IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE APPLICATION OF EDWARD TARROBAGO FINLEY, FOR AN ORDER TO SEAL RECORDS EDWARD TARROBAGO FINLEY, Appellant, vs. CITY OF HENDERSON; AND THE STATE OF NEVADA, Respondents.	CASE NO. 76715 (Appeal from 8th Judicial District Court Case No. A-18-771524-S)

APPELLANT'S OPENING BRIEF

JOHN HENRY WRIGHT
Nevada Bar No. 6182
CHRISTOPHER B. PHILLIPS
Nevada Bar No. 14600
THE WRIGHT LAW GROUP, P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, NV 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8454
Email: john@wrightlawgroupnv.com
chris@wrightlawgroupnv.com
Attorneys for Appellant

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and/or entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusals.

1. Attorneys John Henry Wright, Esq., Christopher B. Phillips, Esq., and Appellant EDWARD TARROBAGO FINLEY certify that Appellant is an individual, and there are no stocks or other interests at issue;

2. The undersigned counsel is the only counsel expected to appear in this Court; and

3. The Appellant is not using a pseudonym.

DATED this 7th day of November, 2018.

/s/ Christopher B. Phillips

JOHN HENRY WRIGHT
Nevada Bar No. 6182
CHRISTOPHER B. PHILLIPS
Nevada Bar No. 14600
THE WRIGHT LAW GROUP, P.C.
2340 Paseo Del Prado, Suite D-305
Las Vegas, NV 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8454
Email: john@wrightlawgroupnv.com
chris@wrightlawgroupnv.com
Attorneys for Appellant

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

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The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

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The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

JURISDICTIONAL STATEMENT

The Nevada Supreme Court's appellate jurisdiction is based upon NRAP 4(a)(1) and NRAP 3A(b)(1) as this is an appeal from a written order denying Appellant's Petition to Seal Records. Pursuant to NRAP 4(a)(1), Appellants' Notice of Appeal was timely filed within 30 days of the district court's entry of a final order on August 20, 2018.

ROUTING STATEMENT

This matter is not within the exclusions set forth in NRAP 17(a). This matter is retained by this Court as a matter of first impression and as an issue of public importance.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The district court committed reversible error when it interpreted NRS 179.245 in a way that renders NRS 179.2595 meaningless. As a result, the district court concluded erroneously that Appellant is statutorily ineligible to seal his criminal records. Because the district court concluded erroneously that Appellant is not statutorily eligible to seal his criminal records, the district court failed to consider the merits of Appellant's Petition. The district court should have interpreted NRS 179.245 in a manner that did not render NRS 179.2595 meaningless, and the district court should have considered the merits of Appellant's petition.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

The district court also erred by applying the wrong version of NRS 179.245. The district court applied the 2015 version of NRS 179.245, when in fact, the district court should have applied the 2017 version of NRS 179.245. Had the district court applied the 2017 version of NRS 179.245, the district court's factual analysis with respect to Appellant's record sealing eligibility would have been different. Presently, the district court's factual analysis is incorrect.

The district court also failed to apply the rule of lenity in favor of Appellant; and the district court failed to consider the public policy and purpose behind Nevada's record sealing jurisprudence.

For the reasons set forth herein, Appellant is in fact statutorily eligible to have his criminal records sealed; Appellant did invoke the discretionary jurisdiction of the district court, and the district court should have considered the merits of Appellant's Petition.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

I. STATEMENT OF THE CASE

This appeal arises from an Order granting the CITY OF HENDERSON'S (hereinafter "Henderson") Motion to Oppose Appellant's Petition to Seal Records. On March 21, 2018, Appellant/Petitioner EDWARD TARROBAGO FINLEY (hereinafter "Finley") filed a Petition to Seal Records in the district court. Finley forwarded the petition to the Clark County District Attorney's office in an effort to

obtain the consent of the District Attorney. The District Attorneys' office returned Finley's petition with instructions to submit further documentation, and also to obtain the consent of the City of Henderson prior to resubmitting the Petition to the District Attorney for further review. Accordingly, Finley sent the Petition to Henderson, who failed to respond for more than sixty days. Finally, on June 13, 2018, Henderson filed a Notice of Motion and Motion to Oppose Petitioner's Request to Seal Records. Henderson argued that since Petitioner had been convicted of new offenses after pleading nolo contendre to Battery Constituting Domestic Violence, Petitioner is not eligible to seal his conviction(s) pursuant to NRS 179.245.

Finley filed an Opposition to Henderson's Motion on June 26, 2018, arguing that despite his subsequent criminal convictions, Finley had remained trouble-free for the requisite amount of time, and is therefore eligible to seal his criminal records.

The District Attorney filed an Opposition on July 2, 2018. The District Attorney argued that rather than submitting additional documents as requested, Finley submitted his petition to the City of Henderson.

Finley filed a response to the District Attorneys' Opposition on July 9, 2018 wherein Finley explained that Finley's submission of the Petition to the City of Henderson was in conformity with the District Attorney's prior instructions; and that Finley was not able to resubmit the corrected petition (which contemplated the City

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

of Henderson's approval/signature) because the City of Henderson filed its Motion to Oppose. Finley explained that at no point did Finley intend to circumvent or prevent further review of the Petition by the District Attorney. The City of Henderson's Opposition prevented Finley from submitting a revised Petition that was approved by the City, as requested by the District Attorney.

On July 19, 2018, the district court heard oral arguments, and after taking the matter under advisement, issued a written order later the same day finding that Finley was not statutorily eligible to seal his criminal records. The district court held that as a result of such statutory ineligibility, Finley failed to invoke the discretionary power of the district court. Consequently, the district could granted Henderson's Motion to Oppose and in so doing, denied Finley's Petition to Seal Records.

On August 13, 2018, Finley timely filed his Notice of Appeal. (AA 73-75).

II. STATEMENT OF THE FACTS

Finley's criminal history shows his first (oldest) arrest on June 9, 2001. Finley's most recent arrest was on February 9, 2005. Finley's complete criminal history is set forth in Finley's Petition to Seal Records (AA1-18); a certified copy of Finley's criminal history was attached to the Petition. (AA15-18).[1]

[1]This appeal turns on the district court's analysis of Finley's criminal history with respect to four specific arrests dated May 28, 2003, July 25, 2004, August 30, 2004, and February 9, 2005. As these are the only four arrest dates relied upon by the

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

On May 28, 2003, Finley was arrested for Battery/Domestic Violence. (AA 18). Finley plead guilty on August 20, 2003, and the case was closed on December 27, 2004. (AA 22).

On July 25, 2004, Finley was arrested for Battery Domestic Violence. Finley plead guilty and received credit for time served on September 17, 2004. (AA 5; 17).

On August 30, 2004, Finley was arrested for Kidnapping and Battery Constituting Domestic Violence. Finley plead guilty and was sentenced to probation for an indefinite period of time not to exceed four years. (AA 53).

On February 9, 2005, Finley was arrested for a probation violation. Nevertheless, Finley was honorably discharged from probation on December 31, 2007. (AA 78 at n. 1).

Finley has remained arrest free for more than thirteen (13) years. Finley's last arrest was February 9, 2005. (AA 1; 16).

III. SUMMARY OF THE ARGUMENTS

The district court's interpretation of NRS 179.245 absurdly concludes that statutory eligibility for criminal record sealings is determined by the mere order in which the arrests and convictions contained in the petition are reviewed and considered by the district court. The district court's analysis also results in NRS

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district court in making its decision, only these arrests are discussed herein. The remainder of Finley's criminal record is not at issue in this appeal and is therefore omitted from this statement of facts.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

179.2595 being rendered meaningless, despite the long established rule that no one section or provision of law should render any other section or provision of law meaningless. It is incumbent upon each and every court, this Court included, to read all of the laws, or sections of a law, in harmony with one another such that the application of the law does not render any one section meaningless. In this case, the district court failed to do so, and as a result, rendered NRS 179.2595 meaningless.

Despite the district court's assertion to the contrary, the district court's interpretation of NRS 179.245 is not a plain meaning interpretation. Rather, the district court's interpretation is premised on an incorrect recitation of the facts presented. The district court also based its analysis on the 2015 version of NRS 179.245, when in fact, the district court should have applied the 2017 version of NRS 179.245, as the 2017 changes to NRS 179.245 have a dispositive impact on the case at bar.

Furthermore, the district court ignored the rule of lenity, to the detriment of Appellant, even though the district court's analysis is both factually incorrect and absurd.

Finally, the district court failed to consider the recognized purpose and public policy regarding record sealing, and as a result, Appellant has been denied the opportunity to have the merits of his Petition considered by the district court.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

IV. ARGUMENT

A. Standard of Review

It has also been long held that the district court's conclusions of law are reviewed de novo. *Lopez v. Corral*, 2010 Nevada LEXIS 69 at *5. As set forth below, the district court's conclusions of law are based upon factual inaccuracies, and as applied to the fact presented here, lead to absurd results.

B. Plain Meaning does not Control Because the District Court's Interpretation Leads to an Absurd Result

1. The Law of Statutory Interpretation and Absurdity

Statutory interpretation is a question of law and is reviewed de novo. *Banks v. Sunrise Hosp.,* 120 Nev. 822, 846 (2004). When interpreting a statute, a court will give words their plain meaning unless the plain meaning would violate the spirit of the statute. *Id.* Statutory interpretation should avoid absurd results. *Id.* Additionally, statutes must be read in harmony with other rules or statutes such that one statute or provision does not render another statute or provision meaningless. *Public Employees' Ret. Sys. v. Gitter*, 393 P.3d 673, 679 (Nev. 2017).

Another fundamental rule of statutory interpretation is that the unreasonableness of the result produced by one possible interpretation is reason for rejecting that interpretation in favor of another that would produce a reasonable result. *Armstrong v. County of San Mateo*, 146 Cal.App.3d 597, 615 (1st Dist. Ct.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

App. 1983).

Finally, this Court has previously recognized that the intention of the legislature constitutes the law of its enactments, and that it is the intention of the legislature rather than the literal meaning of the statute which controls. *Orr Ditch & Water Co. v. Justice Court of Reno Township*, 64 Nev. 138, 173 (1947). The spirit of the statute will prevail over the strict letter. *Id.* at 173-74. Notably, this does not apply if the statute is clear and unambiguous. Yet, in cases such as the one presented here, the spirit of the rule will control over plain meaning in cases where a literal meaning leads to absurdity, contradiction, or other result which is contrary to the intended object of the statute. *Id*. at 174. As discussed *infra*, the district court's interpretation and application of NRS 179.245 is not only absurd, but also inapposite with the stated purpose of Nevada's record sealing jurisprudence.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

2. If Affirmed, the District Court's Analysis Would Render NRS 179.2595 Meaningless

As explained *supra,* a court's statutory interpretation of a given statute should not result in other statutes being rendered meaningless. Here, the practical effect of the district court's analysis renders NRS 179.2595 meaningless. NRS 179.2595 provides in relevant part as follows:

> Notwithstanding the procedure established in NRS 179.245, 179.255 or 179.259 for the filing of a petition for the sealing of records:

> 1. If a person wishes to have more than one record sealed and would otherwise need to file a petition in more than one court for the sealing of the records, the person may, instead of filing a petition in each court, file a petition in district court for the sealing of all such records.

This is the exact scenario presented here. In this case, Finley sought to seal more than one record in more than one court. Rather than filing a petition in each and every court, Finley filed a singular petition as allowed by NRS 179.2595 in the district court in order to seal all of his criminal records. Thus, NRS 179.2595 is applicable to this cause of action.

Furthermore, NRS 179.285 provides in relevant part as follows:

> 1. If the court orders a record sealed pursuant to NRS 174.034, 176A.265, 176A.295, 179.245, 179.247, 179.255, 179.259, 179.2595, 201.354, 453.3365 or 458.330:
>
> (a) All proceedings recounted in the record **are deemed never to have occurred**, and the person to whom the order pertains may properly answer accordingly to any inquiry, including, without limitation, an inquiry relating to an application for employment, concerning the arrest, conviction, dismissal or acquittal and the events and proceedings relating to the arrest, conviction, dismissal or acquittal.

NRS 179.285(1)(a) (emphasis added). When read together, NRS 179.285 and NRS 179.2595 demonstrate the faulty reasoning of the district court.

Consider this: Finley could have filed a petition in the district court to seal his criminal record regarding the February 9, 2005 violation of probation, and nothing

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

else. If Finley had filed such a petition, there would be no question that Finley would have been eligible to seal the violation of probation. He has not been charged with an offense for which the charges are pending, and he was not convicted of any offense except for minor moving or standing traffic violations since the February 9, 2005 violation of probation. (AA 2; 11). Assuming that a district court exercised its discretion and granted this petition, pursuant to NRS 179.285(1)(a), the probation violation would be deemed to have **never occurred**.[2] Finley could then file a subsequent petition to seal the December 2004 conviction for kidnapping and assault with a deadly weapon without any consideration given to the violation of probation, because the probation violation would be deemed to have never occurred. This sort of one-at-a-time sealing could be repeated in each court, for each prior charge, until such time as Finley had sealed each and every one of his prior records. This sort of a la cart record sealing would be inefficient and imprudent. The inefficiency of sealing records in this way is reflected in the wisdom behind NRS 179.2595, which allows a petitioner like Finley to seal all of his records in one single petition.

Here, the district court started its review of Finley's criminal history with the 2003 arrest for Battery Constituting Domestic Violence and worked forward in time

[2]In this hypothetical, Finley's traffic violations are omitted because the plain language of NRS 179.245 indicates that traffic violations will not render a petitioner ineligible for a criminal record sealing.

and concluded that, because Finley was arrested (and subsequently convicted) after 2003, Finley is forever more statutorily ineligible to seal his criminal records. If, on the other hand, the district court had started its review with the most recent arrest in 2005 and worked backwards in reverse chronological order, the district court would have reached a much different result. By beginning with the most recent arrest and working backwards in time, the district court's analysis would never reach a point where a subsequent conviction would be of any consequence. This idea of a subsequent conviction resulting in statutory ineligibility for record sealing only arises if the district court reviews the arrest history from oldest to newest instead of newest to oldest. Stated differently, Finley's eligibility for a record sealing turns entirely upon whether or not the district court reviews the petition in chronological order or reverse chronological order. If reviewed in chronological order, then the district court logically reaches the ineligible outcome as presented in this case. On the other hand, if the district court reviews the petition in reverse chronological order beginning with the most recent arrest in 2005, subsequent arrests never become an issue and the statutorily ineligible result is avoided. It cannot be the case that the Legislature intended for record sealing eligibility to turn on the mere order in which the district court reads the petition.

Under the district court's analysis, the only way for Finley (or other similarly

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

situated petitioners) to obtained a record sealing is to go through a time-consuming and expensive process of sealing each prior arrest one-at-a-time until each and every arrest is sealed. Not only is such a holding absurd, but it also renders NRS 179.2595 meaningless. The entire purpose behind NRS 179.2595 is to avoid an unnecessary and labourious process of filing multiple petitions in multiple courts just to obtain the very same outcome that could be achieved by filing one combined petition to seal all records as contemplated under NRS 179.2595.

3. The District Court's "Plain Language" Interpretation is Factually Incorrect

Here, the district court's analysis is based on a misreading and misapplication of NRS 179.245. The district court's order relied upon NRS 179.245, which provides in relevant part [3]:

> 1. Except as otherwise provided in subsection 5 and NRS 176A.265, 176A.295, 179.256, NRS 453.3365 and 458.330, a person may petition the court in which the person was convicted for the sealing of all records relating to a conviction of:
>
> * * *
>
> (b) Except as otherwise provided in paragraphs (a) and (c), a category B, C or D felony after 5 years from the date of

[3]The district court's order (AA 64-72) incorrectly cited to a prior version of NRS 179.245. A review of the archived code section indicates that the district court cited to the 2015 version of NRS 179.245. As Appellant's petition was filed in the district court on March 21, 2018 (AA 1), Appellant's petition is governed by the 2017 version of NRS 179.245, cited herein.

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

release from actual custody or discharge from parole or probation, whichever occurs later;

* * *

(e) A violation of NRS 422.540 to 422.570, inclusive, a violation of NRS 484C.110 or 484C.120 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later;

* * *

5. If the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with an offense for which the charges are pending or convicted of any offense except for minor moving or standing traffic violations, the court may order sealed all records of the conviction....

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

In reaching its erroneous conclusion, the district court held as follows:

> In this Court's view, NRS 179.245 is not ambiguous, and must be construed as written. NRS 179.245(4) specifically states this Court "may,"or has discretion to grant or deny a petition filed pursuant to NRS 179.245 if it finds the petitioner has been arrested for nothing greater than minor traffic violations "in" the prescribed times set forth in NRS 179.245(1) following the particular convictions identified in subsections (a) through (f). In this case, MR. FINLEY was charged or arrested for committing "Battery Constituting Domestic Violence," a non-felony, in violation of NRS 33.018 on May 28, 2003. Ultimately, he was convicted of committing such offenses in the Henderson Municipal Court. In order for him to be eligible to have his 2003 arrest and conviction sealed, MR. FINLEY could not have been charged or convicted of *any* offense, except for minor moving and standing traffic violations within the seven (7) years following the [sic] his release from custody or when he is no longer under a suspended sentence. *See* NRS 179.245(1)(e) *and* 179.245(4). As set forth in his Petition, MR. FINLEY was arrested in or about July and August 2004 for committing the crimes of second degree kidnapping, assault with a deadly weapon and battery constituting domestic violence. Ultimately, he was convicted of those crimes, to wit:

> Second Degree Kidnapping, Assault with a Deadly Weapon (both Category B felonies) and Battery Constituting Domestic Violence (Misdemeanor) in violation of NRS 200.310, 200.320, 200.471, 200.481, 200.485, and 33.010 in December 2004. Furthermore, MR. FINLEY was arrested for committing a violation of his probation in 2005. Such offenses fell within the seven (7) year period prescribed by NRS 179.245(1)(e). Accordingly, as he committed offenses within seven (7) years following his release from custody, MR. FINLEY failed to invoke this Court's discretionary power under NRS 179.245(4) to seal his criminal records relating to the 2003 conviction for Battery Constituting Domestic Violence. This Court, therefore, grants CITY OF HENDERSON's motion, and denies MR. FINLEY's Petition to Seal Records as it applies to the 2003 conviction.

(AA 69-70) (emphasis in original). This holding is incorrect because, despite the district court's assertion that it was relying on an unambiguous and otherwise plain text reading of the statute, the district court's conclusion is inapposite with the plain text of the statute.

Specifically, NRS 179.245(1)(e) says, "... after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later." The statute does not say **during** the seven (7) years immediately following an arrest or conviction; the statute says **after the release from actual custody or release from a suspended sentence, whichever is later**. In this case, Henderson argued, and the district court erroneously agreed, that because Finley had been arrested and convicted of crimes in December 2004, Finley is therefore ineligible to seal his 2003 conviction. This argument by Henderson (and the eventual

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

holding by the district court) ignores the fact that at the time of Finley's conviction in December 2004, Finley was still under a suspended sentence from the 2003 Battery Constituting Domestic Violence. Finley's 2003 case was closed on December 27, 2004. (AA 22). Finley was next convicted on or about December 13, 2004. (AA 29-30).[4] Thus, it cannot be the case that the 2004 conviction was "during the prescribed period set forth in NRS 179.245(1)" because the December 2004 conviction did not occur **in** the seven (7) years **after** Finley was released from the suspended sentence associated with his 2003 conviction. In this case, the December 13, 2004 conviction was **before** his release from the suspended sentence, as the 2003 suspended sentence was not complete until the case was closed on December 27, 2004. (AA 22). Thus, the district court's holding, to wit: that Finley's December 2004 conviction was "in the prescribed period" associated with the 2003 Battery Constituting Domestic Violence (thereby making Finley statutorily ineligible to seal his criminal record(s)) is factually incorrect, clearly erroneous, and should be reversed.

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The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

[4]Finley plead guilty, and the district court signed a Judgment of Conviction on December 13, 2004; the Judgment of Conviction was filed with the District Court Clerk on December 14, 2004. (AA 29-30).

C. The District Court Applied the Wrong Law to Petitioner's Request to Seal his Violation of Probation

When considering Finley's Petition as it related to his 2005 probation violation, the district court noted that "MR. FINLEY did not receive a discharge from probation until December 2007, whereby, in any event, he would not be eligible to seek a sealing of such criminal records until December 2022." (AA 70). This holding is premised on an incorrect statement of the law. As explained in footnote 2, *supra*, the district court's Order cites to and relies upon the 2015 version of NRS 179.245. Under the 2015 version of NRS 179.245, a class B felony could not be sealed until fifteen (15) years after release from custody or completion of a suspended sentence. In 2017, the Nevada Legislature saw fit to change our state's law regarding record sealing. Under the 2017 version of NRS 179.245, **class B felonies are now sealable 5 years after release from custody or completion of a suspended sentence**. Because Finley's petition to seal records was filed in March 2018, the 2017 version of NRS 179.245 is controlling. As noted by the district court (AA 65 at n. 1), Finley was honorably discharged from probation on December 31, 2007. Calculating five (5) years as set forth in the 2017 version of NRS 179.245 from the completion of his probation, **Finley became statutorily eligible to seal his probation violation on December 31, 2012**. Accordingly, the district court's conclusion that Finley "would not be eligible to seek a sealing of such criminal records until December 2022 " is

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

clearly erroneous and should be reversed.

D. The District Court Erred by not Applying the Rule of Lenity

Finley recognizes that this is not a criminal appeal, and that his Petition to Seal Records is indeed a civil matter. However, as the subject matter of this appeal and the related petition concerns Finley's criminal history and the sealing thereof, the criminal law rule of lenity is instructive in this context.

"'The rule of lenity [is a rule of statutory construction that] demands that ambiguities in criminal statutes be liberally interpreted in the accused's favor...'" *State v. Lucero*, 127 Nev. 92, 99 (2011) (modification in original) (citing *Moore v. State*, 122 Nev. 27, 32 (2006)). Generally speaking, **the rule of lenity is not applied when a court's interpretation avoids absurd results and is consistent with the language of the statute**. *United States v. Butler*, 74 F.3d 916, 924 (9th Cir. 1996) (citing *United States v. Alfeche*, 942 F.2d 697, 699 (9th Cir. 1991)) (emphasis added).

Here, the district court's holding is both absurd and inconsistent with the language of NRS 179.245 for three reasons.

One, the district court's analysis is factually incorrect as discussed in section (B)(2), *supra*. The plain language of NRS 179.245 defines the "prescribed period" as the time **after** release from actual custody or completion of a suspended sentence. Yet, for some reason the district court fashioned its holding based on an arrest (and

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

conviction) that occurred **before**, **not in**, the prescribed period set forth in NRS 179.245. It cannot be the case that a district court's incorrect application of the facts to the law is consistent with the language of the statute or with what the Legislature intended.

Two, the district court's analysis creates an absurd outcome-determinative situation where record sealing eligibility turns on whether the district court reviews a petition in chronological or reverse chronological order, as explained in section (B)(3) *supra*. If a petition such as the one presented here is reviewed in chronological order, then any subsequent arrest renders the petitioner ineligible. On the other hand, if the district court reads the very same petition in reverse chronological order, thereby avoiding the issue of subsequent arrests, the Petitioner is then statutorily eligible. It cannot be overstated how absurd it is for a petitioner's record sealing eligibility to be determined by the mere order in which the district court reviews the arrests and convictions contained in the petition. There is no way the Legislature, who in its wisdom saw fit to significantly reduce the time periods for record sealing eligibility, meant for eligibility to be determined by such an arbitrary factor as the order in which the court reviews the petition.

Three, the only way for a petitioner like Finley to avoid the arbitrary effect of the district court's analysis is to file separate petitions in separate courts; otherwise,

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

a petitioner like Finley is forever at the mercy of the mere order in which any given district court judge reviews the arrests and convictions contained in a petition to seal criminal records. Theoretically, a district court could view a petition which included multiple arrests in an order that results in a finding of ineligibility; meanwhile, an identical petition filed in another department of the same court could be reviewed in the opposite order and deemed eligible. This sort of inconsistent determination of eligibility cannot be what the Legislature intended. Such arbitrary determination of eligibility is positively counter to the stated purpose and policy behind Nevada's record sealing statutes. This is discussed in more detail is section E, *infra.* The only way to avoid this sort of inconsistency is to file multiple petitions in multiple courts, which would render NRS 179.2595 meaningless.

For these reasons, the district court's analysis and conclusion is absurd, and the rule of lenity is applicable in this context. Applying the rule of lenity to the facts presented here leads to only one result: the district court should have interpreted NRS 179.245 in a way that avoided all ambiguity. The district court should have interpreted NRS 179.245 in a way that allowed the merits of Finley's petition to be considered. As currently decided, the district court did not reach the merits of Finley's petition because the district court ultimately concluded that Finley failed to invoke the discretionary power of the district court due to his statutory ineligibility. If the

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

district court had applied the rule of lenity, the district court's incorrect interpretation of NRS 179.245 would not have led the court to conclude erroneously that Finley had not invoked the district court's discretionary power, and Finley would have had the merits of his petition considered by the district court.[5]

E. The District Court Failed to Consider the Public Policy and Purpose Behind Record Sealing

Finally, Finley points out that the district court's interpretation of NRS 179.245 failed to consider the public policy and purpose of record sealing. This Court has previously recognized that the legislative history surrounding NRS 179.245 indicates that Nevada's record sealing statute was enacted to remove ex-convicts' criminal records from public scrutiny so that previously convicted individuals could lawfully tell prospective employers that they had not been convicted of a crime. *Baliotis v. Clark County*, 102 Nev. 568, 570 (1986). Nevada's record sealing scheme is intended to remove the stigma associated with prior convictions so that persons convicted of crimes can, after paying their debt to society, seek meaningful employment opportunities without the encumbrance of the social stigma that comes from a

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

[5] Finley recognizes that the district court's order stated "[i]n this Court's view, NRS 179.245 is not ambiguous..." (AA 69). However, for the reasons explained herein, the district court's interpretation as applied creates both ambiguity and absurdity with respect to determining record sealing eligibility. Thus, Finley maintains that the rule of lenity is applicable.

criminal record. *Id.* at 570-71.

Here, the district court did not reach the merits of Finley's Petition. However, on remand, Finley would be able to show that he has remained trouble-free for more than a decade. In that time, he has completed real estate school, he has passed both the national real estate exam and the Nevada real estate exam, and he is making every effort to obtain meaningful employment. Finley is aware that the ultimate question of whether or not his record will be sealed remains an open issue subject to the discretion of the district court. However, nothing about Mr. Finley's past should prevent him from having the merits of his petition considerd by the district court in the fist instance. To hold otherwise is to say that any criminal defendant who is arrested multiple times in a given period of time (e.g., four years in the case of Mr. Finley) can **never** gain eligibility such that the discretionary power of the district court would be invoked, no matter how long they wait or what successes they achieve in order to demonstrate themselves worthy of the extraordinary benefit that comes from a criminal record sealing. Such a holding would, in itself, be absurd. On the record now before this Court, Finley has been denied the opportunity to present the merits of his Petition as a result of the district court's absurd interpretation and incorrect application of NRS 179.245.

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The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

V. CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed; and this matter should be remanded to the district court with instruction to consider the merits of Finley's Petition as he is, in fact, statutorily eligible to have the merits of his petition considered by the district court in the first instance.

DATED this 7th day of November, 2018

/s/ Christopher B. Phillips

JOHN HENRY WRIGHT
Nevada Bar No. 6182
CHRISTOPHER B. PHILLIPS
Nevada Bar No. 14600
THE WRIGHT LAW GROUP
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8485
Attorneys for the Appellant

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32 (a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirement of NRAP 32(a)(6) because this brief has been prepared in proportionately spaced typeface using WordPerfect X6 in 14 point and Times New Roman.

2. I further certify that this brief complies with the page- or typed-volume limitations of NRAP 32(a)(7) because excluding the parts of the brief that are exempted by NRAP 32(a)(7)(c), it is proportionately spaced, has a typeface of 14 points or more and contains 5,253 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any of the transcript or appendix where the matter relied on is found.

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The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7th day of November, 2018.

/s/ Christopher B. Phillips

JOHN HENRY WRIGHT
Nevada Bar No. 6182
CHRISTOPHER B. PHILLIPS
Nevada Bar No. 14600
THE WRIGHT LAW GROUP
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
Telephone: (702) 405-0001
Facsimile: (702) 405-8485
Attorneys for the Appellant

The Wright Law Group, PC
2340 Paseo Del Prado, Suite D-305
Las Vegas, Nevada 89102
T: (702) 405-0001 • F: (702) 405-8454