own son may have been involved and worry about their safety.

Every victim of similar immoral acts is victimized again as such news causes them to relive the atrocities they personally suffered.

Every teacher is a victim because Ms. Whitaker's crimes diminish respect for an already demanding profession that is under attack on so many fronts. School administrators who have served in Wells are victims as their professional judgment and diligence are scrutinized. School staff members are victims as the community and law enforcement pose questions for which there are no answers.

107

Many residents of Wells, Starr Valley and neighboring communities are victims because the latest rumor or the latest development finds its way into meetings, gatherings and conversations. While the public has a right to know, and the press has an obligation to inform, the reputation of our community has been maligned.

Even public education, which has improved the health and welfare of the human family immeasurably, has been damaged by Ms. Whitaker's offenses.

The Elko County School District is a victim as precious resources were diverted from educating our children to investigating and addressing the allegations. It could be argued that I, as a member of the Elko County School Board, am asking the Court to remedy injustices which some consider to be school matters. Regrettably, the ability of the Elko County School District to punish such offenses is woefully deficient. By law, we are limited to placing an employee on leave or requesting a resignation unless and until there is a conviction or plea. Such employment actions are wholly inadequate to address the crimes at hand.

Perhaps most importantly, while the initial transgressions are in the past, some of these young men will become victims yet again as Ms. Whitaker's shameful acts affect their psychological and sexual health and their relationships for decades to come. In this respect, it is impossible to fully assess the magnitude of the damage Ms. Whitaker has inflicted.

Therefore, it is not possible for the Court to impose a sentence that is too harsh. I plead with the Court to sentence Ms. Whitaker to the maximum time in prison and the maximum fine allowed provided that such funds are reserved for the future psychological care her victims. When her immediate victims need professional help, as some undoubtedly will, their ability to pay should not be a barrier.

Respectfully submitted,

Thad S. Ballard
Father of three sons
Citizen of Elko County
President of the Board of Trustees, Elko County School District

Dergeron

FILED

2018 OCT -1 AM 10:07

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____ *sp*

CASE NO. CR-FP-17-3893

DEPT. NO. 1

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

TENNILLE RAE WHITAKER,

Defendant

NOTICE OF VICTIM IMPACT
STATEMENT

Affirmation Pursuant to NRS 209B.030
SSN Does Appear
SSN Does Not Appear *EW*

109

1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 15th day of October, 2018, I served
4 the foregoing NOTICE, by delivering, mailing or by facsimile transmission or causing to be
5 delivered, mailed or transmitted by facsimile transmission, a copy of said document to the
6 following:


7 By delivering to:

8 HONORABLE NANCY PORTER
9 FOURTH JUDICIAL DISTRICT COURT
10 ELKO COUNTY COURTHOUSE
11 ELKO, NV 89801

12 PAROLE AND PROBATION
13 3920 E. IDAHO ST.
14 ELKO, NV 89801

15 By mailing to:

16 BYRON BERGERON
17 ATTORNEY AT LAW
18 432 COURT STREET
19 RENO, NV 89501

20 
21 _____
22 ERIKA WEBER
23 CASEWORKER

24 DA# F-17-01609
25
26
27
28

My name is Rosa I am the oldest sister to O C was asked to write this letter on behalf of our family, because my mother couldn't put herself to write about something that has forever left our family broken and ununited.

When we were asked to write a letter of impact on how this situation affected our family. I honestly didn't know where to start. I didn't really think I could get our feelings across the board. I guess the only way to know really how we are doing is starting from the beginning.

We have lived in Starr Valley since I was in the fourth grade. We knew the Whitaker family since we moved out there never did we think this could happen.

As I went through the high school Mrs. Whitaker was a substitute teacher and as kids they would talk about how she would do inappropriate things with the senior boys and how they would drink together and such. I never really thought about it because I mean high school is high school you hear all sorts of crazy things. As I graduated Mrs. Whitaker came to be a teacher at Wells Elementary. The rumors continued but it came to kids that she had in her own classroom as student aids. When my mother first saw, or I guess suspected that something was going on was when she would see kids leaving her room at 4:30 p.m. or later from her room. She would tell me that she would see these kids leaving her room but didn't think much of it until parents started saying that she was sending inappropriate texts, pictures etc to their boys. The evening my mother saw O and Whitaker together she couldn't believe that her son was another boy that she managed to take advantage of, and I know it always takes two to play but as someone who was supposed to protect these kids. How could she use that to her advantage to overpower these boys. Since the day my other found out we immediately saw a complete change in O

He became more distant, rude, disrespectful. O and I always had an open relationship I was his go to person for everything the moment we went to the principal to report what my mother had seen he stopped all communication with us. He stopped texting me, stopped coming to me home to visit. It was tough to see how much he changed it hurt. We have always been a close family. More so tough on my mother she had the worst year working at that school. Seeing Whitaker daily and knowing that she wasn't sorry or embarrassed about what my mother had seen. No remorse. O continued to give my parents and myself the silent treatment he hated us for speaking to the administration about this, we thought it was just because he didn't want the whole school finding out later we go finding out that it was because his sport membership was on the line.

His own baseball coach was on the same page as Whitaker if she went down he would make sure these boys had no future in their current baseball season. It was so frustrating knowing that another administration was working with this woman ruining these children's lives. The administration that we for so long trusted our kids to help with their high school career were there to make sure they didn't say anything to leave this kids to think god knows who what thoughts to turn them against their own family and for what just so they can continue to try to get with other children who are willing to be cool because they slept with a teacher. I'm sorry but as an administration she should have known better especially having children of her own.

///

Slowly my mother began to get sick. She stopped sleeping well at night, she began to have anxiety attacks this became so stressful that my mother had to go visit a doctor and results came to that my mother is pre-diabetic, she had high blood pressure as well. As for myself I have managed to keep my emotions undercover because I feel like I have to be strong for my family.

Going through interviews with the investigators was hard enough I was able to express myself to them but as soon as I see my mother I feel like everything must disappear and I have to put a strong face on for her. If I am broken she will be broken and I can't have my mother broken because of Whitaker. Even taking O. to the DA office to conduct more interviews was hard we had a blowout argument before that were O. was so upset with his he had wished we weren't his family anymore.

To this day O. does not live with my mother, as soon as he turned 18 he packed up his belongs and left the house. We currently don't know where he lives or if he has a job. We maybe see him 3 times a month. He has enrolled in college in Oregon and leaves in September. I saw him back in July and his confessed to me in a depressed state that he wishes he had taken some therapy because he is currently making poor life decisions. He wishes he could go back and change everything. As his sister its sad to hear that he has sad depressing thoughts. All I want is for my family to be back the way we once were. I could never forgive this woman for what she put my family threw she will never know how bad she hurt not just my family but all the other victims involved as well.

Casas Family.

ROUGH DRAFT

**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA**

RECORD OF COURT PROCEEDINGS

Present - Honorable NANCY PORTER, District Judge,
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 10/04/18

VS.

Case No.: CR-FP-17-0003893

Dept: 1

TENNILLE RAE WHITAKER,

Defendant.

State of Nevada represented by Chad Thompson, Esq.

Defendant present, not in custody, and represented by

Byron Bergeron, Esq.

Division of Parole and Probation represented by Sara Macias.

Court Clerk, Faye Fleury, present.

SENTENCING HEARING

The Court noted the presence of the parties.

The Court noted that the Defendant last appeared in Court on April 30, 2018 and entered a plea of no contest to COUNT 1: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 2: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 3: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 4: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) The matter was before the Court for the entry of judgment and the imposition of sentence. All parties indicated they were ready to proceed.

113

The Defendant advised the Court that she had received the Presentence Investigation Report, reviewed the same with counsel and understood the recommendations contained therein.

Defense counsel made corrections to the report.

Counsel had issued with the wording in the PSI report regarding the references to pupil and student aid and those references in relation to the victims in the matter.

The Court requested Counsel to go through each reference he wanted to correct on the PSI.

The State advised the PSI was an offense synopsis and was not a legal document and lay terms are usually used. Counsel agreed to allow Defense to refer to each reference as a pupil.

Defense requested to go through each reference and make corrections.

The Court again directed Counsel to go through each correction he wanted to make for the record.

Defense made corrections to the references of victims as pupils to pupils/student aids.

The State advised regarding the selection scale that was marked on the PSI report.

Neither the State nor the Division made corrections to the report.

The Court inquired as to the psychosexual evaluation.

Counsel had reviewed the evaluation

The Defense advised she had reviewed the psychosexual evaluation.

Defense counsel presented a recommendation on behalf of the Defendant.

The Court advised the Defendant of her right to make a statement on her own behalf.

The Defendant did address the Court.

The State presented its position for sentencing.

The Court directed Defense to call his first witness.

Jennifer Hansen was sworn and examined on direct by the Defense. No recross by the State.
Witness excused.

William Horn was sworn and examined on direct by the Defense. No recross by the State.
Witness excused.

Daniel Romans was sworn and examined on direct by the Defense. No recross by the State.
Witness excused.

The Court directed the State to call its first witness.

114

Luida Madison was sworn and examined on direct by the State. No cross by the Defense. Witness excused.

Jennifer Hooper was sworn and examined on direct by the State. No cross by the Defense. Witness excused.

The Court advised the Defenses argument regarding constitutional issues could not be addressed at this level, but may be remedied in a Federal Court.

The matter being submitted;

The Court stated its findings.

The Court **ORDERED** a Judgment of Conviction be entered against the Defendant finding the Defendant guilty of COUNT 1: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 2: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 3: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067) COUNT 4: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540. (NOC 51067)

The Court **FURTHER ORDERED** the Defendant to pay a \$25.00 administrative assessment fee, a \$150.00 genetic testing fee and submit to test to determine her genetic markers and be sentenced to serve for Count 1 a maximum term of 60 months in the Nevada Department of Corrections with minimum parole eligibility after 24 months with credit for 2 days previously served; be sentenced to serve for Count 2 a maximum term of 60 months in the Nevada Department of Corrections with minimum parole eligibility after 24 months; be sentenced to serve for Count 3 a maximum term of 60 months in the Nevada Department of Corrections with minimum parole eligibility after 24 months. be sentenced to serve for Count 4 a maximum term of 60 months in the Nevada Department of Corrections with minimum parole eligibility after 24 months. Counts 1, 2, 3 and 4 will be served concurrent/consecutive with one another. The aggregate minimum sentence is 96 months and the aggregate maximum sentence is 240 months. The Defendant shall be under lifetime supervision as a sex offender and was given the registration requirements.

Court adjourned.

115

CLERK _____ DEPUTY AT

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ELKO
THE HONORABLE NANCY PORTER

- o o o -

STATE OF NEVADA,

Plaintiff,

VS.

TENNILLE WHITAKER,

Defendant.

)
)
) Case No:
) CR-FP-17-3893
)
)
)
)
)
)

TRANSCRIPT OF PROCEEDINGS

Plea & Sentencing

October 4, 2018

ELKO, NEVADA

Transcribed By: RANDI LEE WALKER, CCR No. 137

1 APPEARANCES:

2
3 For the State:

4 ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
5 By: CHAD B. THOMPSON, Chief Criminal Deputy
6 ELKO, NV. 89801

7
8 For the Defendant:

9 LAW OFFICE OF BYRON BERGERON
10 By: BYRON BERGERON, Esq.
11 432 COURT STREET
12 RENO, NV. 89501

13 Parole and Probation:

14 MS. MACIAS
15
16
17
18
19
20
21
22
23
24

117

1 ELKO, NEVADA, APRIL 30, 2018 4:27 P.M.

2 -oOo-

3
4 THE COURT: This is Case CR-FP-17-3893, the
5 State of Nevada versus Tennille Rae Whitaker.

6 The defendant is present in court, represented
7 by Mr. Bergeron.

8 Mr. Thompson is here, on behalf of the State.

9 A criminal Information was filed in this matter
10 on November 16, 2017. This is the time for an
11 arraignment on those charges.

12 Are the parties ready to proceed?

13 MR. THOMPSON: The State is, Your Honor.

14 MR. BERGERON: Yes, Your Honor.

15 THE COURT: Ms. Whitaker, please face the Clerk
16 and raise your right hand.

17 (The defendant was sworn in.)

18 THE COURT: Ms. Whitaker, you need to speak up.
19 That box with the red light is recording you. You make
20 sure you get your voice on there.

21 The record will reflect that the Court Clerk is
22 handing defense counsel a certified copy of the
23 criminal Information.

24 Ms. Whitaker, about half way down that first

118

1 page it says Tennille Rae Whitaker. Is that your full
2 name? And is that spelled correctly?

3 THE DEFT: Yes, it is.

4 THE COURT: All further proceedings shall be
5 had under the name of Tennille Rae Whitaker.

6 Mr. Bergeron, do you waive a formal reading of
7 the Information?

8 MR. BERGERON: We do, Your Honor.

9 THE COURT: Ms. Whitaker, do you read and speak
10 English?

11 THE DEFT: Yes.

12 THE COURT: How old are you today?

13 THE DEFT: 41.

14 THE COURT: How much education have you
15 completed?

16 THE DEFT: (Unintelligible.)

17 THE COURT: Are you in good physical health
18 today?

19 THE DEFT: Yes, I am.

20 THE COURT: Are you in good mental health
21 today?

22 THE DEFT: (Unintelligible.)

23 THE COURT: Are you taking any medication or
24 under the influence of any substances?

119

1 THE DEFT: No, Your Honor.

2 THE COURT: Has your attorney advised you that
3 if you are not a citizen of the United States, a
4 conviction in this case could affect your ability to
5 remain in or re-enter this country?

6 THE DEFT: Yes, Your Honor.

7 THE COURT: You are charged with four counts,
8 Counts I, II, III and IV. They are all the same
9 charge: Sexual Conduct Between School Employee or
10 Volunteer and a Pupil, Category-C felony.

11 Mr. Thompson, will you please explain the
12 elements of the crimes, the maximum potential
13 penalties, and whether they are probationable.

14 MR. THOMPSON: The State would have to show
15 that on or about or between the 1st day of September of
16 2015, and the 6th day of June, 2017, within the County
17 of Elko, State of Nevada, that the defendant, a person
18 older than 21 years of age, while employed at or
19 volunteering at a public or private school, did engage
20 in sexual conduct with a pupil who was 16 years of age
21 or older, and had not received a high school diploma, a
22 general education development certificate, or an
23 equivalent document, and that the student was attending
24 the public or private school which the defendant was

120

1 employed or volunteered, or that the student had
2 contact with the defendant in the course of the
3 defendant performing her duties as an employee or
4 volunteer, a Category-C felony, punishable by up to
5 five years in the Nevada State Prison, with a minimum
6 period of one year.

7 She may further be punished by a fine of up to
8 \$10,000. She would be eligible for probation if she's
9 found, pursuant to an evaluation, not to be a high risk
10 to re-offend.

11 THE COURT: Thank you.

12 Ms. Whitaker, do you understand what you've
13 been charged with, including the elements of the crime?

14 THE DEFT: Yes, Your Honor.

15 THE COURT: Do you understand the potential
16 penalties for these crimes?

17 THE DEFT: I do.

18 THE COURT: Have you discussed this entire
19 matter of the plea agreement and your plea with your
20 attorney before coming to court?

21 THE DEFT: Yes, Your Honor.

22 THE COURT: Are you satisfied with your
23 attorney and confident in his ability to represent you?

24 THE DEFT: Yes, Your Honor.

121

1 THE COURT: How many times have you talked with
2 him about this case?

3 THE DEFT: Several. I'm not sure how many.

4 THE COURT: Can you give me an estimate?

5 THE DEFT: As many as forty. (Muffled and
6 unintelligible on the amount given.)

7 THE COURT: Have you had an opportunity, to
8 your satisfaction, to discuss with your attorney the
9 possible defenses that may be available to you on the
10 charges if you were to go to trial?

11 THE DEFT: Yes, Your Honor.

12 THE COURT: In light of those discussions and
13 the information that's been given to you, do you feel
14 this negotiated plea is the best thing for you to do?

15 THE DEFT: Yes, Your Honor.

16 THE COURT: Do you understand that sentencing
17 is entirely within the discretion of the Court? Do you
18 understand that no matter what the negotiations were,
19 the Court will determine what type of sentence you
20 receive and whether you will receive probation?

21 THE DEFT: Yes, Your Honor.

22 THE COURT: Do you understand that any sentence
23 imposed by this Court may be consecutive or concurrent
24 to any other sentence?

122

1 THE DEFT: Yes.

2 THE COURT: Do you understand that you will
3 have to undergo a psychosexual evaluation?

4 THE DEFT: Yes, Your Honor.

5 THE COURT: Do you understand that to be
6 eligible for probation that evaluator will have to find
7 that your are not at a high risk to re-offend?

8 THE DEFT: Yes.

9 THE COURT: Do you understand that you will
10 have to register as a sex offender?

11 THE DEFT: Yes, Your Honor.

12 THE COURT: Do you understand that you will be
13 subject to lifetime supervision as a result of the
14 conviction of these charges?

15 THE DEFT: Yes, Your Honor.

16 THE COURT: Do you understand that you may be
17 ordered to pay restitution, if that's appropriate?

18 An eight-page memorandum of plea agreement was
19 filed on April 30, 2018. A certificate of counsel is
20 attached to that agreement, signed by Mr. Bergeron,
21 counsel for the defendant. On page 6 is the signature
22 line for Tennille Rae Whitaker, with the signature
23 above that line. Is that your signature, Ms. Whitaker?

24 THE DEFT: Yes, it is.

123

1 THE COURT: The agreement on page 6 is signed
2 by Ms. Whitaker, and Mr. Thompson indicates it was
3 signed in the year 2017. I'm assuming that was
4 supposed to be 2018; is that correct, counsel?

5 MR. THOMPSON: That is correct.

6 MR. BERGERON: It is, Your Honor.

7 THE COURT: Okay. I'm going to correct that,
8 then.

9 Ms. Whitaker, did you sign that document
10 earlier today, April 30th, 2018?

11 THE DEFT: Yes.

12 THE COURT: Before you signed it, did you have
13 an opportunity to read it?

14 THE DEFT: Yes.

15 THE COURT: Did you consult with your attorney
16 before you signed the document? Did your attorney
17 allow you to ask questions about the document?

18 THE DEFT: Yes.

19 THE COURT: Did you sign the memorandum of plea
20 agreement freely and voluntarily?

21 THE DEFT: Yes, Your Honor.

22 THE COURT: Did anybody threaten you with the
23 use of force or violence against your person to get you
24 to sign the agreement, or to get you to plead no

124

1 contest?

2 THE DEFT: No.

3 THE COURT: Were there any promises of
4 leniency, other than those contained in the memorandum
5 of plea agreement, that were made to you to get you to
6 sign the document, or to get you to plead no contest?

7 THE DEFT: No, Your Honor.

8 THE COURT: Is the entire agreement that you
9 have reached with the State of Nevada contained within
10 that memorandum of plea agreement?

11 THE DEFT: Yes.

12 THE COURT: I would ask Mr. Bergeron to explain
13 on the record the essential terms and conditions in the
14 agreement. You need to listen carefully, because I'm
15 going to come back to you and ask you if that's also
16 your understanding of the agreement. Mr. Bergeron.

17 MR. BERGERON: Your Honor, in exchange for my
18 client's no contest plea, the State will be not
19 pursuing the other charges of sexual conduct between a
20 school employee or volunteer. She will be pleading no
21 contest to four counts of a Category-C felony, a
22 violation of 201 -- NRS 201.540. In exchange, the
23 State will not ask for a sentence to exceed 4-to-12
24 years. The defense is free to argue for probation.

125

1 THE COURT: The State will not pursue any
2 charges arising out of these?

3 MR. BERGERON: Any additional charges, as well.

4 THE COURT: Based on facts --

5 MR. BERGERON: Correct.

6 THE COURT: Mr. Thompson, is that your
7 understanding of the plea agreement?

8 MR. THOMPSON: It is.

9 THE COURT: Ms. Whitaker, is that your
10 understanding of the agreement?

11 THE DEFT: Yes, Your Honor.

12 THE COURT: I need to advise you of some of the
13 rights you have under the Constitutions of the United
14 States and the State of Nevada.

15 You have the right against self-incrimination;
16 meaning, nobody can make you be a witness against
17 yourself. Do you understand that right?

18 THE DEFT: Yes.

19 THE COURT: You have the right to a speedy and
20 public trial. If you wanted to go to trial within
21 60 days, we would have to try to do that. And that
22 would be a public trial. Do you understand that right?

23 THE DEFT: Yes, Your Honor.

24 THE COURT: You have the right to the

126

1 assistance of an attorney, either appointed or
2 retained. Did you retain Mr. Bergeron, or did the
3 Court appoint him for you?

4 THE DEFT: (Unintelligible.)

5 THE COURT: So do you understand, then, your
6 right to the assistance of an attorney?

7 THE DEFT: Yes, Your Honor.

8 THE COURT: You have the right to require that
9 the State prove each element of the charges against you
10 beyond a reasonable doubt. If the case went to trial,
11 the State would have to prove, beyond a reasonable
12 doubt, that you did these things. You wouldn't have to
13 prove you didn't do them. Do you understand that
14 right?

15 THE DEFT: Yes, Your Honor.

16 THE COURT: You have the right to confront and
17 cross-examine the witnesses against you. If the case
18 went to trial, the State's witnesses would come into
19 court, and they'd be placed under oath, and your
20 attorney would have the opportunity to question them.
21 Do you understand that right?

22 THE DEFT: Yes.

23 THE COURT: You have the right to subpoena
24 witnesses on your behalf. Do you understand that

127

1 right?

2 THE DEFT: Yes, Your Honor.

3 THE COURT: You have the right to testify in
4 your own defense. That would be your decision to make.
5 If you chose not to testify, no one could hold that
6 against you. Do you understand that right?

7 THE DEFT: Yes, Your Honor.

8 THE COURT: You have the right to appeal the
9 conviction. Do you understand that right?

10 THE DEFT: Yes.

11 THE COURT: Have you talked with your attorney
12 about your Constitutional Rights?

13 THE DEFT: Yes.

14 THE COURT: Is there anything about any of
15 these rights you do not understand, or you would like
16 to ask me?

17 THE DEFT: No, Your Honor.

18 THE COURT: Knowing you have those rights, do
19 you wish to voluntarily waive them -- that means give
20 them up -- and ask me to accept your plea to the
21 charges?

22 THE DEFT: Yes, Your Honor.

23 THE COURT: Do you need any more time to talk
24 with your attorney before you enter your plea?

128

1 THE DEFT: No.

2 THE COURT: How do you plead to Counts I
3 through IV, all charges of Sexual Conduct Between
4 School Employee or Volunteer and a Pupil? Guilty? Not
5 guilty? Or no contest?

6 THE DEFT: No contest.

7 THE COURT: Let the record reflect that the
8 defendant has entered a plea of no contest to Counts I
9 through IV. Are you entering your no-contest plea
10 freely and voluntarily?

11 THE DEFT: Yes.

12 THE COURT: Do you understand that the effect
13 of a no-contest plea is the same as a guilty plea, for
14 all criminal purposes?

15 THE DEFT: Yes.

16 THE COURT: Located in the Court file is what's
17 called an Offer of Proof. That is the evidence that
18 the attorneys believe would be produced at trial. Have
19 you had an opportunity to read that?

20 THE DEFT: Yes.

21 THE COURT: Mr. Bergeron, do you agree that the
22 State could prove its case beyond a reasonable doubt?

23 MR. BERGERON: Your Honor, I would stipulate,
24 for the purposes of this negotiation, the State could

129

1 prove the case beyond a reasonable doubt. I don't
2 necessarily believe it's appropriate to be in agreement
3 with that on the record. I would say these
4 negotiations -- (Unintelligible.)

5 THE COURT: And you've advised Ms. Whitaker of
6 your opinion?

7 MR. BERGERON: I have.

8 THE COURT: Is that your understanding, as
9 well, Ms. Whitaker?

10 THE DEFT: Yes.

11 THE COURT: The Court finds that there is a
12 factual basis for the defendant's plea.

13 Is there anything further that either of the
14 attorneys would like me to canvass the defendant on?

15 MR. THOMPSON: The State would not.

16 MR. BERGERON: No, Your Honor.

17 THE COURT: Ms. Whitaker, do you have any
18 questions about this process that's taken place so far
19 that you would like to ask me?

20 THE DEFT: No, Your Honor.

21 THE COURT: Do you still request that I accept
22 your plea?

23 THE DEFT: (Unintelligible.)

24 THE COURT: The Court finds that the defendant

130

1 has entered her plea freely and voluntarily, with full
2 understanding of her Constitutional Rights, the nature
3 of the charges, and the consequences of the plea.

4 The Court accepts your no-contest plea based
5 upon the memorandum of plea agreement that you signed,
6 a certificate of counsel attached to that agreement,
7 the offer of proof, and your statements in court today.

8 A pre-sentence investigation shall be conducted
9 and a report submitted to the Court on or before
10 June 29th.

11 Will sentencing work on July 23rd for you, Mr.
12 Bergeron?

13 MR. BERGERON: Your Honor, that's the one day
14 that won't work. July 30th? And any Monday in August.

15 THE COURT: Let's see what I've got.

16 Mr. Thompson, are we going to need something
17 other than a law-and-motion day?

18 MR. THOMPSON: I expect there will be --

19 THE COURT: What we're going to do, then, Mr.
20 Bergeron, is Court staff will contact you and the
21 District Attorney's Office to schedule sentencing. I
22 won't be hearing this on a Monday, because I expect
23 we -- (unintelligible) -- will have testimony and will
24 need more time.

131

1 Is there anything further, counsel?

2 MR. BERGERON: No, Your Honor. Thank you.

3 THE COURT: Ms. Whitaker, make sure you stay in
4 touch with your attorney.

5 We're adjourned.

6

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

132

1 STATE OF NEVADA)
2)
3 COUNTY OF WASHOE)
4
5

6 I, RANDI LEE WALKER, Certified Shorthand
7 Reporter of the Second Judicial District Court of the
8 State of Nevada, in and for the County of Washoe, do
9 hereby certify:

10 That I transcribed from a visual/audio disk
11 the above proceedings into typewriting, as herein
12 appears;

13 That the foregoing transcript is a true and
14 correct transcription, to the best of my ability to
15 transcribe from the visual/audio disk.

16 DATED: At Reno, Nevada, this 2nd day of
17 December, 2018.

18
19 /s/ Randi Lee Walker
20 RANDI LEE WALKER, CCR No. 137
21
22
23
24

133

1
2
3
4 IN THE FOURTH JUDICIAL DISTRICT COURT
5 OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF ELKO
7 THE HONORABLE NANCY PORTER

8 -oOo-

9 STATE OF NEVADA,)
10 Plaintiff,) Case No:
11 vs.) CR-FP-17-3893
12 TENNILLE WHITAKER,)
13 Defendant.)
14 _____)

15 TRANSCRIPT OF PROCEEDINGS

16 Plea & Sentencing

17 October 4, 2018

18 ELKO, NEVADA
19
20
21

22 Transcribed By: RANDI LEE WALKER, CCR No. 137
23
24

134

1 APPEARANCES:

2
3 For the State:

4 ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
5 By: CHAD B. THOMPSON, Chief Criminal Deputy
6 ELKO, NV. 89801

7 For the Defendant:

8 LAW OFFICE OF BYRON BERGERON
9 By: BYRON BERGERON, ESQ.
10 432 COURT STREET
11 RENO, NV. 89501

12 PAROLE AND PROBATION:

13 MS. MACIAS
14
15
16
17
18
19
20
21
22
23
24

135

INDEX

STATE'S WITNESSES:

DIRECT

CROSS

QUIDA MADISON

69

JENNIFER HOOPER

73

DEFENSE WITNESSES:

JENNIFER HANSON

59

WILLIAM HORN

61

DANIEL ROMANS

65

136

1 ELKO, NEVADA, OCTOBER 4, 2018, 1:41 P.M.

2 -oOo-

3
4 THE COURT: This is Case Number CR-FP-17-3893,
5 the State of Nevada versus Tennille Rae Whitaker.

6 The defendant is present in Court, is not in
7 custody, and is represented by Mr. Bergeron.

8 Mr. Thompson is here on behalf of the State.

9 And Ms. Macias is from Parole & Probation.

10 The defendant has pled no contest to Count I
11 through IV; all counts of sexual conduct between school
12 employee or volunteer and pupil, a Category-C felony.

13 This is the time set for entry of judgment and
14 the imposition of sentence.

15 Are the parties ready to proceed?

16 MR. THOMPSON: The State is, Your Honor.

17 MR. BERGERON: Yes, Your Honor.

18 THE COURT: There are quite a few people here
19 today, a lot more than we normally have in this
20 courtroom, for a hearing like this. I expect everybody
21 to behave as you should behave in a courtroom.

22 I have authorized the bailiff and the deputies
23 to remove anyone who isn't behaving appropriately.
24 They have my authority to do that, without my having to

137

1 tell them to do so.

2 I understand this case is very emotional for
3 all of you who are here, but you do need to behave
4 appropriately for a courtroom.

5 A Pre-Sentence Report was ordered and has been
6 received. Ms. Whitaker, have you had a chance to
7 review the Pre-Sentence Report?

8 THE DEFT: I have.

9 THE COURT: Did you understand that the
10 Division of Parole & Probation has recommended that I
11 sentence you to 12-to-36 months on each of the four
12 counts, that I run those counts consecutively, the
13 sentences, and that I not place you on probation?

14 THE DEFT: Yes, Your Honor.

15 THE COURT: Mr. Bergeron, did you see any
16 errors or omissions in the Pre-Sentence Report?

17 MR. BERGERON: I did, Your Honor.

18 THE COURT: Ms. Whitaker, you can have a seat.

19 MR. BERGERON: May I approach?

20 THE COURT: Yes.

21 MR. BERGERON: May I proceed?

22 THE COURT: Go ahead.

23 MR. BERGERON: Your Honor we're in receipt of
24 the Presentence-Investigation Report, dated September

138

1 17, 2018. I've provided a copy to my client. She read
2 through it. She has no corrections to make to the
3 report.

4 The corrections that I have to make to the
5 report are largely legal in nature. And, consequently,
6 I've provided both the State and you copies of the
7 statute -- subsequent statute.

8 If you turn to page 3 of the Pre-Sentence
9 Investigation Report, down to the paragraph that says
10 "Summary and Conclusion?"

11 THE COURT: Yes.

12 MR. BERGERON: It notes that she is a low-risk
13 to re-offend. And then it notes, at the same time,
14 "her need for treatment is as high as it is overdue."

15 The problem with that statement is she had been
16 in counseling for 12 months, maybe, at the time this
17 was written. That is factually incorrect. It's not
18 overdue at all.

19 In fact, as the Court looks at what defense
20 counsel has provided, you will see that she has done at
21 least somewhere around 14 months' treatment, 62
22 sessions, all in Reno, making the efforts to drive to
23 Reno.

24 THE COURT: I am aware of that. I thought that

139

1 statement came directly out of the psychosexual
2 evaluation.

3 MR. BERGERON: That's possible, Your Honor. I
4 read that as by the author.

5 THE COURT: I was reading it as coming from Dr.
6 Ing.

7 MR. BERGERON: I appreciate that.

8 THE COURT: Doctor Ing, or Mr. Ing.

9 MR. BERGERON: I appreciate that. So as far as
10 it is from Dr. Ing, and the initial psychosexual, I
11 don't have any objections to this.

12 THE COURT: That's where I thought it came
13 from.

14 MR. BERGERON: I appreciate that. If you turn
15 to page 5, and you look at Offense and Disposition, it
16 refers to the offense: A school employee or volunteer,
17 in position of authority, 21 years of age or older,
18 engaging in sexual conduct with a pupil -- this states
19 16 or 17.

20 So it's noted. They're noting the statute, and
21 they're using the term "pupil," and they're doing it
22 according to -- that's correct, because the statute
23 does state "pupil."

24 The problem I begin to have with the

140

1 Presentence-Investigation Report is, it starts out
2 using the word "pupil" on the offense synopsis. And I
3 counted about 12, 13 references to "pupil," "student,"
4 or "student aide."

5 Now, I'm looking for a little guidance from the
6 Court here on how to correct that, because the statute
7 says "pupil." Factually, two were student aides, two
8 were not student aides, and were at the high school a
9 block away. So I'm not quite sure how it should be
10 referenced in the PSI.

11 Factually, two were student aides. And legally
12 it should be the term "pupil." And, regrettably, when
13 I look at the chapter, the chapter doesn't define
14 "pupil" or "student."

15 And if you look at the statute that I provided
16 you and Mr. Thompson, you will see a subsequent statute
17 that applies to empirical material. We're taught to
18 read statutes in conjunction with one another, in order
19 to determine meaning and what the legislature meant.

20 And NRS 201.550 references sexual conduct
21 between certain employees of college or university and
22 student. So, clearly, they use "pupil," and
23 distinguish from "student," which puts me in a little
24 bit of a precarious position when I'm trying to correct

141

1 this PSI. Because if we say "student aide," that's
2 factually incorrect as to two of the pupils, in the
3 law.

4 THE COURT: Did you look at the legislative
5 history previous to these statutes -- it looks like
6 they were passed and then changed at similar times --
7 to see if the legislature talked about those two terms?

8 MR. BERGERON: No. And there may be a lot I
9 didn't do, because this case just keeps cascading and
10 cascading, factually, the further we get away from the
11 arraignment, waiving the Prelim, the second
12 arraignment, and now the sentencing. And, quite
13 frankly, there's a lot I would like to do. But the
14 fact is, I don't even think I can keep half of it
15 straight today. And that's just me being particularly
16 honest with the Court.

17 THE COURT: Okay.

18 MR. BERGERON: But they obviously used
19 "student" in the context of a college student. And
20 they obviously used "pupil" in the context of high
21 school. But half the alleged victims are not pupils,
22 and the other half are student aides. So it's creating
23 quite the dilemma for me, just for purposes of making a
24 record. And I think I'm going to have to do that

142

1 today.

2 THE COURT: You're going to have to go through
3 each one. Because of the use of the initials, it's
4 difficult for me to keep it straight, as well, Mr.
5 Bergeron.

6 MR. BERGERON: Yes.

7 THE COURT: You're going to have to go through
8 each one. Because of the use of the initials, it's
9 difficult for me to keep it straight, as well, Mr.
10 Bergeron.

11 MR. BERGERON: Yes. I had it all straight
12 until I started reading the PSI. And that's not an
13 insult to anybody who wrote the PSI, it's just so many
14 people are referenced by their initials only, out of
15 respect. But I found myself having to relabel everyone
16 again. And I don't have the luxury of knowing them by
17 face.

18 MR. THOMPSON: We're not talking about leaving
19 the terms there to be used in the defense synopsis.
20 This is just to give you an overview of what the facts
21 are in the case. They can use the term "student" and
22 "pupil" and use that interchangeably.

23 I guess, under the law, we use "pupil" and it's
24 got this definition. But under the defense synopsis,

143

1 we're just talking about what happened in the case, to
2 give you an idea of what happened.

3 It's not a legal pleading, and so we're not
4 that particular about the terms that are used in the
5 defense synopsis; otherwise, the PSI record is going to
6 have -- (unintelligible) -- I understand and I respect
7 it. If he wants to make the change whenever they're
8 referencing "student," I would object and say that that
9 should be "pupil," that's fine. I don't care if he
10 wants to -- (unintelligible) -- at any point. But I
11 don't -- it's not a legal -- (unintelligible.)

12 THE COURT: A "student aide" distinction seems
13 more important, Mr. Bergeron. But if you're asking for
14 these changes, you can make them.

15 MR. BERGERON: You know what, Judge? The
16 Nevada Supreme Court said I have to address this right
17 now or I lose it.

18 THE COURT: That's right.

19 MR. BERGERON: I prefer that ruling never
20 occurred, and we could just go to argument and I could
21 make a record between "pupil," "student," and how the
22 legislature uses it. I prefer not to have to do this
23 at all; and, quite frankly, the only reason I'm doing
24 it is because if I don't do it now, I lose it.

144

1 THE COURT: I understand that. I just said you
2 could. So let's do it.

3 MR. BERGERON: I'm just saying, I don't mean to
4 treat it as --

5 THE COURT: Okay. Let's do it.

6 MR. BERGERON: It's actually twofold, Your
7 Honor. Line 2 says, "High school pupils." I don't
8 really have a problem with that, but the statute uses
9 the term "pupils."

10 Line 3 describes "a 17-year-old male pupil."

11 Line 5, at the very end, calls them "multiple
12 pupils."

13 Now the 17-year-old, again, is a student aide.
14 So on line 2, I'm not sure that's correct, statutorily
15 correct. Should I be correcting that -- I'm looking
16 for guidance. Should I be correcting that now?
17 Because if I don't, I can't make the distinction later.
18 Can we put "pupil/student aide?"

19 THE COURT: Mr. Thompson, do you agree that the
20 17-year-old reference there was a student aide?

21 MR. THOMPSON: (Unintelligible.)

22 THE COURT: All right. So I'm going to change
23 that to say "17-year-old male pupil/student aide."

24 What else, Mr. Bergeron?

145

1 MR. BERGERON: Likewise with line 2, "High
2 school pupils/student aides."

3 THE COURT: All right.

4 MR. BERGERON: Please bear with me.

5 If you go to the fourth paragraph, "In
6 addition, there is a program in place in which high-
7 school-age students." Again, replace that with "pupil/
8 student aides."

9 THE COURT: Any objection, Mr. Thompson?

10 MR. THOMPSON: No.

11 MR. BERGERON: Are assigned as elementary
12 school teachers -- same line -- as a teacher's aide."
13 We switch a third time: "Pupil, to "student," to now
14 "aide."

15 THE COURT: Well, they wouldn't be assigned as
16 the elementary school teachers as a pupil. So it seems
17 like "teacher's aide" is accurate there.

18 MR. BERGERON: I think that's right.

19 "If the student --" and continue reading --
20 "the student has the required credits for graduation.
21 That would be "pupil." I guess it would be "student
22 aides," if they have the credits for graduation. Are
23 they still a pupil at that point?

24 THE COURT: I don't know. I didn't write the

146

1 statute.

2 MR. BERGERON: Yeah, I wouldn't take credit for
3 it either, Your Honor.

4 THE COURT: I have changed it to read "pupil."

5 MR. BERGERON: Okay. Go to the next paragraph.
6 It reads "student" again. So perhaps "aide" -- 17 --
7 as the -- well, "pupil/student aide," because he's
8 still a pupil, even though he has the requisite amount
9 of credits to graduate.

10 THE COURT: I have changed it to "pupil/
11 student aide."

12 MR. BERGERON: Go to page 8, Your Honor. Page
13 8, third paragraph down, second line from the bottom of
14 the paragraph, refers to "teacher's aide." I don't
15 have an objection to "student aide." But if we're
16 being consistent, even though he has the requisite
17 number of credits to graduate, I'm not sure he's a
18 pupil, but I concede he's a student aide. I don't know
19 how you want to handle that.

20 THE COURT: You want it to stay "student
21 aide," instead of "teacher's aide?" Because he
22 wouldn't be assigned --

23 MR. BERGERON: "Pupil/aide." It's going to be
24 an issue, Your Honor, that's all I'm saying. If I'm

147

1 going to preserve that issue, like I want to preserve
2 that issue, I've got to object to it now, so --

3 THE COURT: Okay. So all I'm telling you is it
4 says "he was reassigned to work with his aunt, as a
5 teacher's aide." He wouldn't have been reassigned to
6 work as a pupil, so I will change it to "student aide."

7 MR. BERGERON: Thank you, Your Honor.

8 On page 9, first paragraph, "Ms. Whitaker later
9 indicated there was a rumor of her having an affair
10 with a student." I would strike the whole sentence; it
11 revolves around a rumor. But since it's coming from my
12 client's mouth, it should either be "pupil" or "aide."
13 Or, perhaps, since it's a quote -- but it's not in
14 quotes.

15 THE COURT: I don't know what she said.

16 MR. BERGERON: Well, it appears in quotes.

17 THE COURT: Right. But I don't know whether
18 she said "student" or "pupil."

19 MR. BERGERON: Presumably, if they're going to
20 quote one word and not the other, she didn't use that
21 term.

22 THE COURT: I don't know.

23 MR. BERGERON: I don't know, either. May we
24 put "pupil" or "aide?"

148

1 THE COURT: Mr. Thompson?

2 MR. THOMPSON: I think it should say "student."
3 But if you want to put "pupil" or "aide" or "student,"
4 I don't care.

5 THE COURT: I'm going to put "student/pupil/
6 aide."

7 What else, Mr. Bergeron?

8 MR. BERGERON: Your Honor, the remaining -- I
9 had them marked -- indicate: a) I was marking all of
10 them because they were used in different terms.

11 I have no objection to them if Mr. Thompson
12 would like them all to read -- not all of them are
13 aides. If Mr. Thompson doesn't have an issue with it,
14 I won't object to any more of those terms.

15 THE COURT: Mr. Thompson?

16 MR. THOMPSON: No.

17 THE COURT: Anything else, Mr. Bergeron?

18 MR. BERGERON: Just a little bit, Your Honor.
19 There's a rumor referenced about an affair with an
20 adult, that I would like to see stricken. And I'm
21 struggling to find it. I'd ask for patience, Your
22 Honor.

23 THE COURT: Yes.

24 MR. BERGERON: It's page 6, to include the top

149

1 sentences of paragraph -- about halfway down, starting
2 with the words "that there had been rumors."

3 THE COURT: Okay. I found it.

4 MR. BERGERON: I would request that be
5 stricken. 'I don't believe that's something that should'
6 be considered. It's not honestly a fact or not; it's
7 not a rumor.

8 THE COURT: Well, it's not a crime, anyway,
9 assuming the man referenced there is an adult.

10 Any objection, Mr. Thompson? I'm going to
11 strike that sentence, then.

12 MR. THOMPSON: No.

13 MR. BERGERON: Your Honor, there are several
14 descriptions of "the high school," then "the combined
15 elementary school." I can go through each one, but
16 there seems to be no consistency. It's important,
17 because my client didn't teach at the high school. She
18 teaches at the elementary school. Do you want me to go
19 through each one?

20 THE COURT: That's up to you, Mr. Bergeron.
21 I'm aware she taught at the elementary school, and that
22 these were high school pupils. I believe it's called
23 Wells Combined School, but --

24 MR. BERGERON: So I'll address that in

150

1 argument.

2 At the end of the report, there's a reference
3 for "deviation justification."

4 THE COURT: Yes.

5 MR. BERGERON: It states, "The defendant in
6 this case was in a coveted position of authority."
7 That's just not the facts, Your Honor. I can address
8 that in argument, if you want.

9 THE COURT: That seems more appropriate for
10 argument. This is the opinion of the lieutenant who is
11 in charge of Parole & Probation, and I recognize it as
12 such.

13 MR. BERGERON: But they make it part of the
14 PSI. Should I address it in argument? Or do I need to
15 make a record now? So I guess I'll just make the
16 record that I request the change.

17 THE COURT: That's fine. I'm reading this as
18 his opinion. You can argue it at the time you make
19 your argument.

20 MR. BERGERON: Regarding the whole statement?

21 THE COURT: It's his opinion, the presentence
22 writer's, if they deviate from their scale, have to
23 explain why they're deviating. And that's how I'm
24 reading it: this is why their recommendation deviates

151

1 from the scale.

2 MR. BERGERON: I understand. I'm not trying to
3 be argumentative, Your Honor, I'm just trying to make a
4 good record.

5 THE COURT: Me, too.

6 MR. BERGERON: There's a subsequent filing from
7 the Division of Parole & Probation, from
8 September 25th, and it references: "To the Honorable
9 N.A. Porter. I request that you see the attached
10 victim-impact statement."

11 THE COURT: September 26th?

12 MR. BERGERON: September 25th. It was filed
13 September 26th.

14 Your first name is misspelled, just for
15 identification.

16 THE COURT: I have a couple filings on
17 September 26th, both entitled -- well, no, one says
18 "Notice of Victim-Impact Statement."

19 MR. BERGERON: There's actually three.

20 THE COURT: No, it's not one of them.
21 That's not what I'm looking at. If you want to come
22 forward and show me what you have, that might help.

23 MR. BERGERON: Well, Your Honor, I'm
24 referencing that one. But the objection that I'm

152

1 making applies to all, provided they're victim-impact
2 statements provided by Parole & Probation.

3 THE COURT: I'm trying to decide if this is
4 even in my file.

5 MR. BERGERON: It references --

6 THE COURT: Yes. Well, it's received by the
7 Elko County District Attorney. That's not showing it's
8 filed into the court; that's the District Attorney's
9 stamp.

10 MR. BERGERON: In lieu of that, Your Honor,
11 while we're trying to figure that out -- So as long as
12 they were provided to Mr. Thompson, then Mr. Thompson
13 decided to forward them to the Court, I'm just going to
14 allow you to determine who's the victim and who's not,
15 and the like.

16 THE COURT: Well, I'm trying to decide if I
17 even have that, Mr. Bergeron.

18 MR. BERGERON: Well, I don't think you do,
19 because you correctly noted, Your Honor, that this has
20 a receipt stamp from the D.A., not a file stamp.

21 MR. THOMPSON: I believe you received it from
22 the D.A.'s, also.

23 THE COURT: I do have that. It was attached --
24 it's not filed, it was submitted to me. I don't even

153

1 know where it came from; it's just loose, sitting in
2 the file.

3 The one I had has last names, things are not
4 redacted from it, but it has not been filed.

5 So I can tell you, Mr. Bergeron, I have read
6 every word of every statement in the file. I recognize
7 that there are people who have submitted letters or
8 signed letters that are not victims, pursuant to the
9 statute, and so I'm not considering them to be victims.

10 I understand -- you can see all these people
11 here. We have a lot of people who are interested in
12 this proceeding. The victims get to make an impact
13 statement, and that's what I'm considering.

14 MR. BERGERON: I understand, Your Honor. And I
15 just want to make sure that we're all talking about the
16 same statement.

17 THE COURT: We are. It's not filed. The Court
18 is showing something was filed under seal on
19 September 26th, but I don't have anything in the file
20 filed under seal on that date.

21 MR. BERGERON: I also have a Notice of
22 Victim-Impact Statement filed on the 1st of October.

23 THE COURT: All right. I have that.

24 MR. BERGERON: Also served on the 1st --

154

1 THE COURT: I have that.

2 MR. BERGERON: -- by mailing it to me at 432
3 Court Street, Reno, Nevada.

4 I don't particularly care for that, Your Honor,
5 because that looks like a tactic so that I don't know
6 what's in it. I'm clearly not going to get it if I'm
7 here on the 1st. I'm not going to get it if I'm here
8 on the 2nd. I'm clearly not going to show up the 3rd,
9 which is only the third mailing day. And that looks
10 like service that's intended to be filed and intended
11 to receive on the 4th. That actually looks a little
12 deceptive to me. It's possible that it's in my office,
13 but I'm not in my office.

14 THE COURT: Mr. Thompson, would you like to
15 address that?

16 MR. THOMPSON: We received it on the 1st, so we
17 filed it on the 1st. Mr. Bergeron came over to my
18 office this morning and we gave him a copy of it. He
19 said he'd been in town, and we gave him a copy of it
20 this morning.

21 THE COURT: I didn't know he was in town this
22 week. Did you know that?

23 MR. THOMPSON: I did not know, until he showed
24 up yesterday.

155

1 THE COURT: I don't think there was any evil
2 intent here, Mr. Bergeron.

3 MR. BERGERON: And I didn't know it was Mr.
4 Thompson. I'm not sure it makes very clear that it's
5 Mr. Thompson. I see it was sent to Parole & Probation;
6 I see it was sent to you; I see it was mailed to me;
7 and there's a signature of -- I don't know if that was
8 the social worker. I don't know who that is.

9 So Mr. Thompson did provide a copy to me.

10 With that, Your Honor, I believe all my
11 corrections are made.

12 THE COURT: Mr. Thompson, did you see any
13 errors or omissions in the Pre-Sentence Report?

14 MR. THOMPSON: I just had one thing I wanted to
15 bring up. The selection scale from -- the Department
16 of Parole and Probation's selection scale, you'll note
17 that her raw score was 33, that they check marked the
18 one for the 17-27 range, at 12-36. I discussed that
19 with Ms. Macias. That's not an error, that was part of
20 the deviation. That was intentional for them to do in
21 the --

22 THE COURT: I'm glad you corrected that,
23 because I wondered about that myself.

24 MR. BERGERON: Can you repeat that? It took me

156

1 a minute to get to the page that --

2 MR. THOMPSON: So the raw score offense is 33.
3 So it should be in this range, which would be 12-to-34
4 months, but they checked the 12-to-36 months. And that
5 was an intentional --

6 MR. BERGERON: Thank you.

7 MR. THOMPSON: With that. I don't have any
8 corrections.

9 THE COURT: Ms. Macias, do you have anything to
10 add?

11 THE DIVISION: No, Your Honor.

12 THE COURT: There was a psychosexual evaluation
13 conducted. Ms. Whitaker, have you had a chance to
14 review that evaluation?

15 THE DEFT: Yes, I have, Your Honor.

16 THE COURT: Mr. Thompson, have you reviewed
17 that evaluation?

18 MR. THOMPSON: I have.

19 THE COURT: Ms. Macias, I'm assuming you did,
20 as well, because it's quoted in your report.

21 THE DIVISION: That's correct, Your Honor.

22 THE COURT: Starting with you, Mr. Bergeron, on
23 your argument and position regarding sentencing.

24 MR. BERGERON: You've already heard part of my

157

1 argument, Your Honor, but I'm going to repeat it, to
2 see if I can be a little more clear.

3 I'm going to try to be as polite and courteous
4 as I can. But as the Court has noted, Mr. Thompson has
5 some difficult topics, and there's a lot of emotion on
6 this case. So know that if something comes out a
7 little wrong, it's unintentional.

8 It's arguable that none of these people were
9 her pupils. I disagree with Mr. Thompson's assertion
10 that a teacher's aide is a pupil. But two were,
11 clearly, not even teacher's aides. They're not on the
12 same campus. And that's 15 years' worth of crimes.

13 Now, Mr. Thompson has been polite, he's been
14 courteous, he's been easy to work with. I can't say
15 enough kind things about the man. But we're having an
16 impasse about that. And we've had that impasse for
17 quite a while.

18 My client received a lot of media attention,
19 and it wasn't just relegated to Elko. There's at least
20 one cite I found in Boston -- and I'm going to keep it
21 short. I found another cite in -- I believe it was
22 Oxford, or England -- it was England. I just don't
23 know if it was Oxford or not. She's had international
24 media attention.

158

1 And I'm in the position, when I'm a criminal
2 defense attorney, to advise someone when to go to
3 trial, and advise somebody when not to go to trial.
4 And I beat that drum: "Let's go to trial." But she'd
5 been beat down so much, she didn't want to.

6 Part of the problem I have with what Mr.
7 Thompson has done here is, there are at least 15 years'
8 worth of crimes that she didn't commit, that shouldn't
9 have been charged. It should have been motioned out
10 before the Court at trial. But, as you well know,
11 that's not my decision. But I do think that's what is
12 going on. And I don't like saying that, but it is.
13 There's no way around it.

14 Additionally, a student aide doesn't get a
15 grade, and they're over the age of consent. And they
16 don't even get a grade for attendance. They keep track
17 of attendance. But as I read to you before, they have
18 to have the necessary credits to graduate.

19 So in order for my client to be guilty of
20 anything, which is why I so strongly urged her to go to
21 trial -- she just wants to put it behind her -- but it
22 puts us in a precarious position. Because now I'm
23 sitting here trying to make a record that she wasn't a
24 teacher, even though she pled no contest and took

159

1 advantage of the negotiation.

2 Charging people with crimes they did not
3 commit, to get people to plead guilty or no contest to
4 crimes you believe they commit, that's unacceptable.

5 Now, here's what I think: I think Mr. Thompson
6 genuinely believed that there's no misconduct here,
7 because I don't think the man would do anything
8 intentional like that. But the net result is, I've got
9 to bring that up. And it's completely contrary to
10 anything I know about Mr. Thompson. And since this
11 case has droned on for almost two years, I think I've
12 gotten to know him pretty well.

13 But I still think that's misconduct. And he's
14 going to disagree with me -- and I don't blame him for
15 disagreeing with me -- but they are not her students --
16 thank you -- are pupils. Pupils. I've even got to
17 remind myself not to say "pupil" synonymous with
18 "student."

19 They are not defined. Thank you, Nevada
20 Legislature. At least give us a definition of what a
21 "pupil" is. Because, otherwise, how do I know? Go to
22 the dictionary? That's almost laughable, because legal
23 definitions vary from dictionary definitions immensely.

24 And I'm going to take time in between to review

160

1 my notes, if you don't mind, Your Honor --

2 THE COURT: That's fine.

3 MR. BERGERON: So two worker aides, and the
4 other two went to high school, I believe, a block away.
5 It could be closer.' I'm not trying to split hairs
6 here, I'm trying to remember. It's been so long ago, I
7 don't remember.

8 Again, they did not receive a grade; they have
9 sufficient credits to graduate; all of them then go to
10 the high school next door.

11 Attendance was kept by the secretary in the
12 principal's office, not Ms. Whitaker; and the
13 principal's office submitted them, the attendance
14 records -- I don't know -- I guess so they can put them
15 on their -- so the pupils can put them on their college
16 application? They're not getting a grade; I don't know
17 how much it matters at that point. When I look
18 at this statute, it's pretty clear to me, and when I
19 look at other statutes throughout the country, these
20 statutes have been held unconstitutional in Arkansas,
21 unconstitutional in Alabama. I think just one was held
22 constitutional in Utah. There was yet a third, I think
23 maybe it was Arizona, they were held unconstitutional.

24 And because wording differs between states,

161

1 it's important to really analyze this, because it could
2 be very much unconstitutional.

3 Now, when a person pleads no contest, they
4 waive their state appeal's rights, but they don't waive
5 their Constitutional Rights. I researched it; they
6 don't do it. But I have to preserve it. So I'm going
7 to bring up some constitutional issues I have with the
8 statute.

9 I think that most statutes that are held
10 constitutional are done so because the State has a
11 rational or compelling interest to not allow a teacher
12 to use their influence over a pupil.

13 But that's not what this says. This actually
14 says: "If they are a volunteer, an employee, or a
15 teacher, they cannot have a sexually-intimate
16 relationship with somebody who is 16 years of age or
17 older."

18 I don't really see how an employee -- I don't
19 see how a cafeteria worker, or a janitor -- maybe a
20 football coach or a cheerleading coach, they have some
21 authority over whether you make the team. But what's a
22 cafeteria worker going to do? Give you more mashed
23 potatoes? What's a janitor going to do? Wash your
24 locker? I mean, that's way overbroad.

162

1 And it gets more confusing from there: "Who
2 has not received a high school diploma or GED." So
3 you're not allowed to have a relationship with a
4 16-year-old, unless they had their diploma or their
5 GED. Because they are pupils -- but are they even
6 pupils at that point if they had their GED or their
7 diploma?

8 I suppose you could get your GED. I suppose
9 you could go in there and take extra classes. And this
10 is part of why I just wanted to try this case, because
11 now it's a mess. Now all I will see is a mess.

12 I suppose you could still take classes, but
13 it's highly doubtful, which is why this is so poorly
14 written.

15 It gets worse. It references "is or ever was a
16 student." So it's internally consistent: If they have
17 a GED, you can; but even if they have a GED, you can't,
18 because they were your student.

19 Even more, it's overbroad. It's not only
20 ambiguous, it's overbroad, because "is" or "was"
21 probably means that a 52-year-old man and a 46-year-old
22 woman couldn't have a relationship.

23 And that's a substantial right's issue. The
24 legislature cannot tell people who they can and they

163

1 cannot have a relationship with, whether it's a
2 boyfriend relationship, whether it's a sexually
3 intimate relationship, whether it's a husband/wife
4 relationship.

5 But it gets worse. For everybody else, the age
6 of consent is 16, and if the basis for the statute, the
7 constitutional basis for the statute, is to protect
8 students, then there's a compelling interest, because
9 there's an equal-protection problem. And it's not
10 because some random person can have a relationship,
11 it's because it only applies to teachers.

12 In today's day and age, students go and they do
13 internships for people, and they get credit for doing
14 internships.

15 Same situation here, except they might even get
16 a grade based on that internship. They could intern
17 with you. And if you chose to have an intimate
18 relationship with that person, you're certainly in a
19 position of authority, you're certainly sought out to
20 have that position. You're not guilty. Mr. Thompson,
21 he's not guilty. Mr. Bergeron, he's not guilty. It's
22 not that they don't have an interest, it's that they
23 are applying the statute unequally.

24 The police officers, you can intern with them.

164

1 And if they did it, they wouldn't be criminally liable.
2 We can go on forever.

3 The people who wrote this law, the Governor who
4 signed it, you can do an internship there, and there
5 would be no criminal liability.

6 You can go to the congressional level, you can
7 intern for congress. No consequence.

8 You can be an intern for the President. No
9 consequence.

10 I guess only teachers are subject to this rule?

11 I can understand it being held constitutional
12 on a compelling-interest standard, and the standard
13 that we want to protect vulnerable people. But they
14 weren't her pupils. They weren't even her pupils.

15 And the same standard applies to all positions
16 in authority, and yet it's not applied. But I think
17 it's going to fail. I think it's going to fail on
18 equal protection. And not because your average person
19 can do it, because everybody else in a position of
20 authority can do it.

21 I had to ask myself, Your Honor -- I looked up
22 "combined schools," and "combined schools" are --
23 because I never heard of it, quite frankly -- "combined
24 school" is ages seven through 12. They are not K-6

165

1 through 12. The combined school is referencing a high
2 school, not where Ms. Whitaker taught. She taught at
3 the elementary school.

4 And the student aide position is a volunteer
5 position. They come and volunteer for her.

6 I had to ask myself: Is six blocks better? Is
7 a mile better? Five miles? 10 miles? Is Carlin
8 better? Is Reno better? How far do you have to travel
9 to get on a different campus for this to be legal?

10 What is this? This is a woman who committed
11 adultery, who used bad judgment. There are a lot of
12 men out there that could have done the same thing: go
13 out and buy a sports car, date a younger woman, happen
14 to not be teachers. And guess what? No criminal
15 liability, whatsoever. That's equal protection.

16 And I bring it up to preserve constitutional
17 issues, Federal Constitutional issues. I don't believe
18 there is a State remedy here, but there is a Federal.

19 I think she has suffered enough. She's no
20 longer a teacher. She's participated in counseling for
21 15 months. She's done 62 sessions with her husband.
22 She did that in Reno, so that includes drive time,
23 driving back. She's suffered public humiliation
24 nationwide, internationally. She's lost her

166

1 reputation. She's lost her job. She's lost her
2 respect of the community. I'm pretty sure she'd
3 compact to another county, if you gave her probation.

4 Not only is she a low risk, she's the lowest
5 possible risk. There was a time we wanted to know
6 whether somebody was not just not a high risk to
7 re-offend, but we wanted to know: Are they a moderate-
8 to-high? Are they a moderate? Are they a low-to-
9 moderate? Are they a low? She's a low. She's not
10 even close to re-offending.

11 In fact, if you look at Dr. Ing's report, he
12 says she's the least likely to re-offend out of anybody
13 he's ever treated. He's only been doing this 30 years.
14 I like to think I've been doing it a long time, but
15 then I compare myself with Dr. Ing, and he's been doing
16 it a lot longer than I have.

17 I didn't even want to address this, Your Honor,
18 and I'm going to address it tangentially, and then I'm
19 going to stop, because I know there's a tragedy that
20 occurred in this community, and there's a grieving
21 family.

22 And I know that young man felt some guilt, and
23 certainly my client feels guilt. And I believe you
24 know who I'm referring to.

167

1 And having grown up in rural Nevada --
2 Hawthorne, specifically -- I notice there's a pretty
3 high rate of that occurrence. I'm speaking in
4 vagueness. I hope that's okay.

5 THE COURT: I know what you're referring to.

6 MR. BERGERON: There's also some distance
7 between the contact. I'm not talking proximity of
8 time, I'm talking -- again, I'm talking vague,
9 because -- not just for the Court, not just for Mr.
10 Thompson, but out of respect to the family, there's
11 20 months apart. 20 months apart.

12 Dr. Ing also noted that she was clearly not a
13 predator.

14 Some of the problem that I had encountered in
15 working on this case is that there's a lot of rumors
16 going around, and a lot of rumors getting into the PSI.
17 It just doesn't make a whole lot of sense to me.

18 He referred to her as pathetic, not a predator,
19 and that's because what he's conveying there is she's
20 not a risk to re-offend.

21 As a side note, my client has always indicated
22 to me that the young men involved initiated contact
23 with her, which is consistent with them volunteering to
24 be student aides.

168

1 I'd just like to go over the years -- the laws
2 regarding years of consent, the years of majority, and
3 the like. If someone is 16, that is the age of consent
4 for everybody except teachers, unless they are your
5 pupil and they have a GED or a diploma.

6 But, again, if they were far, or ever was your
7 pupil, then it doesn't matter how much time passes,
8 according to go that statute. That's why it's vague
9 and ambiguous.

10 And I don't understand why somebody who has a
11 GED is somewhat less deplorable than somebody who
12 doesn't. I mean, you're either 16 and vulnerable, or
13 16 and not.

14 And, quite frankly, I'm not in love with the
15 idea that 16 is the age of consent. But if we want to
16 change it, then get a petition together, we send it, we
17 get it on the ballot, and we all sign it, saying, "Up
18 the age of consent. We don't like the fact that it's
19 the age of consent."

20 And it's pretty clear to me that there are a
21 lot of people in this community that are angry at the
22 age of consent, and are directing that anger at my
23 client.

24 And I understand it, because I really don't get

169

1 the whole notion that a 16-year old is somehow -- I
2 don't know -- mature enough. But it's legal at 18.
3 You can join the military.

4 Going back to 16, and the 18 being the age of
5 majority, you can enter into a contract. I guess
6 unless it's a necessity, then you can, what, enter into
7 a contract at 16? If it's a marital contract, you can
8 marry at 16, with parental consent. Or you can marry
9 at 18.

10 You can fight for your country at 18. You can
11 vote at 18. You can't drink a beer until you're 21.

12 I mean, these exceptions in ages -- while I can
13 see why they're there, it's starting to be a little
14 hard to keep track of.

15 And I understand the presumption is: everyone
16 knows the law, or ignorance of the law would be a
17 defense in every case.

18 But this is not just knowing the law; this is
19 contradiction, exception, swallowing the rule of when
20 it's allowed, when it isn't.

21 Why is that important? Nine of the 12 counts
22 involve a former student aide. A former student aide.
23 Am I recalling that correctly? Excuse me. 35 years of
24 the complaint involved a former student aide.

170

1 So that "is" or "was" a student provision in
2 the statute is telling somebody who's already
3 graduated, already had the necessary credits to
4 graduate -- shouldn't say "already graduated," because
5 I think he's still doing the student internship. So I
6 don't want to mischaracterize that. But the
7 teacher/aide, student/aide relationship, no longer
8 exists.

9 They are actually telling people whether they
10 can have a relationship after somebody -- or while
11 somebody is graduating from high school, that has the
12 necessary credits to graduate from high school, that is
13 doing or has done an internship, because previously
14 there was a student/aide relationship? I don't think
15 anybody is going to get that.

16 You could make the ages more closely related,
17 but the statute says if you're over 21. So a
18 21-year-old who has a sexually-intimate relationship
19 with a former student aide, who has the necessary
20 credits to graduate, who is volunteering to be that
21 student aide, while at least he was that aide, if they
22 decide to have a relationship after the student/aide
23 relationship is over, you face one-to-five years for
24 every act? That's archaic. I sincerely believe that.

171

1 If I take off my defense attorney hat, I put on
2 my logic hat, and I think to myself: That doesn't make
3 any sense.

4 I also take off my defense attorney hat, and I
5 put my taxpayer hat on. And I think: This is the last
6 person I want in prison. Are you kidding me?

7 I grew up with some pretty nasty people. They
8 commit murder, they commit robbery, they commit armed
9 robbery, they commit kidnapping. You know the drill.

10 And I stand next to some of them and I think:
11 This guy is a good candidate for prison. Especially
12 since I get to hear some of the statements you don't,
13 and Mr. Thompson doesn't.

14 I have to take them in my office occasionally
15 and go, "What are you talking about, you want me to
16 argue for probation? This is a stip-to-prison case, or
17 you're going to get hammered."

18 And I'm supposed to stand next to her and say,
19 "I can understand why she might get prison?" I don't
20 mind keeping her in custody. She's a low risk to
21 re-offend.

22 She's been in counseling for 15 months. She's
23 put in her time. She's been humiliated. She's been
24 humiliated internationally. And I don't want to pay

172

1 for it. And I say that sincerely, as a taxpayer, to
2 heck with being a defense attorney.

3 So, again, I want to make sure I cross all the
4 T's and dot all the I's. I think this is vague and
5 ambiguous -- this statute is vague and ambiguous, as
6 it's applied to this circumstance, because he no longer
7 was a student aide when any of this occurred.

8 So the "is" or "was" provision -- and I'm
9 forgetting the proper term -- it goes on for infinity.
10 And that's not normal. People don't realize that. I
11 think it's a substantial-right's issue. Because once
12 you're above the age of consent, you're now telling
13 people whether or not they can have a relationship with
14 one another.

15 And that is why I also provided you the second
16 statute. Because if you read them in conjunction with
17 one another, what the legislature is saying is that a
18 college student -- I don't know -- can't have a
19 sexually-intimate relationship with the associate
20 professor?

21 Wait a minute. Kids go to college at 19, they
22 graduate at 22, and I call them "kids." They are young
23 adults. And I have tried to coach myself on that.

24 I still think this civil rights era, where two

173

1 black kids tried to enter the University of Alabama,
2 and I had a hard time calling them adults. But you
3 know what? They were adults. They stood on the steps
4 during a time that was pretty significant. They are
5 adults.

6 But this prohibits all college professors. So
7 if I had a cooking class, and my cooking teacher is
8 four years older than me, but I'm still her student, I
9 guess the subsequent statute applies.

10 If I'm in a basketball class, and we're both
11 30, these are so -- I think it's imperpeteria. Is that
12 correct, Judge, the property?

13 THE COURT: Perpetuity?

14 MR. BERGERON: Perpetuity. Hence the reason I
15 didn't go into property law.

16 Is there some sort of petition that has reached
17 the Court, that I don't know about? If the answer is
18 "no," I'm okay with it.

19 THE COURT: It was a letter that was signed by
20 several people. And I recognize that the vast majority
21 of those are not victims, as defined by the statute.

22 MR. BERGERON: I appreciate that, Your Honor.
23 I was going to make a little bit different point.

24 The State -- Mr. Thompson represents the County

174

1 of Washoe, the State of Nevada -- excuse me -- the
2 County of Elko, the State of Nevada.

3 You were elected by the whole community, not
4 just those people. And I think a petition signed to
5 change your mind, I'm not terribly burdened by it, and
6 I don't find the need to address it for too long a
7 period of time. But that's not what a petition is for.
8 A petition is to get a ballot on at the election. You
9 get enough signatures, you get it on the ballot. It is
10 not for this.

11 THE COURT: It's not influencing me, Mr.
12 Bergeron. It's been signed by several people.

13 MR. BERGERON: And I'm just making a point that
14 it's an improper venue for that sort of thing.

15 I want to talk a little bit about teenagers. I
16 was one, once. I know there are a lot of people in the
17 community that know teenagers. And the one thing I've
18 become absolutely certain of is that teenagers lie,
19 sometimes. They lie that -- (unintelligible.) And
20 they don't do it routinely, but they definitely can do
21 it if they think they are going to get in trouble.
22 That's the worst time, right there. That is the worst
23 time to take a statement from a teenager as completely
24 truthful.

175

1 You've got to really scrutinize it at that
2 moment, because you just don't know the influence on
3 them. And a lot of these young men -- trying to refer
4 to them as men, not kids, because they are the age of
5 consent. But they are being questioned by police; they
6 are being questioned by their parents. And there's one
7 little anecdote that stands out. I'm not going to go
8 through them all. I probably would have had to if we
9 went to trial, but I'm not going to go through them
10 all. At one point my secretary called me up, she says,
11 "Do you realize the young men said your client promised
12 her a beer -- him a beer?" My secretary.

13 I go, "Kim, you want to come over? I'll give
14 you a beer." She laughed and said, "No." "How about a
15 six-pack?" She laughed and said, "No." "Okay.
16 12-pack?" "No." I go, "How about a keg?"

17 Now she knows there's no way. She knows how
18 facetious I'm being right now. And I said, "Do you
19 know how stupid that sounds?" Now, I'm not calling
20 anyone stupid, but I'm calling that statement stupid.
21 And she goes, "I see your point."

22 And that is evidence of an attempt to
23 manipulate. In the PSI it's called, "Well, she plied
24 him with alcohol." That's not how it reads.

176

1 This has been rather -- I'm going to finish up,
2 right now. This has been one of the most difficult
3 cases in my career. My client doesn't want to go to
4 trial. I can't get her to go to trial. And if she
5 doesn't go to trial, all of this mess comes up.

6 She doesn't want to go to trial, because she's
7 getting beat up in the media, and she's exhausted. And
8 some of it is probably okay for a gossip column, but
9 not for criminal charges.

10 And I call it -- the over-arching theme of this
11 entire case is "overreaching." The media attention
12 wasn't -- nobody called me. Nobody called me once,
13 even though they knew I was counsel of record. It
14 became apparent to me. I'm a journalist. I created
15 four newspapers. I write for a newspaper, right now.
16 It's just over-reach. It's too much. And clients
17 fold, even when I want them to go to trial.

18 And then the clients that I don't want to go to
19 trial, demand to go to trial. And some have good
20 facts, and some have bad facts. Some have good issues,
21 some have bad issues. And you can imagine which one's
22 which. There's over-reach.

23 And I have a healthy respect for law
24 enforcement, but there's over-reach by the police.

177

1 Eight months' investigation? As part of this trip, I'm
2 trying to bring my wife and kids up to meet dad, or to
3 hang out with dad. Eight months? I didn't have room
4 for it.

5 I was going to bring it in, just to show you
6 how much resources were put into this case, as a prop.
7 I didn't need it, but as a prop. I couldn't fit it in
8 the car. Obviously, in this weather, I couldn't use my
9 truck, so I didn't.

10 But I'm still going to make the point that
11 there's over-reach. There's over-reach by the Justice
12 of the Peace. And I'm not talking about this Justice
13 of the Peace. I'm talking about the Justice of the
14 Peace in Wells.

15 I have seen a restraining order. And I saw
16 what that restraining order looked like. And that
17 restraining order was nothing like any restraining
18 order I have ever seen. It wasn't just a restraining
19 order against Ms. Whitaker, it was against -- a
20 restraining order against her husband.

21 It wasn't designed to keep her away; it was
22 designed to keep her away from -- is it 4-H? -- 4-H.
23 And there's an FFA reference here, and I didn't know
24 if -- I may have made a mistake.

178

1 It was designed to keep Walter, her husband,
2 from driving down the interstate. He only works for
3 NDOT.

4 You're talking about huge ranches. You don't
5 need a restraining order to keep somebody off your
6 property if your home is a hundred yards away from the
7 fence. I mean, that's strange. I don't know how that
8 was granted.

9 You cannot exit the interstate on this exit.
10 You can't drive down this road. When they live right
11 there. And they're not within a hundred feet, they're
12 not within a hundred yards. There's no definition of
13 how far away she or her husband was allowed to go.

14 I'm pretty sure you've dealt with this stuff,
15 Judge. If there's a restraining order against me and I
16 walk into a supermarket, I'm obliged to turn and leave.
17 That's that hundred feet, the hundred-yard reference.
18 No reference to it. It was -- I don't even know how to
19 calculate the distance it covers.

20 And I don't want to beat Mr. Thompson up too
21 much, but we have a disagreement here. I think there's
22 over-reach by the prosecution, as well. I will say
23 clearly that I do not think it's malicious; I think
24 it's a disagreement.

179

1 And I think there's over-reach by Parole &
2 Probation. They are considering things they shouldn't
3 be considering, and they are not including things they
4 should be considering.

5 I certainly didn't see a whole heck of lot of
6 reference to the psychosexual and her low risk to
7 re-offend. Granted, there's a one-liner in there.

8 My client has done her counseling; she's
9 appropriately remorseful; she would like to address it;
10 I'm sure you will see that. It's extensive overkill to
11 put her one day in prison.

12 There's a lot of statements for her first
13 sexual assault. This is not a sexual assault.

14 She wouldn't have done that level of counseling
15 if she wasn't appropriately remorseful.

16 Your Honor, my client would like to make a
17 statement regarding allocution -- I don't mean now, but
18 she is going to a brief one, unless you have any
19 questions of me.

20 I don't believe that she's an appropriate
21 candidate for prison. Please give her probation.

22 THE COURT: Ms. Whitaker, you do have the
23 opportunity to speak. You are not required to, but you
24 are entitled to. Is there anything you would like to

180

1 state?

2 THE DEFT: Yes, Your Honor. I'd ask for --
3 (unintelligible.) I'm truly sorry. I'm sorry to the
4 people, because I'm truly sorry.

5 THE COURT: It's okay for you to address them,
6 Ms. Whitaker, we just need to make sure we get your
7 voice on the recording. It's the box with the red
8 light. You can move that closer, if you want to turn
9 to speak to the people in the gallery.

10 THE DEFT: I'm so sorry for my actions. I know
11 they affected you. (Unintelligible.) I'm ashamed for
12 it. I'm truly sorry for betraying your trust. This
13 past year I have been under so much fire.
14 (Unintelligible.) I feel like I'm sorry, so that -- so
15 I ask your forgiveness. (Unintelligible.) I'm so
16 sorry. I'm so sorry. And I love each and every one of
17 you. And -- (Unintelligible.)

18 That's all I want to say.

19 THE COURT: Thank you. You may be seated.

20 Mr. Thompson.

21 MR. THOMPSON: Thank you, Judge. I have a bit
22 of a cold. I want to respond to a couple of things
23 that Mr. Bergeron brought up.

24 Firstly, when he said that we had charged -- or

18)

1 mentioned 15 years of a crime, I have no idea what he's
2 talking about there.

3 The criminal Information clearly shows that
4 we're alleging incidents that occurred between the 1st
5 day of September, 2015, through the 6th day of June,
6 2017. That's not 15 years. I don't know where he's
7 coming from, as far as that goes.

8 With regard to his interpretation of what the
9 statute 201.540 means, an interesting argument for
10 sentencing. I completely disagree with how he reads
11 the statute.

12 All of these boys, in our view, complied
13 especially with the statute, because it says, "With
14 whom a person had contact in the course of performing
15 his or her duties." That's under C(2), which talks
16 about basically you being in the school. And the
17 unique school that they have, one principal covers all
18 the schools. That's why they call it the Wells
19 Combined School.

20 All of these guys were pupils, students. None
21 of them had graduated at the time these incidents had
22 occurred.

23 So they were all attending the school that she
24 was employed at, and she had contact with them as part

182

1 of her duties either as a students' aide, or a
2 teacher's aide, or through other activities.

3 So they all would comply with the statute.
4 There is no issue there.

5 Ms. Whitaker, she had sex with these four boys.
6 Some on multiple occasions, others a single occasion.
7 And one of the things that people really want to know a
8 lot of times is: Why? And we see a little bit of that
9 in a psychosexual evaluation. And, by the way, Mr. Ing
10 is not a doctor. He has a Master's Degree, and a
11 Bachelor's, and he's a Licensed Marriage & Family
12 Therapist. He's not a doctor. So I will just refer to
13 him as Mr. Ing.

14 He says -- with regard to the crime, he says,
15 "When we examine the mental-health components of the
16 offense, we see an example of the perfect storm of
17 criminogenic variables. So what happened was, she had
18 chronic feelings of emptiness, creating a very needy
19 person, who gets rejected by her primary support and
20 becomes depressed."

21 What he's referencing there is that she was
22 depressed, because her husband and she were having a
23 hard time. She was rejected by her primary support.

24 "This leads to increased drinking, which lowers

183

1 the inhibitions, and increases the depression."

2 "So her husband rejected her, and so she turned
3 to drinking, that, in turn, accelerated -- it increases
4 the depression that, in turn, accelerated the
5 impulsivity related to her ADHD and her other
6 personality disorder. As bad as these
7 sexually-impulsive crimes were, for all the --
8 (unintelligible) -- they would represent a choice
9 preferable to suicide."

10 The way I read what Mr. Ing is saying is, that
11 in her mind, it was either things were so bad I commit
12 suicide, or I go have sex with a 16- or 17-year-old
13 boy? That was what he saw in her.

14 "Once Ms. Whitaker had crossed one boundary
15 into an inappropriate and enviable sexual behavior, she
16 took on a fatalism typical of those with her pre-
17 mental-health problems. Once she realized that she,
18 again, ruined her story-book romance --" referring to
19 her marriage -- "she became discouraged to the point of
20 surrender, saying in our interview for this evaluation,
21 "What was the point? I already screwed up everything."

22 And what she's referring to there is that she
23 had the first interaction with the first boy, where she
24 had multiple counts in the criminal Information. I

184

1 believe the first five counts had to do with him. That
2 was for a longer period of time.

3 And then the next three occur in the same year,
4 following the termination of the first one.

5 "What was the point? I've already screwed up
6 everything."

7 "This sort of thinking is common to major
8 depressive disorder, or borderline personality
9 disorder, and individuals with ADHD. This way of
10 thinking made the behavior all the more needful of
11 community intervention."

12 According to Mr. Ing, what we're doing here is
13 a community intervention. We got involved, and we
14 stopped her, and we came to her aid.

15 "As is the case with most sexual crimes,
16 secrecy is what makes the offense possible. And when
17 the secrecy ends, the criminal behavior ends with it."

18 What that means is, you can do these things in
19 private with people who are young and get away with it.
20 And there's the old adage, that I've heard, that a true
21 measure of a person is what they do in secret -- or the
22 true measure of a person is what they do when they
23 think nobody else is watching, or when they think they
24 can get away with it. That's the true measure of who

185

1 Ms. Whitaker was and is.

2 Now, so in his view, that's the why: she has a
3 borderline personality, and ADHD, and depression. And
4 because of that, it was either suicide or sex with
5 these young boys. And once she started with one of
6 them, the other three just rolled into shape there.

7 Further with Mr. Ing, he gives his
8 recommendations, of course, for probation. He says,
9 "In this case, the idea of incarceration makes sense
10 only from the perspective of those in whom the need to
11 punish is strong. This is generally only true when
12 failing to understand the criminogenic variables that
13 erode the decision-making capacity of the offender."

14 Meaning: for those of you who don't understand
15 Ms. Whitaker, you're going to think that she needs to
16 go to prison.

17 But for Mr. Ing, who understands her, he's
18 enlightened enough to say, "Oh, but prison is not for
19 her."

20 A moral diagnosis is made, is what he says to
21 those of us who don't understand Ms. Whitaker, unless a
22 bad person needs to be thoroughly punished.

23 And then he goes onto say, "An important reason
24 is that she won't get the help she needs in prison."

186

1 So it's all about Ms. Whitaker.

2 When you think of sentencing -- we talked about
3 restitution. The restitution, you can't put back
4 virtue, you can't put back purity. You can't start
5 over there. No amount of money is going to fix that.

6 So we're down to the other two, which are
7 rehabilitation and retribution. The rehabilitation has
8 everything to do with Ms. Whitaker. How do we fix Ms.
9 Whitaker? How do we fix Ms. Whitaker? She's this
10 college-educated person. And as I go through those
11 letters of support for her, I didn't see anything in
12 there where somebody says that I knew something was
13 wrong with her. Mr. Ing says she was on the verge of
14 suicide, and that's what caused her to do this. And I
15 don't see anything from these friends that say, "I knew
16 something was wrong."

17 She then makes that decision and says, "Well, I
18 already messed up once," and then knowingly goes into
19 the next three relationships, and decides to do those.

20 It can't just be about the rehabilitation of
21 Ms. Whitaker.

22 Retribution is the other aim of sentencing.
23 Punishment. Deterrence. What is the community going
24 to do in the future when somebody thinks about doing

187

1 this? Somebody out there? General deterrence.
2 They're a teacher, they don't want their students
3 attracted.

4 Gosh, you know, I'm close to retirement. Ms.
5 Whitaker got probation, maybe it's not so bad. What
6 kind of a deterrence do we have for the teachers? What
7 kind of perception of safety do we have for the parents
8 for the students who go to school, if there's not this
9 retribution, this punishment: If you do this, you go to
10 prison.

11 I recognize -- and she has pled, it's not a
12 sexual assault; she's pled to exactly what we've
13 charged her with, four counts.

14 This is not something that the legislature
15 mandated prison. And they have done with many other
16 statutes, where they say, "If you commit this crime,
17 you will go to prison. You have no option for
18 probation."

19 That's not what Ms. Whitaker did in this case.
20 We understand that. And the deviation from the PSI is
21 our recommendation. We -- in the plea agreement, we're
22 capped at arguing for 12-to-36 months on each count,
23 consecutive, no probation. That's our recommendation.

24 And we think it is warranted because of the

188

1 multiplicity of counts, the multiplicity of events.
2 Yes, it did go on for over a year. And, yes, she knew
3 it was wrong, and yet continued. And she's smart
4 enough to know that it's wrong, and continued.

5 What kind of a message do we send to the
6 community if she doesn't go to prison? To her? Well,
7 and it's even more when you get into the specific
8 nature of this crime to the victims.

9 We talk about the healing process for Ms.
10 Whitaker. How does a victim heal when they see Ms.
11 Whitaker out on probation? She has spent two whole
12 days in jail over this. Two whole days in jail.

13 The legislature has said that this is how we're
14 going to punish crimes: We're going to send people to
15 prison, or put them on probation with supervision, or
16 we're going to fine them. That's what we have options
17 for.

18 In this particular case, because of the serious
19 nature of these offenses, we think that prison is
20 appropriate.

21 Now, we recognize that she scored out, and if
22 it weren't for the deviation, the Division would be
23 recommending probation. I understand that.

24 But we think they took into consideration the

189

1 appropriate things: She had multiple victims, that
2 occurred over a longer period of time. That causes
3 this to rise to that level where she needs to go to
4 prison.

5 If you can't find your way clear to send her to
6 prison, our recommendation for each of the counts would
7 be the same, with consecutive. But if you put her on
8 probation as a condition of probation, you have to send
9 her to jail 364 days.

10 If you're not willing to send her to prison, we
11 would ask that you at least send her to jail for a
12 year, as a condition of probation.

13 That has to have a deterrent effect for others.
14 There has to be that retribution that heals the victim,
15 that helps them heal, to see that there's consequences
16 for these actions.

17 You saw in the letters from the parents, their
18 boys scattered, they left. It's not going to be the
19 same for them. How do they heal? How do their parents
20 heal? To see consequences. To see retribution.

21 That's our argument, Judge.

22 THE COURT: Mr. Bergeron, do you have witnesses
23 to call?

24 MR. BERGERON: I do, Your Honor.

190

1 THE COURT: Your first witness.

2 MR. BERGERON: I think that Mr. Thompson was --
3 I, obviously, referred to him as "doctor."
4 (Unintelligible.) Not sure that's appropriate.

5 THE COURT: It's argument, Mr. Bergeron, and
6 that's how I took it.

7 MR. BERGERON: Thank you. I appreciate that.

8 THE COURT: Your first witness.

9 MR. BERGERON: I'd like to call Jennifer
10 Hanson.

11 THE COURT: Jennifer Hanson?

12 MR. BERGERON: H-a-n-s-o-n.

13 THE COURT: Come forward, please.

14
15 JENNIFER HANSON,
16 called as a witness by the Defense,
17 who, having been first duly sworn, was examined
18 and testified as follows:

19
20 THE COURT: Please state and spell your first
21 and last name.

22 THE WITNESS: Jennifer Hanson.

23 THE COURT: And your first name's the customary
24 spelling of Jennifer?

191

1 THE WITNESS: Yes.

2 THE COURT: That microphone is also recording
3 you. You don't need to get right up to it, but make
4 sure you speak up loud enough.

5 Go ahead, Mr. Bergeron. And you also are not
6 going to get on the recording if you don't stay near a
7 microphone. There's one right there, behind your left
8 arm.

9 MR. BERGERON: Thank you.

10 DIRECT EXAMINATION

11 BY MR. BERGERON:

12 Q How do you know my client?

13 A I met her over a year ago, after all this
14 happened, and been really good friends with her ever
15 since.

16 Q Did I tell you what to say on the stand today?

17 A No.

18 Q But you want the Court to hear something; right?

19 A Yeah.

20 Q What would you like the Court --

21 A I've known Tennille for -- after this happened.
22 And she's been nothing but good to me, personally.

23 I don't agree with what she's done, but I think
24 it takes two. And I've been around a lot of 16-year-old

192

1 boys, and I think there's one thing on their mind, so --

2 I don't think that she should be the only one
3 that gets in trouble for this, like you said, because
4 she's a teacher.

5 So I was with her -- this week I flew in, and I
6 have been with her family, and she has the most amazing
7 family I've ever met. They have been so good to me and my
8 daughter. And seeing her children the last couple days
9 has been tough. Her little girl is amazing, and -- sorry.

10 This morning was a very tough morning. I
11 actually had to walk out with her trying to say good-bye
12 to her kids, not knowing what was going to happen. It was
13 tough.

14 I love Tennille with all my heart. And she'll be
15 a friend of mine forever. I think we all make mistakes,
16 and I know I have made mine, and I would hope that people
17 wouldn't judge me for it.

18 I don't agree with what has been done, but I
19 think that every one of the boys should be here today,
20 too. If it was my kid that was involved, I know that he
21 would be here. I would make him be responsible for what
22 he's done, as well. 16, nowadays, is -- kids are a lot
23 older.

24 So that's all I have to say.

193

1 THE COURT: Mr. Thompson, any questions?

2 Thank you. You may step down.

3 (The witness was excused.)

4 THE COURT: Your next witness, Mr. Bergeron.

5 MR. BERGERON: William Horn.

6 THE COURT: William Horn?

7 MR. BERGERON: Yes.

8
9 WILLIAM HORN,

10 called as a witness by the Defense,

11 who, having been first duly sworn, was examined

12 and testified as follows:

13
14 THE COURT: Please state your name.

15 THE WITNESS: My name is William Horn. I'm
16 Tennille's father.

17 THE COURT: Thank you. Go ahead, Mr. Bergeron.

18
19 DIRECT EXAMINATION

20 BY MR. BERGERON:

21 Q Did you hear everything today?

22 A Yes, I did.

23 Q I know you're a little hard of hearing.

24 A Yes.

194

1 Q I actually tried to speak up a little bit for
2 your benefit. And I want to be recorded, but I want to
3 make sure you heard.

4 A You did a good job.

5 Q Okay. What would you like to say?

6 A Well, one thing I would like to say is my
7 daughter is a very good person; not because she's my
8 daughter, just -- this gal has got a long list of
9 accomplishments, some of them nationally known, some of
10 them state known. She's very intelligent. She's very
11 responsible. She's a good mother. She's a good daughter.
12 She's just a good gal.

13 And I think that the year-and-a-half she's been
14 through, she's spent her prison time 100 percent. This
15 gal has went through a living heck. It's broke our family
16 apart.

17 She has the most wonderful husband you could ever
18 find in the world. He stuck by her. She has two kids
19 that are -- that have academic achievements a mile long,
20 and them two kids need her.

21 So, Your Honor, I just hope you really consider
22 that Tennille is not a threat to anyone. She has always
23 been there to help anyone.

24 That pretty much condenses it.

195

1 Q Mr. Horn, where do your daughter's children go to
2 school?

3 A Well, they went to school in Wells. Now she's
4 home-schooling them, and she seems to be doing a real fine
5 job.

6 Tennille wanted to be a teacher, because she
7 liked helping kids. We never financially helped Tennille
8 much for her school, so she worked and got her own
9 education on her own. So I've got to give her a lot of
10 points for that one.

11 Q Did we plan your testimony?

12 A No, sir.

13 Q Where is Starr Valley?

14 A Starr Valley is 35 miles north of Elko.

15 Q I'm sorry. I didn't ask that very artfully.
16 Where is Starr Valley in relation to Wells?

17 A Starr Valley is 16 miles from the Wells school,
18 around the Ruby -- east Humboldt mountain range.

19 Q Is that in relation to Walter and Tennille's
20 property?

21 A Yes, it is. Tennille and Walter not only have
22 jobs, eight-hour jobs, but they also have a business of
23 their own. They run 300-and-some head of cattle, and they
24 do it by themselves. They are self-made people. And last

196

1 winter, Tennille not only home-schooled her kids, but she
2 fed them cattle on her own. And she didn't have no
3 automatic feeders, she done it all by hand, alone.

4 Q Did that put a lot of pressure on their
5 relationship?

6 A Well, these kids know how to get by; they're a
7 strong family.

8 MR. BERGERON: Thank you, Mr. Horn.

9 THE COURT: Mr. Thompson, any questions?

10 MR. THOMPSON: No.

11 (The witness was excused.)

12 THE COURT: Your next witness, Mr. Bergeron.

13 MR. BERGERON: Daniel Romans.

14
15 DANIEL ROMANS,

16 called as a witness by the Defense,
17 who, having been first duly sworn, was examined
18 and testified as follows:

19
20 THE COURT: Please state your name.

21 THE WITNESS: My name is Daniel Romans.

22 THE COURT: Spell your last name, please.

23 THE WITNESS: R-o-m-a-n-s.

24 THE COURT: Thank you. Go ahead, Mr. Bergeron.

197

DIRECT EXAMINATION

BY MR. BERGERON:

Q What do you do for a living?

A I'm a pastor at Lighthouse Christian Fellowship.

Q Who do you counsel?

A Well, I don't counsel, I give biblical advice.

Q Thank you for reminding me.

A And I have only known Tennille and Willy -- I didn't know his name was Walter -- since June of 2017. So I didn't know Tennille at all, before; all I know who Tennille is now.

I have known Tennille as a broken, remorseful -- she wanted desperately to apologize for her conduct. She could apologize to her husband; she could apologize to her children; she could apologize to everyone she knew, but she was not allowed to apologize to anyone who she couldn't contact because of legal definitions.

Q If I might, sometimes a lawyer puts their client on the stand and asks questions open-endedly, like I did, what I wanted to do was let the Court, and even the prosecutor, know about all of what you do.

A Okay.

Q Don't you go to the jail?

A Yes. I have been a jail chaplain in Elko County

198

1 since the started the program. I was the head chaplain
2 for Twin Falls County since 1994. And I have been
3 involved with prison and jail ministry, well, since 1994.

4 I have seen a lot of people that are regretful
5 for getting caught; and I have seen people say the right
6 things; and I have also seen people that were genuinely
7 broken and remorseful. And I would put Tennille in that
8 category.

9 They come -- I mean, they drive to Reno for the
10 counseling, but then they would come once a week, on a
11 Tuesday evening, to speak to me and my wife, for the
12 last -- since June of 2017. Just about every Tuesday.
13 Not every Tuesday, because there's been exceptions, but
14 just about every Tuesday.

15 I count Tennille and Willy as family, even though
16 I have only known them a short time. I have seen Tennille
17 interact with her children, with her husband. She's a
18 great mother. The kids love her dearly.

19 Been trying to work on Willy and Tennille's
20 relationship, their trust with one another, to get them
21 back on a normal keel.

22 It's hard, once trust is violated, to earn it
23 back. You can say things, but time has to be involved,
24 and they have been doing well.

199

1 And I don't want to lecture anyone -- that's the
2 preacher voice coming out -- but I can see no benefit in
3 her spending time behind bars. Probation is not getting
4 off scot-free. It's very restrictive.

5 I thought she should have went to trial, too.
6 But that's not my call. She wanted things over with.
7 She's tired of it. She's tired. She's been a victim for
8 a long time, a victim of her own crimes.

9 I mean, sin has a devastation on people. And the
10 people that perpetrate it are often the worst, only if
11 they are repentant.

12 Those that enjoy it and just keep going on it --
13 I mean, I can understand --

14 MR. THOMPSON: Your Honor, I'm going to object to
15 this line. He can talk about the character, but --
16 (unintelligible.)

17 THE WITNESS: That's what happens when you put
18 a preacher on the stand.

19 THE COURT: It is a sentencing. I think he's
20 answered that question, Mr. Bergeron. Do you have any
21 other questions?

22 MR. BERGERON: Well, I did interrupt him, Your
23 Honor.

24 BY MR. BERGERON:

200

1 Q Have you pretty much said what you wanted to say?
2 Or did I break your train of thought when the prosecutor
3 and the Court, when you kind of moved past: what is the
4 decision of the Court?

5 A Well, the only thing I have to say is that I do
6 believe that Tennille is different from all the stories I
7 have heard in the past. That's all I know of her now.

8 MR. BERGERON: Thank you, sir.

9 THE COURT: Mr. Thompson, any questions?

10 MR. THOMPSON: No.

11 THE COURT: Thank you. You may step down.

12 (The witness was excused.)

13 THE COURT: Mr. Bergeron, do you have any other
14 witnesses?

15 MR. BERGERON: I do not, Your Honor.

16 THE COURT: Mr. Thompson, do you have victims
17 who wish to make victim-impact statements?

18 MR. THOMPSON: I do.

19 THE COURT: Who would you like to call first?

20 MR. THOMPSON: Ouida Madison.

21 ///

22 ///

23 ///

24 ///

201

1
2 OUIDA MADISON,
3 called as a witness by the State,
4 who, having been first duly sworn, was examined
5 and testified as follows:
6

7 THE COURT: Counsel, will you approach for a
8 side-bar, please.

9 (Whereupon, counsel approached the bench.)

10 THE COURT: Will you please state your name,
11 and spell your first and last name.

12 THE WITNESS: My name is Ouida Madison:
13 O-u-i-d-a M-a-d-i-s-o-n.

14 THE COURT: Thank you. Go ahead, Mr. Thompson.
15

16 DIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q Ms. Madison, have you prepared a statement that
19 you wanted to read?

20 A Yes.

21 Q You'll have to make sure that we catch that on
22 the microphone. Which one magnifies the voice? Both of
23 them?

24 THE COURT: Yes. Either one works.

202

1 THE WITNESS: I'm the wife of Cary Robison, and
2 he wrote this letter. And he's having a difficult time to
3 do this; it seems like I am, too. But this is in his
4 words:

5 "My name is Terry Madison, father of Corbin
6 Madison. I'd like to tell you a little bit about my son.
7 He was a hard-working young man. He loved working on the
8 Wright and the Hooper Ranches. And also he was a 4-year
9 letterman in three sports, as well as FFA and Senior Class
10 Vice President.

11 He wanted to stay in Wells. He loved the small-
12 town life. But after what Ms. Whitaker did to him, he was
13 embarrassed to be around town, with people always asking
14 him about it.

15 He graduated on June 9th, packed up, and moved to
16 Reno on June 12th, and went to work for Tesla on
17 June 14th.

18 After two months, he hated Reno and his job. The
19 demons she put in his head, he just could not find a way
20 to cope, and he took his own life, rather than to come
21 home and have to deal with this court case and all the
22 questions about it.

23 His senior class voted him the most
24 unforgettable. And now he is gone forever, thanks to Mrs.

203

1 Whitaker.

2 Please find some justice for my son.

3 Thank you, Terry Madison."

4 BY MR. THOMPSON:

5 Q Mrs. Madison, just to be clear, those June dates
6 that you were referencing, is that 2018?

7 A Yes, sir.

8 Q Do you have an opinion as to what kind of
9 sentencing you'd like the Judge do, or would you just like
10 to leave it to her discretion?

11 A I'll leave it to your discretion.

12 MR. THOMPSON: Is there anything else you'd
13 like the Court to know?

14 A It's just been really hard on the town, and the
15 people that I work with, and the friends and families of
16 these victims.

17 These four boys were actually friends, and every
18 one of them, they graduated and they left town because
19 they just couldn't take it anymore. That's why they're
20 not here. They just want to move on. But, unfortunately,
21 ours couldn't move on. He had just way too many demons in
22 him. And he just couldn't take it anymore. And now we
23 will never have him again.

24 MR. THOMPSON: Thank you.

204

1 THE COURT: Any questions, Mr. Bergeron?

2 MR. BERGERON: No, Your Honor.

3 THE COURT: Thank you.

4 (The witness was excused.)

5 MR. BERGERON: May we have a moment?

6 THE COURT: Yes.

7 Your next witness, Mr. Thompson.

8 MR. THOMPSON: Jennifer Hooper. And if her
9 husband could come up and stand next to her.

10 THE COURT: Mr. Hooper, it's my understanding
11 you're here for moral support. But you may need to
12 finish your wife's statement; is that correct?

13 MR. HOOPER: Possibly.

14 THE COURT: So I'd like you both to be placed
15 under oath, then. Raise your right hand, please.

16 (Both Mr. & Mrs. Hooper were placed under
17 oath.)

18 JENNIFER HOOPER,

19 called as a witness by the State,
20 who, having been first duly sworn, was examined
21 and testified as follows:

22
23 THE COURT: Please state your name.

24 THE WITNESS: My name is Jennifer Hooper.

205

1 THE COURT: And is Jennifer spelled the usual
2 way?

3 THE WITNESS: Yes.

4 THE COURT: Thank you. Go ahead, Mr. Thompson.

5
6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Ms. Hooper, do you have a statement that you
9 prepared that you'd like to read?

10 A Yes, I do. And it's regarding the impact this
11 has had on my family, and the whole Hooper family.

12 Mrs. Whitaker, the defendant, was a beloved
13 family friend, a neighbor to my husband and I, as well as
14 our five children.

15 These crimes that Mrs. Whitaker committed against
16 these minor children over the years has been devastating
17 to our community of Wells and outlying areas. It's
18 negatively impacted our boys, students, boys and girls,
19 teachers, coaches, school, siblings, neighbors,
20 friendships and families.

21 I would like to describe the impact on our
22 family. It seemed to change everything in our community,
23 to us. We had to consider whether to attend many events
24 in our community with our family, to avoid being in her or

206

1 her family's presence, many times changing the route we
2 would drive, or the activity.

3 The incidents have been present in our minds on a
4 daily basis for over a year now.

5 The defendant's acts have made me question my
6 trust in teachers, the school, and in friends.

7 We feel the school failed to protect these boys
8 from these acts by Mrs. Whitaker.

9 It has tainted our memories of our five children
10 in elementary school.

11 We did not want our younger daughter to attend
12 school in Wells, where most of the students knew of these
13 actions between Mrs. Whitaker and her student victims.

14 We did not want her to be subjected to the
15 dramatic fallout from these personal, dramatic, and
16 heinous crimes.

17 My daughter had a close friendship with Mrs.
18 Whitaker, and was a life-long friend of her son. My
19 daughter's trust in the defendant was destroyed. Her
20 heart was broken, and trust and innocence was lost at the
21 same time.

22 It was too painful for us to have her return to
23 school in Wells, and she left her friends. After home
24 schooling for the school year last year, she's now

207

1 attending school in Elko.

2 In addition to the impact she has faced with
3 school and home, she has had to comfort friends that have
4 also been negatively impacted from these crimes that Mrs.
5 Whitaker has committed.

6 The impact of the defendant's crimes on my son
7 began at an early age. Mrs. Whitaker was his 4th and 6th
8 Grade teacher. She treated him as a teacher's pet, which
9 I mistakenly thought she did, because I was a valued
10 friend.

11 In 6th Grade, we pulled my son from her class, as
12 he became too disruptive to the entire class. Mrs.
13 Whitaker's cheerful, extremely emotional response, which
14 was also witnessed by the principal, was not normal. She
15 had made him feel special from an early age, which was not
16 unique to my son, it is a common thread in how she treats
17 young boys.

18 This was the beginning of her manipulation of
19 him. We had no idea to what extent this unhealthy
20 relationship would become, or to what level it would
21 escalate.

22 The four victims involved were assigned aides in
23 Mrs. Whitaker's classroom, which is an elective in Wells,
24 because there are not many electives available. So he was

208

1 an aide to Mrs. Whitaker.

2 She was a person in power over these boys. She
3 violated that power and trust, and used it against these
4 boys, and some girls, as well. She set out to ruin proms,
5 stalked them at activities and games, taunt girlfriends,
6 threaten any more relationships for these boys.

7 I feel awful for many of the boys and girls that
8 experienced her extreme level of manipulation. Can you
9 put yourselves in the girls' -- shoes of these young
10 girls, fighting for their dates and boyfriends with a
11 mature teacher, who had power over them as students? It
12 was very intimidating.

13 Who, additionally, was providing alcohol for
14 their social events. And as a result, some kids were very
15 dangerously intoxicated, including our child.

16 Mrs. Whitaker was an adult teacher whom, as a
17 predator, manipulated these boys by broken promises, lies,
18 threats, and bribes, and traded sex for alcohol and
19 baseball caps.

20 What kind of impact does this have on a kid? Do
21 they feel used? Shame? Immoral? Guilt? The answer is:
22 All of the above. And they have to carry that around
23 through life as a result of her manipulation. They most
24 likely feel more guilt for her family than she does her

209

1 own, I think, at times.

2 So much pain has been inflicted on us, like
3 others in our community. Children have been hurt;
4 students have been violated; innocence widely spread has
5 been lost; careers have been changed; friendships, adult
6 and children's, have been lost; families have been broken;
7 and school memories tarnished.

8 But the most pain -- and more pain over -- was
9 our biggest fear realized, the biggest heartbreak of all,
10 the last of these boys' close friends, one of her victims,
11 a loss we can never replace, and a hole in our heart we
12 can't fill.

13 Complete devastation to these boys, our families,
14 and our community. How does this affect a child? It
15 affects them in a variety of ways, which none of them are
16 positive.

17 The impact of these incidents on these boys is
18 and will manifest in different ways, now and through time.

19 One of the most agonizing parts of the last
20 year-and-a-half for these four victims is that she has
21 shown no remorse or shame for her actions.

22 Mrs. Whitaker has appeared nonchalant, without
23 remorse, trying to attend events where the victims and
24 their families may be present.

210

1 She seems to have no understanding of the pains
2 she has caused, and how strongly the victims and their
3 families simply do not want to see her or be around her
4 anywhere.

5 She's brazen, and not sincerely sorry for what
6 she's done. The defendant does not take responsibility
7 for her actions; and, therefore, is a brazen threat to the
8 youth in our community.

9 She does not want her criminal acts against these
10 boys to infringe on how she lives her life, at the expense
11 and risk to others.

12 She has not changed her behavior, nor do I
13 believe she will. And I don't believe she can be trusted.

14 I'm not sure if probation is the right thing to
15 deter her behavior. I'd ask the Judge to decide whether
16 probation or prison or jail is necessary, to keep these
17 boys safe in the community.

18 MR. THOMPSON: Is there anything else you'd
19 like to say?

20 THE COURT: Mr. Bergeron, any questions?

21 MR. BERGERON: No, Your Honor.

22 THE COURT: Thank you. You may step down.

23 (The witness was excused.)

24 THE COURT: Your next witness, Mr. Thompson.

211

1 MR. THOMPSON: We have no further witnesses.

2 THE COURT: There were many arguments made by
3 Mr. Bergeron regarding constitutionality of the
4 statute, and possible overreaching by the District
5 Attorney's Office. Those are not issues that this
6 Court can decide at a sentencing. He may have a remedy
7 in a Federal Court, but it's too late in the State
8 Court, for this Court to address those issues.

9 Mr. Bergeron argued that Mr. Ing's psychosexual
10 evaluation said that Ms. Whitaker's risk to the
11 community was as low as any he had ever seen. That's a
12 misstatement, Mr. Bergeron. The statement is: "Ms.
13 Whitaker's risk to the community is as low as she could
14 possibly score, using the actuarial tables described in
15 his report." That's different than "as low as any he's
16 ever seen."

17 Mr. Ing was treating Ms. Whitaker for several
18 months before he performed the psychosexual evaluation.
19 I have never seen a psychosexual evaluation from a
20 treating practitioner, so I looked at the statute to
21 see if that's permissible. It's not excluded. But
22 because of that, I do question his objectivity.

23 Mr. Thompson is correct, that retribution and
24 deterrence are things the Court should consider in

212

1 sentencing.

2 I also want to state to everyone here that the
3 law treats women who commit crimes against boys, the
4 same as it treats men who commit crimes against girls.
5 As it should. The boys-will-be-boys argument, does not
6 fly. That is not the law.

7 The defendant will stand and face the Court.

8 The Court will order that a judgment of
9 conviction be entered against the defendant, finding
10 her guilty of Counts I through IV, all counts of sexual
11 conduct between a school employee or volunteer and a
12 pupil, a Category-C felony.

13 The defendant shall pay the \$25.00
14 administrative-assessment fee, and a \$150.00
15 genetic-testing fee.

16 Ms. Macias, do I need to order payment for the
17 psychosexual evaluation?

18 THE DIVISION: No, Your Honor.

19 THE COURT: Pursuant to NRS 176.0931, the
20 defendant is sentenced to lifetime supervision, after
21 any period of probation or any term of imprisonment and
22 any period of release on parole.

23 Ms. Whitaker, you have received the benefit of
24 your bargain by having these counts pled down to four

213

1 counts.

2 I'm sorry for your family, your children, your
3 parents. You are their only child. But you did this
4 to these people, to your family, and to the victims,
5 nobody else.

6 You have hurt other people's children, not just
7 your own.

8 You are not the victim here. These four boys
9 are the victims here, and their families.

10 I'm going to advise the observers again to
11 behave appropriately, or you will be removed.

12 For Count I, the defendant is sentenced to a
13 maximum term of 60 months, with minimum parole
14 eligibility of 24 months, in the Nevada Department of
15 Corrections, with credit for two days, previously
16 served.

17 For Count II, the defendant is sentenced to a
18 maximum term of 60 months, with minimum parole
19 eligibility of 24 months, in the Nevada Department of
20 Corrections. That sentence will be served
21 consecutively with the sentence for Count I.

22 For Count III, the defendant is sentenced to a
23 maximum term of 60 months, with minimum parole
24 eligibility of 24 months, in the Nevada Department of

214

1 Corrections. That sentence shall be served
2 consecutively with the sentences in Counts I and II.

3 For Count IV, the defendant is sentenced to a
4 maximum term of 60 months, with minimum parole
5 eligibility of 24 months, in of Nevada Department of
6 Corrections. That sentence shall be served
7 consecutively to the sentences for Counts I, II and
8 III.

9 The maximum aggregate sentence for all counts
10 is 240 months, and the minimum aggregate for the four
11 counts is 96 months.

12 Ms. Whitaker, you have a duty to register
13 initially with the local law-enforcement agency of the
14 jurisdiction in which you are convicted. You must do
15 so before being released from incarceration. You have
16 a duty to register in the state during any period in
17 which you're a resident of this state, or a
18 non-resident who is a student or worker within the
19 state, and a time within which you are required to
20 register, pursuant to NRS 179D.450.

21 You have a duty to register in any other
22 jurisdiction, including, without limitation, any
23 jurisdiction outside the United States, during any
24 period which you're a resident of the other

215

1 jurisdiction, or a non-resident who's a student or
2 worker within the other jurisdiction.

3 If you move from this state to another
4 jurisdiction, including, without limitation, any
5 jurisdiction outside of the United States, you have a
6 duty to register with the appropriate law-enforcement
7 agency in the other jurisdiction.

8 You have the duty to notify a law-enforcement
9 agency in whose jurisdiction you formerly resided, in
10 person or in writing, if you change the address at
11 which you reside, including if you move from this state
12 to another jurisdiction, or change the primary address
13 at which you are a student or worker.

14 The record will reflect that the Court Clerk is
15 handing the defendant a copy of the requirements for
16 registration.

17 Ms. Whitaker, you need had to read that
18 carefully. If you have any questions, ask your
19 attorney or ask me.

20 MR. BERGERON: Do you want us to read it right
21 now?

22 THE COURT: Yes.

23 Those last two pages are for the Court. You
24 need to sign the one that Mr. Bergeron has.

21b

1 That's what I need to sign, Mr. Bergeron.

2 MR. BERGERON: Thank you for clarifying, Your
3 Honor.

4 THE COURT: Ms. Whitaker, do you have any
5 questions about the registration requirements?

6 The record will reflect that the defendant has
7 read and signed the notification of registration
8 requirement.

9 The most important job of this Court is the
10 protection of the public. Under the circumstances of
11 this case, the only way I could see to do that was to
12 incarcerate Ms. Whitaker.

13 Counsel, are there any questions?

14 MR. THOMPSON: Not from the State.

15 THE COURT: Mr. Bergeron?

16 MR. BERGERON: May I have a moment?

17 (Unintelligible.)

18 THE COURT: Okay. We're adjourned.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

217

1 STATE OF NEVADA)
2)
3 COUNTY OF ELKO)
4
5

6 I, RANDI LEE WALKER, Certified Shorthand
7 Reporter of the Second Judicial District Court of the
8 State of Nevada, in and for the County of Washoe, do
9 hereby certify:

10 That as a Certified Court Reporter, in the
11 State of Nevada, I listened to the recorded disk from
12 Elko County, Nevada, and thereafter transcribed the
13 same into typewriting as herein appears;

14 That the foregoing transcript is a full,
15 true and correct transcription of my listening and
16 typing of said proceedings, to the best of my
17 abilities.

18 DATED: At Reno, Nevada, this 2nd day of
19 December, 2018.

20
21 /s/ Randi Lee Walker
22 RANDI LEE WALKER, CCR No. 137
23
24

217

1 CASE NO. CR-FP-17-3893

2 DEPT. NO. 1

FILED
2018 OCT -5 PM 4:22
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY *[Signature]*

3
4
5
6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 V.

12 TENNILLE RAE WHITAKER,

13 Defendant.
14 _____/

JUDGMENT OF CONVICTION
(No Contest Plea - Incarceration)

15 On the 30th day of April, 2018, above-named Defendant, TENNILLE RAE WHITAKER, AKA
16 TENNILLE RAE HORN-WHITAKER, AKA TENNILLE RAE HORN [who is further described as follows:
17 Date of Birth: 2/12/1977; (age 41); Place of Birth: Elko, Nevada] was arraigned and entered a plea of no
18 contest to the crimes described below and as more fully set forth in the criminal information filed herein.
19 Legal counsel present at Defendant's arraignment were Byron Bergeron, Esq., representing Defendant, and
20 Mark S. Mills, Elko County Deputy District Attorney, representing the State. At the time above-named
21 Defendant entered her plea of no contest, this Court informed her of all applicable constitutional rights, the
22 elements of the crimes charged, and the maximum possible penalty for said crimes. After being so informed,
23 above-named Defendant stated that she understood all of the applicable constitutional rights, the elements
24 of the crimes charged and the maximum possible penalty for said crimes. This Court then made a finding
25 that Defendant had entered her plea freely and voluntarily, and with full understanding of her constitutional
26 rights, the nature of the charges and the consequences of her plea.

219

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

COUNT 4: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS. 201.540. (NOC 51067).

After hearing from all parties and allowing Defendant an opportunity to personally address the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

For the conviction of Count 2, Defendant is sentenced to a maximum term of 60 months in the Nevada Department of Corrections with minimum parole eligibility after 24 months. Defendant is credited with 0 days heretofore served as computed to and including the date of this sentencing (the 4th day of October, 2018). Said sentence shall be served consecutively with the sentence in Count 1.

1 For the conviction of Count 3, Defendant is sentenced to a maximum term of
2 60 months in the Nevada Department of Corrections with minimum parole
3 eligibility after 24 months. Defendant is credited with 0 days heretofore
4 served as computed to and including the date of this sentencing (the 4th day of
5 October, 2018). Said sentence shall be served consecutively with the
6 sentences in Counts 1 and 2.

7 For the conviction of Count 4, Defendant is sentenced to a maximum term of
8 60 months in the Nevada Department of Corrections with minimum parole
9 eligibility after 24 months. Defendant is credited with 0 days heretofore
10 served as computed to and including the date of this sentencing (the 4th day of
11 October, 2018). Said sentence shall be served consecutively with the
12 sentences in Counts 1, 2 and 3.

13 The maximum aggregate for all counts is 240 months, and the minimum
14 aggregate for all counts is 96 months.

15 Pursuant to NRS 176.0931, Defendant is sentenced to lifetime supervision after
16 any period of probation or any term of imprisonment and any period of release
17 on parole.

18 FINANCIAL AND RESTITUTION REQUIREMENTS

19 Defendant is ordered to pay the administrative fee in the amount of \$25.00
20 as required by NRS 176.062, and a judgment is rendered against Defendant
21 in that amount. Said amount shall be deducted from any cash bail monies
22 posted by Defendant before any remainder is returned upon the exoneration
23 of bail. It is further ordered that if Defendant has any monies in the
24 possession of the Elko County Jail, that said monies shall be delivered
25 directly to the Elko County Clerk and applied to this fee.

26 Defendant is ordered to pay the \$3.00 administrative assessment on each
count for purposes of obtaining a biological specimen and conducting a
genetic marker analysis, and a judgment is rendered against Defendant in that
amount. It is further ordered that if Defendant has any monies in the
possession of the Elko County Jail, that said monies shall be delivered
directly to the Elko County Clerk and applied to this fee.

Defendant is ordered to pay the genetic testing fee of \$150.00 as required by
NRS 176.0915. Said amount shall be deducted from any cash bail monies
posted by Defendant before any remainder is returned upon the exoneration
of bail. It is further ordered that if Defendant has any monies in the
possession of the Elko County Jail, that said monies shall be delivered
directly to the Elko County Clerk and applied to this fee.

OTHER REQUIREMENTS

Defendant is required to register as a sex offender pursuant to NRS 179D.441
through NRS 179D.495, prior to being released from custody.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

IT IS HEREBY ORDERED that any bail bond previously posted for said Defendant shall be exonerated. Any cash bail for said Defendant shall be applied first to fines and/or costs due pursuant to this judgment and, unless otherwise agreed to by the parties, any amount remaining shall be returned by the clerk to the person who posted said cash bail.

6 ENTRY OF JUDGMENT

7 IT IS FURTHER ORDERED that the clerk of the above-entitled Court enter this JUDGMENT OF
8 CONVICTION as part of the record in the above-entitled matter.

9 SO ORDERED this 5 day of October, 2018.

0
1
2

Nancy Porter
NANCY PORTER
DISTRICT JUDGE - DEPARTMENT 1

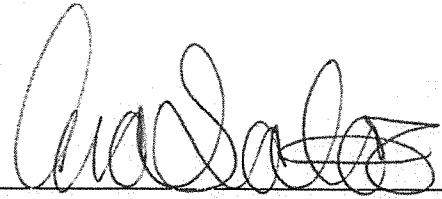
1 CERTIFICATE OF HAND DELIVERY

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
3 Department 1, and that on this 5 October, 2018, I personally hand delivered a file stamped copy of the
4 foregoing **JUDGMENT OF CONVICTION** (No Contest Plea - Incarceration) addressed to:

5 Dept. of Parole and Probation
6 3920 E. Idaho Street
7 Elko, NV 89801
[Box in Clerk's Office]

Elko County Sheriff's Office
775 W. Silver Street
Elko, NV 89801
{1 File Stamped Copy and 1 Certified Copy}
[Box in Clerk's Office]

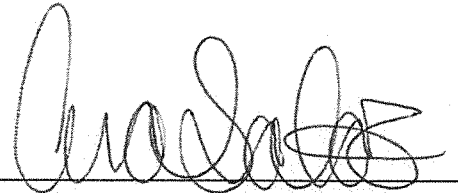
8 Tyler J. Ingram, Esq.
9 Elko County District Attorney
540 Court Street, 2nd Floor
10 Elko, NV 89801
[Box in Clerk's Office]

11
12 
13

14 CERTIFICATE OF MAILING

15 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
16 Department 1, and that on this 5 day of October, 2018, I deposited for mailing in the U.S. mail at Elko,
17 Nevada, postage prepaid, a copy of the foregoing **JUDGMENT OF CONVICTION** (No Contest Plea -
18 Incarceration) addressed to:

19 Byron Bergeron, Esq.
20 Attorney at Law
432 Court Street
21 Reno, NV 89801

22 
23
24
25
26

CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department 1, Elko, Nevada, and that on this 5 day of October, 2018, I caused to be delivered via electronic-mail, a file stamped copy of the foregoing **JUDGMENT OF CONVICTION** (No Contest Plea-Incarceration), along with a copy of Defendant's Pre-Sentence Investigation Report addressed to:

Nevada Department of Corrections
Offender Management Division, Sentence
Management

Attn: Shelly Williams, Records Supervisor

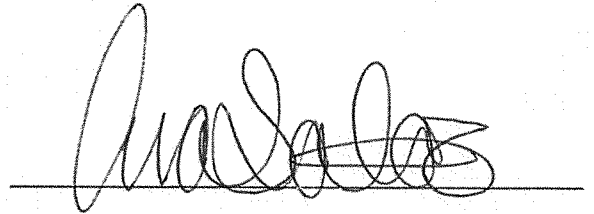
E-mail: skwilliams@doc.nv.gov

Attn: Kristy Rodriguez

E-mail: kwinters@doc.nv.gov

Attn: Mary Gourlay

E-Mail: mgourlay@doc.nv.gov



1 Byron Bergeron Esq. #7598
2 432 Court Street
3 Reno Nevada 89501
4 775 229 3736
5 bbergeronlaw@live.com

FILED
2018 OCT 17 AM 11:00
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY MA

6 **IN AND FOR THE COUNTY OF ELKO, FOURTH JUDICIAL DISTRICT COURT,**
7
8 **STATE OF NEVADA**

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 TENNILE WHITAKER,)

13 Defendant.)

Case No. CR FP-17-3893
Dept. 1

14
15 **NOTICE OF APPEAL**

16 Notice is hereby given that defendant TENNILE WHITAKER hereby appeals from the
17 judgment of conviction entered on October the 5th, 2018

18 Byron Bergeron
19 Byron Bergeron Esq. #7598
20 432 Court Street
21 Reno Nevada 89501
22 775 229 3736
23 Bbergeronlaw@live.com
24
25

225

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

CERTIFICATE OF SERVICE

I, Byron Bergeron, not a party to this action, affirm under penalty of perjury pursuant to
NRCP 4, that on October 11th, 2018, I sent in the mail via the United States Postal Service to:

Chad Thompson

Elko Deputy District Attorney

540 Court Street Elko Nevada

2nd Floor 89801

DATED: October 11th 2018

By: 

Byron Bergeron

226

PGM ID-DSPDOC
DATE 10/29/18

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CR-FP-17-0003893

PAGE 1
TIME 9:42

TYPE: FELONY - AGAINST PERSONS

STATUS: CLOSED

10/08/18

-----JUDGE-----
CURRENT: PORTER, NANCY

--PARTY #--

PL 001: NEVADA, STATE OF
VS.

-----ATTORNEYS-----
THOMPSON, CHAD

DF 002: WHITAKER, TENNILLE RAE
DOB: 2/12/77

BERGERON, BYRON
BUTKO, KARLA K

CHARGE 1: FP SEX CONDUCT SCHOOL
DISPOSITION: JUDG OF CONV - NOLO DATE: 10/05/18 NRS 201.540

CHARGE 2: FP SEX CONDUCT SCHOOL
DISPOSITION: JUDG OF CONV - NOLO DATE: 10/05/18 NRS 201.540

CHARGE 3: FP SEX CONDUCT SCHOOL
DISPOSITION: JUDG OF CONV - NOLO DATE: 10/05/18 NRS 201.540

CHARGE 4: FP SEX CONDUCT SCHOOL
DISPOSITION: JUDG OF CONV - NOLO DATE: 10/05/18 NRS 201.540

CHARGE 5: A DC GEN ANALYSIS
DISPOSITION: JUDG OF CONV - NOLO DATE: 10/05/18 ASSMT DC GEN ANALYSIS

ASSMNT 6: A DC GENETIC MARKER
DISPOSITION: JUDG OF CONV - NOLO DATE: 10/05/18 ASSMT DC GENETIC

MAJOR EVENTS

1/23/18 FILE CHECKED OUT BY:	PECK	000
1/25/18 ARRAIGNMENT (DC)	FOR: 4/30/18 15:00 DC1SEC	002
1/25/18 FILE CHECKED IN BY:	MERKLEY	000
4/24/18 FILE CHECKED OUT BY:	FLEURY	000
5/16/18 SENTENCING	FOR: 10/04/18 13:30 DC1SEC	002
5/16/18 FILE CHECKED IN BY:	JALLEN	000
9/26/18 FILE CHECKED OUT BY:	FLEURY	000
10/05/18 FILE CHECKED IN BY:	PECK	000
10/08/18 FILE CLOSED	JAKEMAN	000
10/08/18 DATE CLOSED	DISPOSITION: FILE CLOSED	

FILING PROCEEDINGS
DATE EVENT COMMENT EVENT DATE ENTRY PERSON/P

6/06/17	BOOKING INFORMTN RPT			MERKLEY	002
---------	----------------------	--	--	---------	-----

227

PGM ID-DSPDOC
DATE 10/29/18

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CR-FP-17-0003893

PAGE 2
TIME 9:42

6/07/17 BAIL BOND SS-250-00362 - \$160,000.00	MERKLEY	002
6/07/17 RECEIPT(S) #25030	MERKLEY	002
6/07/17 AGREEMENT TO APPEAR and Waive Extradition	MERKLEY	002
8/29/17 CRIMINAL COMPLAINT	MERKLEY	001
9/05/17 FAX OF WAIVER OF FIFTEEN DAY RULE, WAIVER OF INITIAL APPEARANCE	MERKLEY	002
11/06/17 WAIVER OF PRELIM EXM	MERKLEY	002
11/07/17 ORD BINDING OVER -DC	MERKLEY	000
11/09/17 FILE OPEN - DC CRIM FILE OPENED - DC CRIMINAL	MERKLEY	002
11/09/17 RECORD OF CT PROC.	MERKLEY	000
11/16/17 CRIMINAL INFORMATION Certified copy issued AND PLACED ON FF'S DESK @10:28	RODRIGUEZ	001
12/27/17 CERTIFIED COPY ISSUE OF: CRIMINAL INFO TO: DEPT OF EDUCATION PER THEIR RQST	DEMARS	000
1/23/18 FILE CHECKED OUT BY: DC I for review/signature	PECK	000
1/25/18 ARRAIGNMENT (DC)	FOR: 4/30/18 15:00 DC1SEC	002
1/25/18 FILE CHECKED IN BY:	MERKLEY	000
4/24/18 FILE CHECKED OUT BY: DC I for review/signature	FLEURY	000
4/27/18 ORDER REGARDING MEDIA REQ (FILE CHECKED OUT SENT PLEADING TO DC1)	PECK	000
4/27/18 REQUEST MEDIA (FILE CHECKED OUT SENT PLEADING TO DC 1)	PECK	000
4/27/18 OFFER OF PROOF WITH RESPECT OT THE DEF TENNILLE RAE WHITAKER'S	PECK	001

228

PGM ID-DSPDOC
DATE 10/29/18

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CR-FP-17-0003893

PAGE 3
TIME 9:42

PROPOSED PLEA OF NOLO CONTENDERE
(FILE CHECKED OUT SENT PLEADING TO DC 1)

4/30/18 HRG - DC1-ARRAIGN	FLEURY	002
4/30/18 MEMO OF PLEA AGREEMENT # OF PAGES 8 (FILE CHECKED OUT SENT PLEADING TO DC 1)	PECK	002
4/30/18 ORD RE: MEDIA REQUEST FILED IN OPEN COURT AT 3:19 PM	FLEURY	000
4/30/18 TRANS CONF RPT - P&P	FLEURY	002
4/30/18 MISC PLEADING ADDITIONAL DOCUMENTS TO BE CONSIDERED AT TIME OF SENTENCING UNDER SEAL (FILE CHECKED OUT SENT PLEADING TO DC 1)	PECK	000
4/30/18 CONFIDENTIAL REPORT (FILE CHECKED OUT SENT PLEADING TO DC 1)	PECK	000
5/04/18 FAX SENT FAXED DOCKET TO MARNI W/P&P PER HER REQUEST	DEMARS	000
5/16/18 SENTENCING SENTENCING	FOR: 10/04/18 13:30 DC1SEC	002
5/16/18 FILE CHECKED IN BY:	JALLEN	000
5/18/18 LETTER FROM DEMAR DAHL	PECK	002
8/14/18 NOTICE OF VICTIM PACT STATEMENT	PECK	002
9/26/18 FILE CHECKED OUT BY: DC I for review/signature	FLEURY	000
9/26/18 STATEMENT .EF'S STATEMENT TO BE CONSIDERED AT TIME OF SENTENCING UNDER SEAL (MISC LETTERS IN SUPPORT OF DEF) FILE CK'D OUT. PLACED PLEADING IN DC1'S P/U BOX AT 12:30 PM.	DEMARS	002
9/26/18 NOTICE OF VICTIM IMPACT STATEMENT. FILE CK'D OUT. PLACED PLEADING IN DC1'S P/U BOX AT 3:05 PM.	DEMARS	001
9/28/18 NOTICE OF VICTIM IMPACT STATEMENT	PECK	002
9/28/18 STATEMENT	RODRIGUEZ	001

229

NOTICE OF VICTIM IMPACT STATEMENT
PLEADING PLACED IN DC1 PICK UP BOX @8:31 ON 10/1/18

10/01/18 NOTICE OF VICTIM IMPACT STATEMENT (FILE CHECKED OUT SENT PLEADING TO DC 1)	PECK	001																																				
10/03/18 CONFIDENTIAL TREATMENT SUMMARY UPDATE FILED UNDER SEAL PLEADING PLACED IN DC1 PICK UP BOX @11:12	RODRIGUEZ	002																																				
10/04/18 HRG - DC1-SENTENCE	FLEURY	002																																				
10/04/18 NOTIFICATN 176.0926 NOTIFICATION OF REGISTRATION REQUIREMENTS FILED IN OPEN COURT @ 3:45PM	FLEURY	002																																				
10/04/18 NOTICE OF CONVICTION FILED IN OPEN COURT @ 3:45PM	FLEURY	000																																				
10/05/18 FILE CHECKED IN BY:	PECK	000																																				
10/05/18 JUDG OF CONV - NOLO CT 1-CT 4: SEXUAL CONDUCT BETWEEN SCHOOL EMPLOYEE OR VOLUNTEER AND A PUPIL, A CATEGORY C FELONY AS DEFINED BY NRS 201.540 (NOC 51067): 24-60 months NDOC w/credit for 2 days served as of 10/4/18 for Ct 1, 24-60 months NDOC w/credit for 0 days served for Ct 2, consecutive to Ct 1, 24-60 months NDOC w/credit for 0 days served for Ct 3, consecutive to Cts 1 and 2, 24-60 months NDOC w/credit for 0 days served for Ct 4, consecutive to Cts 1, 2 and 3, maximum aggregate is 240 months and minimum aggregate is 96 months, lifetime supervision, \$25 admin fee, \$3 genetic admin fee, \$150 genetic testing fee, register as sex offender (6 pgs) (cert copy issued)	JAKEMAN	002																																				
10/05/18 BOND EXONERATED SS-250-00362 - \$160,000.00 Certificate of Discharge mailed to Aawsome Bail Bonds on 10/9/18	JAKEMAN	002																																				
10/08/18 PAYMENT/AR UPDATE DISPOSITION:	JAKEMAN	002																																				
<table border="0"><tr><td colspan="2">A/R SOURCE BALANCES</td><td colspan="2">Current A/R Account Info</td></tr><tr><td colspan="2">A/R ACCOUNT BALANCES</td><td colspan="2">A/R ACCOUNT BALANCES</td></tr><tr><td>Amount Due</td><td>.00</td><td>Amount Due</td><td>.00</td></tr><tr><td>Amount Paid</td><td>\$178.00</td><td>Amount Paid</td><td>\$178.00</td></tr><tr><td>Susp/Wrt Off</td><td>.00</td><td>Susp/Wrt Off</td><td>.00</td></tr><tr><td>SRC NOW DUE</td><td>.00</td><td>TOT NOW DUE</td><td>.00</td></tr><tr><td>Last Pmt Date</td><td>10/10/18</td><td>Last Pmt Date</td><td>10/10/18</td></tr><tr><td>Last Pmt Amt</td><td>\$178.00</td><td>Last Pmt Amt</td><td>\$178.00</td></tr><tr><td>Next Due Date</td><td>11/01/18</td><td>Past Due</td><td>.00</td></tr></table>			A/R SOURCE BALANCES		Current A/R Account Info		A/R ACCOUNT BALANCES		A/R ACCOUNT BALANCES		Amount Due	.00	Amount Due	.00	Amount Paid	\$178.00	Amount Paid	\$178.00	Susp/Wrt Off	.00	Susp/Wrt Off	.00	SRC NOW DUE	.00	TOT NOW DUE	.00	Last Pmt Date	10/10/18	Last Pmt Date	10/10/18	Last Pmt Amt	\$178.00	Last Pmt Amt	\$178.00	Next Due Date	11/01/18	Past Due	.00
A/R SOURCE BALANCES		Current A/R Account Info																																				
A/R ACCOUNT BALANCES		A/R ACCOUNT BALANCES																																				
Amount Due	.00	Amount Due	.00																																			
Amount Paid	\$178.00	Amount Paid	\$178.00																																			
Susp/Wrt Off	.00	Susp/Wrt Off	.00																																			
SRC NOW DUE	.00	TOT NOW DUE	.00																																			
Last Pmt Date	10/10/18	Last Pmt Date	10/10/18																																			
Last Pmt Amt	\$178.00	Last Pmt Amt	\$178.00																																			
Next Due Date	11/01/18	Past Due	.00																																			

230

PGM ID-DSPDOC
DATE 10/29/18

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CR-FP-17-0003893

PAGE 5
TIME 9:42

Min Mon Pmt \$25.00

10/08/18	TRANSFER TO A/R	TRANSFER TO A/R	JAKEMAN	002
10/08/18	TRANS CONF RPT-C REP Notice of Conviction, Notification of Registration Requirements and JOC faxed to Sex Offender Registry		JAKEMAN	002
10/08/18	TRANS CONF RPT - DPS JOC, Criminal Info, Criminal Complaint and Booking Sheet faxed to Dept of Public Safety		JAKEMAN	002
10/08/18	FILE CLOSED		JAKEMAN	000
10/10/18	PAYMENT/AR UPDATE Amt \$178.00 DISPOSITION: PAYMENTS-CK OLD SYS Rcpt# 10007		PECK	002
10/15/18	NOTE ADDED TO FILE KARLA BUTKO CALLED TO ADVISE THAT BYRON BERGERON HAD MAILED A NOTICE OF APPEAL AND SHE WILL BE MAILING THE CASE APPEAL STATEMENT.		MERKLEY	000
10/17/18	NOTICE OF APPEAL FILED AT 11 A.M. BY BYRON BERGERON'S OFFICE ON 10/17/2018 COPIES MAILED IN SASE ON 10/29/2018		JALLEN	002
10/17/18	CASE APPEAL STATEMNT FILED BY KARLA BUTKO'S OFFICE COPIES IN SASE ON 10/29/2018		JALLEN	002
10/17/18	MOTION FOR TRANSCRIPTS FOR APPEAL; JAVS RECORDING BY KARLA BUTKO'S OFFICE, COPIES IN SASE ON 10/29/2018		JALLEN	002
10/29/18	NOTE ADDED TO FILE RETURNED NOTICE OF APPEAL SUBMITTED BY KARLA BUTKO'S OFFICE PER HER REQUEST AS A NOTICE OF APPEAL HAD ALREADY BEEN FILED BY MR. BERGERON'S OFFICE NOTICE OF APPEAL WAS RETURNED UNFILED ENTRY BY JALLEN		MERKLEY	002
10/29/18	CLERK'S CERTIFICATE FOR SUPREME COURT APPEAL		JALLEN	000

BONDS

6/06/17	BOND-SURETY SURETY BOND (ORG AMT: 160,000.00 RCPT: 25030	JAKEMAN
	POSTED BY: AAWSOME BAIL BONDS	
10/05/18	BOND-EXONERATED	JAKEMAN

231

PGM ID-DSPDOC
DATE 10/29/18

ELKO COUNTY COURT SYSTEM
CASE#: EC DC CR-FP-17-0003893

PAGE 6
TIME 9:42

PEOPLE INVOLVED

ENTERED	PERSON	PERSON TYPE	STATUS	ENTRY PERSON
10/29/18	BUTKO, KARLA K	ATT	ACTIVE	MERKLEY

232

State and Citation	Statute Content	Significant Legal Challenge
Alaska ALASKA STAT. § 11.41.434 (West 2011) AS 11.41.470(5)	Sexual Abuse of a Minor in the First Degree (a) An offender commits the crime of sexual abuse of a minor in the first degree if (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person; (2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or (3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or (B) the offender occupies a position of authority in relation to the victim. (b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. AS 11.41.470(5), defines "position of authority" as: "an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position, and a police ... or probation officer [in certain circumstances]." <u>Sexual indecency with a child</u> - (a) A person commits sexual indecency with a child if: (1) Being eighteen (18) years of age or older, the person solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in:	NO
Arkansas ARK. CODE ANN. § 5-14-110 (West 2011)		NO

(A) Sexual intercourse;

(B) Deviate sexual activity; or

(C) Sexual contact;

(2)(A) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to another person who is less than fifteen (15) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim;

(3) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to a minor, and the actor is:

(A) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;

(B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(C) The minor's parent or guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust and authority over the minor;

(4) With the purpose to arouse or gratify his or her sexual desire or a sexual desire of another person, the person, being eighteen (18) years of age or older, causes or coerces a minor to expose his or her sex organs to the actor or another person, and the actor is:

(A) Employed with the Department of Correction, the Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;

(B) Employed by or contracted with the Department of Community Correction, a local law enforcement agency, a court, or a local government and the actor is supervising the minor while the minor is on probation or parole or for any other court-ordered reason;

(C) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(D) The minor's parent or guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor; or

	<p>(5) Being eighteen (18) years of age or older, the person causes or coerces another person who is less than fourteen (14) years of age to expose his or her sex organs or the breast of a female with the purpose to arouse or gratify a sexual desire of the actor or another person.</p> <p>(b) Sexual indecency with a child is a Class D felony.</p> <p>§ 12-18-402. Mandated reporters</p> <p>(22) A public or private school counselor;</p> <p>(23) A school official, including without limitation institutions of higher education;</p> <p>(26) A teacher;</p>	
Colorado	<p>COLO.REV.STAT.ANN. § 18-3-405.3 (West 2011).</p> <p>Sexual assault on a child by one in a position of trust</p> <p>(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child by one in a position of trust if the victim is a child less than eighteen years of age and the actor committing the offense is <u>one in a position of trust</u> with respect to the victim.</p> <p>COLO.REV.STAT.ANN. § 18-3-401 (West 2011).</p> <p>(3.5) One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, <u>education</u>, welfare, or supervision of a child, including foster care</p> <p>e, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.</p>	
Connecticut	<p>CONN.GEN.STAT. § 53a-71 (West 2011).</p>	

	<p>Sexual assault in the second degree: Class C or B felony</p> <p>(a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and:</p> <p>(8) <u>the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor;</u> or (9) the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (10) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under eighteen years of age.</p> <p>CONN.GEN.STAT. § 53a-65 (West 2011)</p> <p>(13) "School employee" means a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary or secondary school or working in a public or private elementary or secondary school.</p>
Delaware	<p>DEL.CODE ANN. tit. 11 § 769 (West 2011).</p> <p>Unlawful sexual contact in the first degree; class D felony</p> <p>(a) A person is guilty of unlawful sexual contact in the first degree when:</p> <p>(1) In the course of committing unlawful sexual contact in the third degree or in the</p>

	<p>course of committing unlawful sexual contact in the second degree, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury to the victim or the person displays what appears to be a deadly weapon or dangerous instrument; or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument. (2) The person intentionally has sexual contact with another person who has not yet reached that person's sixteenth birthday and the defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>DEL.CODE.ANN. tit. 11 § 761</p> <p>(e) "Position of trust, authority or supervision over a child" includes, but is not limited to:</p> <p>(1) Familial or custodial authority or supervision; or</p> <p>(2) A teacher, instructor, coach, babysitter, day care provider, or aide or any other person having regular direct contact with children through affiliation with a school, church or religious institution, athletic or charitable organization or any other organization, whether such a person is compensated or acting as a volunteer.</p>	
District of Columbia	<p>D.C.CODE§ 22-3009.02 (West 2011).</p> <p>Second degree sexual abuse of a minor</p> <p>Whoever, being 18 years of age or older, is in a significant relationship with a minor and engages in a sexual contact with that minor or causes that minor to engage in a sexual contact [violates this section].</p> <p>D.C. CODE § 22-3001</p> <p>(10) "Significant relationship" includes:</p>	

	(D) Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor.	
Georgia	<p>GA.CODE ANN. § 16-6-5.1 (West 2011).</p> <p>Sexual assault</p> <p>(b) A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he or she engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law <u>or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person.</u></p>	
Illinois (720 ILCS 5/11-1.20 No legal challenge)	<p>720 ILL. COMP. STAT. §§ 11-1.20 (West 2011).</p> <p>Criminal Sexual Assault</p> <p>(a) A person commits criminal sexual assault if that person commits an act of sexual penetration and:</p> <p>(1) uses force or threat of force;</p> <p>(2) knows that the victim is unable to understand the nature of the act or is unable to give knowing consent;</p> <p>(3) is a family member of the victim, and the victim is under 18 years of age; or</p> <p>(4) is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age.</p> <p>720 ILL. COMP. STAT. § 11-0.1 (West 2011).</p>	

Indiana	<p>IND.CODE ANN. § 35-42-4-7 (West 2011).</p> <p>Child seduction</p> <p>Sec. 7. (a) As used in this section, “adoptive parent” has the meaning set forth in IC 31-9-2-6.</p> <p>(b) As used in this section, “adoptive grandparent” means the parent of an adoptive parent.</p> <p>(c) As used in this section, “charter school” has the meaning set forth in IC 20-18-2-2.5.</p> <p>(d) As used in this section, “childcare worker” means a person who:</p> <p>(1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility;</p> <p>(2) is employed by a:</p> <p>(A) school corporation;</p> <p>(B) charter school;</p> <p>(C) nonpublic school; or</p> <p>(D) special education cooperative; attended by a child who is the victim of a crime under this chapter; or</p> <p>(3) is:</p> <p>(A) affiliated with a:</p> <p>(i) school corporation;</p> <p>(ii) charter school;</p> <p>(iii) nonpublic school; or</p> <p>(iv) special education cooperative; attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;</p> <p>(B) <u>in a position of trust in relation to a child who attends the school or cooperative;</u></p> <p>(C) engaged in the provision of care or supervision to</p> <p>a child who attends the school or cooperative; and</p> <p>(D) at least four (4) years older than the child who is the victim of a crime under this chapter.</p>
---------	--

Iowa	<p>IOWA CODE § 709.4 (West 2011).</p> <p>Sexual abuse in the third degree</p> <p>A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:</p> <p>2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:</p> <p>a. The other person is suffering from a mental defect or incapacity which precludes giving consent.</p> <p>b. The other person is twelve or thirteen years of age.</p> <p>c. The other person is fourteen or fifteen years of age and any of the following are true:</p> <p>(1) The person is a member of the same household as the other person.</p> <p>(2) The person is related to the other person by blood or affinity to the fourth degree.</p> <p>(3) <u>The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.</u></p> <p>(4) The person is four or more years older than the other person.</p>	
Kansas	<p>KAN.STAT.ANN. § 21-5512 (West 2011)</p> <p>(8) <u>the offender is a teacher or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(3) of K.S.A.21-5503 or subsection (b)(1) of K.S.A. 21-5506, and amendment</u></p> <p>s thereto, lewd fondling or touching, not otherwise subject to subsection (a) of K.S.A. 21-5506 or subsection (b)(2) or (b)(3) of K.S.A. 21-5506, and amendments thereto, or sodomy, not otherwise subject to subsection (a) of K.S.A. 21-5504 or subsection (b)(1) or (b)(2) of K.S.</p> <p>A. 21-5504, and amendments thereto, is a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of subsection (b) of K.S.A. 21-5604, and amendments thereto, shall apply, not this</p>	

	subsection; KAN.STAT.ANN. § 21-5512 (9) “teacher” means and includes teachers, supervisors, principals, superintendents and any other professional employee in any public or private school offering any of grades kindergarten through 12;	
Kentucky	<p>KY.REV.STAT.ANN. § 510.060 (West 2011).</p> <p>Rape in the Third Degree</p> <p>(1) A person is guilty of rape in the third degree when:</p> <p>(a) He engages in sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;</p> <p>(b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;</p> <p>(c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; or</p> <p>(d) <u>Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position.</u></p> <p>(2) Rape in the third degree is a Class D felony.</p> <p>KRS 532.045</p> <p>(a) “Position of authority” means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, <u>teacher</u>, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility or a detention facility as defined in <u>KRS 520.010(4)</u>, staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;</p>	

Louisiana	<p>LA.REV.STAT.ANN. § 14:81.4 (West 2011).</p> <p>Prohibited sexual conduct between educator and student</p> <p>A. Prohibited sexual conduct between an educator and a student is committed when any of the following occur:</p> <p>(1) An educator has sexual intercourse with a person who is seventeen years of age or older, but less than nineteen years of age, when the victim is not the spouse of the offender and is a student at the school where the educator is assigned, employed, or working at the time of the offense.</p> <p>(2) An educator commits any lewd or lascivious act upon a student or in the presence of a student who is seventeen years of age or older, but less than nineteen years of age, with the intention of gratifying the sexual desires of either person, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense.</p> <p>(3) An educator intentionally engages in the touching of the anus or genitals of a student seventeen years of age or older, but less than nineteen years of age, using any instrumentality or any part of the body of the educator, or the touching of the anus or genitals of the educator by a person seventeen years of age or older, but less than nineteen years of age, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense using any instrumentality or any part of the body of the student.</p> <p>C. The consent of a student, whether or not that student is seventeen years of age or older, shall not be a defense to any violation of this Section.</p> <p>LA.REV.STAT.ANN. § 14:81.2</p> <p>(2) For purposes of this Subsection, “educator” means any teacher or instructor, administrator, staff person, or employee of any public or private elementary,</p>
-----------	--

	secondary, vocational-technical training, special, or post secondary school or institution, including any teacher aide, paraprofessional, school bus driver, food service worker, and other clerical, custodial, or maintenance personnel employed by a private, city, parish, or other local public school board.	
Maine	<p>ME.REV.STAT.ANN. tit. 17-A, § 25</p> <p>Gross sexual assault</p> <p>2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:</p> <p>F. <u>The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class C crime;</u></p> <p>G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class C crime;</p> <p>ME.REV.STAT.ANN. tit. 17-A, § 254</p> <p>Sexual abuse of minors</p>	

	<p>1. A person is guilty of sexual abuse of a minor if:</p> <p>C. The person is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime;</p> <p>ME.REV.STAT.ANN. tit. 17-A, § 255-A</p> <p>1. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:</p> <p>K. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class D crime</p>	
Maryland	<p>MD.CODE.ANN., CRIM.LAW § 3-308 (West 2011).</p> <p>Sexual offense in the fourth degree</p> <p>“Person in a position of authority” defined</p> <p>(a) In this section, “person in a position of authority”:</p> <p>(1) means a person who:</p> <p>(i) is at least 21 years old;</p> <p>(ii) is employed as a full-time permanent employee by a public or private preschool, elementary school, or secondary school; and</p> <p>(iii) because of the person's position or occupation, exercises supervision over a minor who attends the school; and (2) includes a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.</p>	

Michigan (MCL 750.520d(1)(e) No legal challenge)	<p>Prohibited--In general</p> <p>(b) A person may not engage in:</p> <p>(1) sexual contact with another without the consent of the other;</p> <p>(2) except as provided in § 3-307(a)(4) of this subtitle, a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or</p> <p>(3) except as provided in § 3-307(a)(5) of this subtitle, vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim.</p> <p>Prohibited--Persons in a position of authority</p> <p>(c)(1) <u>Except as provided in § 3-307(a)(4) of this subtitle or subsection (b)(2) of this section, a person in a position of authority may not engage in a sexual act or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a student enrolled at a school where the person in a position of authority is employed.</u></p> <p>(2) Except as provided in § 3-307(a)(5) of this subtitle or subsection (b)(3) of this section, a person in a position of authority may not engage in vaginal intercourse with a minor who, at the time of the vaginal intercourse, is a student enrolled at a school where the person in a position of authority is employed</p>	
	<p>MICH.COMP.LAWS § 750.520b (West 2011).</p> <p>Criminal sexual conduct in first degree</p> <p>Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:</p> <p>(a) That other person is under 13 years of age.</p> <p>(b) That other person is at least 13 but less than 16 years of age and any of the following:</p> <p>(i) The actor is a member of the same household as the victim.</p>	

	<p>(ii) The actor is related to the victim by blood or affinity to the fourth degree.</p> <p>(iii) <u>The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.</u></p> <p>(iv) <u>The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.</u></p> <p>MICH.COMP.LAWS § 750.520d</p> <p>(e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:</p> <p>(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if</p> <p>the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.</p>	
Minnesota	<p>MINN.STAT. § 609.343 (West 2011).</p> <p>Criminal sexual conduct in the second degree</p> <p>Subdivision 1. Crime defined. A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists:</p> <p>(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by</p> <p>the complainant is a defense. In a prosecution under this clause, the state is not required to</p> <p>prove that the sexual contact was coerced;</p> <p>(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a <u>position of authority over the</u></p>	

246

	<p>complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>MINN.STAT. § 609.341 (West 2008).</p> <p>Subd. 10. Position of authority. "Position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, <u>or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child</u>, either independently or through another, no matter how brief, at the time of the act. For the purposes of subdivision 11, "position of authority" includes a psychotherapist.</p>	
Mississippi	<p>MISS.CODE.ANN. § 97-3-95</p> <p>Sexual Battery</p> <p>(2) A person is guilty of sexual battery if he or she engages in sexual penetration with a child under the age of eighteen (18) years <u>if the person is in a position of trust or authority over the child including without limitation the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.</u></p> <p>MISS.CODE.ANN. § 97-5-23</p> <p>Fondling Child</p> <p>(1) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch</p>	

247

	<p>or rub with hands or any part of his or her body or any member thereof, any child under the age of sixteen (16) years, with or without the child's consent, or a mentally defective, mentally incapacitated or physically helpless person as defined in Section 97-3-97, shall be guilty of a felony.</p> <p>(2) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child younger than himself or herself and under the age of eighteen (18) years who is not such person's spouse, with or without the child's consent, when the person occupies a position of trust or authority over the child shall be guilty of a felony. A person in a position of trust or authority over a child includes without limitation a child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.</p>	
Missouri	<p>Mo.REV.STAT. § 566.086 (West 2011).</p> <p>Sexual contact with a student</p> <p>1. <u>A person commits the crime of sexual contact with a student while on public school property if he or she has sexual contact with a student of the public school while on any public school property and is:</u></p> <p>(1) A teacher, as that term is defined in subdivisions (4), (5), and (7) of section 168.104, RSMo;</p> <p>(2) A student teacher;</p> <p>(3) An employee of the school;</p> <p>(4) A volunteer of the school or of an organization working with the school on a project or program; or</p> <p>(5) A person employed by an entity that contracts with the public school district to provide services.</p> <p>2. For the purposes of this section, "public school property" shall mean property of any</p>	

	<p>public school in this state serving kindergarten through grade twelve or any school bus used by the public school district.</p> <p>3. Sexual contact with a student while on public school property is a class D felony.</p>	
Nevada	<p>NRS 201.450</p> <p>1. Except as otherwise provided in subsection 2, a person who:</p> <p>(a) Is 21 years of age or older;</p> <p>(b) Is or was employed by a public school or private school in a position of authority or is or was volunteering at a public or private school in a position of authority; and</p> <p>(c) 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 and:</p> <p>(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</p> <p>(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,</p> <p>is guilty of a category C felony and shall be punished as provided in <u>NRS 193.130</u>.</p> <p>2. The provisions of this section do not apply to a person who is married to the pupil at the time an act prohibited by this section is committed.</p> <p>3. The provisions of this section must not be construed to apply to sexual conduct between two pupils.</p>	
New Hampshire	<p>N.H.REV.STAT.ANN. § 632-A:2 (West 2011). Aggravated Felonious Sexual Assault.</p> <p>(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and <u>the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.</u></p>	

	N.H.REV.STAT.ANN. § 632-A:1	
New Jersey	<p>N.J.STAT.ANN. § 2C:14-2 (West 2011). Sexual assault</p> <p>c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:</p> <ol style="list-style-type: none"> (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury; (2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status; (3) The victim is at least 16 but less than 18 years old and: <ol style="list-style-type: none"> (a) The actor is related to the victim by blood or affinity to the third degree; or (b) <u>The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or</u> (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household; (4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim. <p>Sexual assault is a crime of the second degree.</p>	
New Mexico	<p>N.M.STAT.ANN. § 30-9-13</p> <p>Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:</p> <ol style="list-style-type: none"> (1) on a child under thirteen years of age; or (2) on a child thirteen to eighteen years of age when: <ol style="list-style-type: none"> (a) the perpetrator is in a position of authority over the child and <u>uses this authority to</u> 	

coerce the child to submit:

N.M.STAT.ANN. § 30-9-10

E. “position of authority” means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

North Carolina

N.C.GEN.STAT. § 14-27.7 (West 2011).

Intercourse and sexual offenses with certain victims; consent no defense

(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term “same school” means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms “school”, “school personnel”, and “student” shall have the same meaning as in G.S.14-202.4(d). For purposes of this subsection, the term “school safety officer” shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools.

	<p>N.C.GEN.STAT. § 14-202.4 (West 2011).</p> <p>Taking indecent liberties with a student</p> <p>(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.</p>	
Ohio	<p>OHIO.REV.CODE.ANN. § 2907.03 (West 2011).</p> <p>Sexual battery</p> <p>(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:</p> <p>(7) The offender is a <u>teacher</u>, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.</p>	
Oklahoma	<p>OKLA.STAT. tit. 21, § 1123 (West 2011).</p> <p>Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16--Sexual battery</p>	

	<p>B. No person shall commit sexual battery on any other person. “Sexual battery” shall mean the intentional touching, molesting or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner :</p> <p>4. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a <u>student, or in the legal custody or supervision of any public or private elementary or secondary school, or technology center school, by a person</u> <u>who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends.</u> As used in this subsection, “employee of the same school system” means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.</p>	
South Carolina	<p>S.C. CODE ANN. § 16-3-755 (West 2011). Sexual battery with a student.</p> <p>(3) “Person affiliated with a public or private secondary school in an official capacity” means an administrator, teacher, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school bus driver, guidance counselor, or coach who is affiliated with a public or private secondary school but is not a student enrolled in the school.</p> <p>(4) “Secondary school” means either a junior high school or a high school.</p> <p>(5) “Sexual battery” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.</p> <p>(6) “Student” means a person who is enrolled in a school.</p>	

Tennessee	<p>TENN. CODE ANN. § 39-13-527 (West 2011). Authority figure; sexual battery; penalty</p> <p>(a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:</p> <p>(1) The victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age; or</p> <p>(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,</p> <p>(3)(A) <u>The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or</u></p> <p>(B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.</p> <p>(b) Sexual battery by an authority figure is a Class C felony.</p>	
Utah	<p>UTAH CODE ANN. § 76-5-404.1 (West 2011). Sexual abuse of a child--Aggravated sexual abuse of a child</p> <p>(4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:</p> <p>(h) <u>the offense was committed by a person who occupied a position of special trust in relation to the victim; "position of special trust" means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence</u></p>	

	<p>over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, baby-sitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;</p>	
Washington	<p>WASH.REV.CODE ANN. § 9A.44.093 (West 2011). Sexual misconduct with a minor in the first degree (1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; (b) <u>the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.</u> (2) Sexual misconduct with a minor in the first degree is a class C felony. (3) For the purposes of this section: (a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based</p>	

	<p>instruction under chapter 28A.200 RCW.</p> <p>(b) "School employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve</p>	
Wisconsin	<p>WIS.STAT.ANN. § 948.095 (West 2011).</p> <p>Sexual assault of a child by a school staff person or a person who works or volunteers with children</p> <p>(1) In this section:</p> <p>(a) "School" means a public or private elementary or secondary school.</p> <p>(b) "School staff" means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract.</p> <p>(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply:</p> <p>(a) The child is enrolled as a student in a school or a school district.</p> <p>(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.</p> <p>(3)(a) A person who has attained the age of 21 years and who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children may not have sexual contact or sexual intercourse with a child who has attained the age of 16 years, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position.</p> <p>(b) Whoever violates par. (a) is guilty of a Class H felony.</p> <p>(c) Paragraph (a) does not apply to an offense to which sub. (2) applies.</p> <p>(d) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact directly with children:</p> <p>1. Teaching children.</p>	

	<p>2. Child care.</p> <p>3. Youth counseling.</p> <p>4. Youth organization.</p>	
Wyoming	<p>WYO.STAT.ANN. § 6-2-301 (West 2011).</p> <p>Definitions</p> <p>(a) As used in this article:</p> <p>(i) "Actor" means the person accused of criminal assault;</p> <p>(ii) "Intimate parts" means the external genitalia, perineum, anus or pubes of any person or the breast of a female person; (iii) "Physically helpless" means unconscious, asleep or otherwise physically unable to communicate unwillingness to act;</p> <p>(iv) "Position of authority" means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person;</p>	

CERTIFICATE OF SERVICE

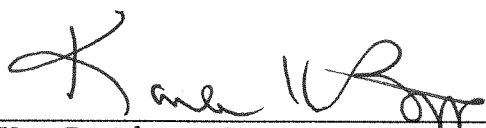
Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

X placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada.

_____ personal delivery
addressed as follows:

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

DATED this 27 day of February, 2019.



Karla K. Butko, Esq.