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 REPLY BRIEF

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ARGUMENT SECTION I - REPLY TO STATE OF NEVADA'S ANSWERING BRIEF

A. The District Court Erred in Holding that it Lacked Discretion to Consider the Merits of Appellant's Petition to Seal Records

1. The District Court Applied the Wrong Law

First, as an initial matter, Appellant (hereinafter "Finley") emphasizes that the State of Nevada agrees that the district court erred by applying the 2015 version of NRS 179.245 instead of the 2017 version which was the law when Finley petitioned to seal his records. *See State of Nevada's Answering Brief* (hereinafter "SAB") at p. 4. As explained by the State of Nevada (hereinafter "State"), the difference between the 2015 version and the 2017 version of NRS 179.245 is consequential, because under the 2015 version, the district court lacked discretion since Finley would not yet have satisfied the requisite waiting period to become eligible. *Id.* However, under the 2017 version, Finley became eligible in December 2017. *Id.* Finley filed his petition in March 2018, some three months after he became eligible. (AA 1). The State agrees that the district court had discretion to consider the merits of Finley's petition. *SAB* at 5. Because the district court erred by incorrectly concluding that the court did not have the discretion to consider the merits of Finley's petition, the district court committed reversible error, and this case should be remanded on that basis alone. *SAB*

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5-6.[1]

2. The District Court's Ruling Renders NRS 179.2595 Meaningless

The State next discusses NRS 179.2595. State says that NRS 179.2595 facilitates judicial economy by allowing the court to consider a request to seal multiple records in one single filing thereby avoiding the need for multiple briefs and multiple petitions. *SAB* at 7. To this point, Finley agrees. State goes on to say that "[e]ach individual crime, however, must still be eligible for sealing, and NRS 179.2595 should not be read to overcome the provisions of NRS 179.245(5)." *SAB* at 7. Finley agrees with this point as well. Where Finley and State disagree is the process of determining whether each individual crime is eligible. Stated differently, State wants this court to determine that eligibility for petitions containing multiple arrests and convictions can only be determined by looking at the petition in chronological (i.e. oldest to newest) order. Finley's position is that a petition containing multiple arrests or convictions reviewed in reverse chronological order (i.e. newest to oldest) would come to a different outcome. This outcome

[1] Finley recognizes that the State reserves its right to challenge the merits of Finley's petition if the matter is remanded for further consideration by the district court. Finley does not challenge the State's right to do so. In the same way that the State reserves the right to challenge the merits of the petition, Finley reserves the same right to present the merits of his petition to the district court in the first instance.

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determinative review is explained in more detail in Finley's Opening Brief at pp. 9-11. In the interest of brevity, Finley will not restate that discussion here. Instead, Finley will remind the Court that statutory interpretation should avoid absurd results. *Banks v. Sunrise Hosp.,* 120 Nev. 822, 846 (2004) 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. If this Court agrees with State's argument, then NRS 179.2595 becomes meaningless.

As explained in Finley's Opening Brief, Finley could have filed a single petition to seal only his most recent arrest. If that petition was granted, his most recent arrest would be deemed to have never occurred. *See* NRS 179.285(1)(a). As a result, he would be statutorily eligible to seek a sealing of the next most recent conviction because there would no longer be a subsequent arrest or conviction to render him ineligible.

On this point an important distinction needs to be made. Finley understands that this hypothetical proceeds on the assumption that the district court would exercise its discretion and grant the petition to seal the specific record(s). However, whether or not the district court would ultimately chose to seal the records is entirely immaterial to the issue before this Court. Likewise, whether or not Finley (or any other petitioner) would be successful in an attempt to seal multiple records via

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separate record sealing petitions is also immaterial. The issue is not whether the district court should or even would grant the petition(s). Instead, **the issue is that a petitioner who desires to seal multiple prior conviction's should not have to file multiple petitions just to avoid an arbitrary finding of ineligibility simply because multiple convictions are identified in the same, singular, petition.**

If petitioners such as Finley cannot list all of their arrests and convictions on a single petition and still be eligible to have the merits of the petition considered by the district court, then NRS 179.2595 has no legal purpose. The purpose of NRS 179.2595 is to facilitate judicial efficiency by allowing petitioners to bring multiple arrests and convictions in one single petition so that valuable - and limited - resources are not expended reviewing multiple briefs and multiple petitions all for the same one individual petitioner. *See SAB* at 7.

What the State fails to appreciate is that if a petitioner is going to be ineligible to have the merits of his or her petition considered simply because his or her petition contains multiple arrests and convictions, then there is no purpose whatsoever in having a law that allows for multiple arrests and multiple convictions to be brought before the court in one consolidated petition. To accept the State's argument as true would discourage petitioners from filing consolidated petitions under NRS 179.2595, and instead encourage judicial inefficiency by having each and every petitioner file

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separate petitions for each arrest or conviction so as to avoid a district court declaring them ineligible without considering the merits of the petition.

State's argument renders NRS 179.2595 meaningless because NRS 179.2595 only applies to petitioners who have multiple arrests or convictions; NRS 179.2595 says "[i]f a person wishes to have more than one record sealed..." (emphasis added). The plain language of NRS 179.2595 anticipates that every petitioner who petitions the district court under the authority of NRS 179.2595 will have multiple arrests and multiple convictions. Thus, it cannot be the case that the Nevada Legislature intended to create a new law to allow for the sealing of multiple arrests and multiple convictions if, in fact, the existence of multiple arrests and multiple convictions renders the petition ineligible without even reaching the merits of the petition.

3. State's Discussion of the Merits is Irrelevant Because the Merits of the Petition has to be Considered by the District Court in the First Instance

Finally, State offers a discussion about how even if the most recent offense is sealed and deemed never to have occurred, the crime did in fact still occur. *See SAB* at p. 8 (citing NRS 179.285(1)(a)). State goes on to discuss how district courts have a responsibility to consider the entirety of a person's criminal history when considering the merits of a petition to seal records. *SAB* at 8. This discussion goes to the district court's consideration of the merits of the petition. Finley fully understands

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that if this Court agrees with Finley and remands this case for further proceedings, Finley may or may not succeed on the merits of his petition. To the extent that State's argument is that the entirety of a person's criminal history must be considered when evaluating the merits of a record sealing petition, Finley does not disagree. *See SAB* at 8. However, there is a distinction between (1) saying that a conviction is so completely eliminated that it is beyond judicial review when considering the merits of a petition (*see SAB* at p. 8), and (2) saying that a petitioner with multiple convictions is per se ineligible to present the merits of his or her petition to seal records. Finally, it is worth noting again that State's discussion of what the district court should consider is immaterial here because the district court did not reach the merits of Finley's petition; and the merits of the petition have to be considered by the district court in the first instance.

For all of the above reasons, this Court should agree with Finely and the State of Nevada and remand this case to the district court with instructions to apply the correct version of NRS 179.245 and to consider the merits of Finley's petition in the first instance.

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ARGUMENT SECTION II - REPLY TO CITY OF HENDERSON'S ANSWERING BRIEF

A. The City of Henderson Relies Upon an Incorrect Standard of Review

Before addressing the substance of the City of Henderson's (hereinafter "Henderson") Answering Brief, Finley points out that Henderson includes an abuse of discretion standard of review. Henderson says that abuse of discretion is the standard of appellate review when reviewing a district court's decision to seal criminal records pursuant to NRS 179.245. *See Henderson's Answering Brief* (hereinafter "HAB") at p. 4. Finley does not disagree with Henderson's statement of the law. However, this appeal is not before this Court on an assertion that the district court abused its discretion. In fact, no discretionary question whatsoever is presented here. The district court specifically held, "[Finley] **failed to invoke this court's discretionary power** under 179.245(4) to seal his criminal records... This [c]ourt, therefore, grants CITY OF HENDERSON'S motion, and denies [Finley's] Petition to Seal Records..." (AA 70) (emphasis added). Thus, Henderson's attempt to apply an abuse of discretion standard of review to this appeal is improper. Here, Finley's appeal is based entirely upon a question of statutory interpretation, to wit: whether the district court's interpretation of NRS 179.245 renders NRS 179.2595 meaningless. As such, the correct standard of review for the instant appeal is de novo,

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not abuse of discretion. *See State v. Catanio*, 120 Nev. 1030, 1033 (2004); *State v. Lucero*, 127 Nev. 92, 95 (2011); *Lopez v. Corral*, 2010 Nevada LEXIS 69 at *5.

B. Appellant's Claim is Ripe for Appeal

Henderson's first substantive argument is both confusing and misleading. Henderson mischaracterizes Finley's argument and says:

> Appellant exclusively argued that the waiting period for all of his various convictions should begin after he was released from probation on his felony case in December 2007.

HAB at 6. Henderson goes on to say:

> Appellant now claims that the seven (7) year waiting period was in fact satisfied because he was still under his suspended sentence until after his new felony case had been adjudicated.

Id. This is misleading. Finley never said that the 7 year waiting period was satisfied because he was still under a suspended sentence. What Finley actually said was this:

> ...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 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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Appellant's Opening Brief (hereinafter "AOB") at p. 15 (emphasis in original). Henderson ignores that this argument is purely a plain language argument based upon the statute's use of the words "in," "after," and "before." Stated differently, the district court focused on the phrase "in the prescribed period." Here, Finley is merely pointing out that there is a difference between "in the prescribed period" that begins "after release from custody" and a conviction that occurs beforehand. Henderson's argument that Finley somehow waived "this particular issue" is not ripe for appeal fails because Finley is not making the argument that Henderson claims. No part of this argument is as Henderson suggests. Finley is not saying that he "somehow satisfied both time periods." *See* HAB at p. 7. Finley's position before the district court was that because it has been more than 7 years since his last (most recent) arrest or conviction, he is eligible to petition to have his record(s) sealed. That argument was presented below and that is the position that Finley maintains now before this Court. As such, Henderson's first argument regarding ripeness and waiver is factually incorrect and fails as a matter of law.

Henderson goes on to offer further argument in the guise of this Court considering "this issue, for the first time on appeal." As explained *supra*, there is no new issue. Nevertheless, Henderson goes to great lengths argue against this "new issue," so Finley is obliged to respond in kind. Henderson goes through a lengthy

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discussion about the dates of Finley's convictions and Finley's failures on supervised release (probation). Henderson sums up its argument by saying that allowing Finley to seal his record, "...would be truly perverse and reward [Finley's] non-compliance." *HAB* at 9. Here, none of this matters because Henderson's entire argument challenges the merits of Finley's petition, which is not at issue before this Court. As explained *supra*, the district court declined to reach the merits of petition, and this appeal is not before this Court on an abuse of discretion standard. As such, any argument regarding the merits of Finley's petition and why the district court should deny the same is entirely immaterial because the merits of the petition have not been considered by the district court in the first instance.

Additionally, Henderson goes on to talk about Finley's September 2005 conviction for failure to appear and Finley's Tennessee arrest in 2005. This is yet another improper attempt to discuss the merits of Finley's petition even though the merits of the petition are not at issue before this Court. Nevertheless, because Henderson is set on raising the issue, Finley points out that Finley does not have access to the FBI database records check in the same way that Henderson does as a law enforcement agency. Instead, Finley is forced to rely upon the Nevada Department of Public Safety (NDPS) Criminal History Records Repository. Finley's NDPS criminal history was obtained prior to filing his petition with the district court,

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and a copy of the same in included in the record now before this Court. (AA 14-18).

The NDPS Criminal History states as follows:

> A technical fingerprint search of the above individual's fingerprints was performed through the Western Identification Network Automates Biometric Identification System (WIN-ABIS) and/or **the FBI Next Generation Identification NGI.**

(AA 15) (emphasis added). A review of the NDPS criminal history shows that the 2005 Tennessee arrest does not appear on the NDPS criminal history. Henderson is making an issue of something that was "omitted" without considering that the petition as presented to the district court contains a verbatim recitation of Finley's Las Vegas Metropolitan Police Department criminal history (SCOPE) as well as the NDPS criminal history[2]. This argument by Henderson is just another attempt to challenge the merits of the petition without having to address the statutory interpretation issue that is truly at issue in this appeal.

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[2] Later in Henderson's Brief at HAB p. 16, Henderson goes on to talk about yet another arrest (without a conviction) for Aggravated Assault with a Weapon and DUI in Texas in 2014. Again, this was not contained in the NDPS Criminal History and was therefore not included in the Petition to Seal Records. Henderson is making every effort to discredit Finley and the merits of his Petition before the district court even considers the merits of the petition.

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C. Appellant DID NOT Fail to Invoke the District Court's Discretion under NRS 179.245(5)

1. Henderson's Argument Leads to an Absurd Result

Henderson next argues that this Court should affirm the district court because Finley failed to invoke the district court's discretionary powers. This argument also fails. Moreover, Henderson's argument is counter to the spirit and intent of the law. Henderson says:

> If a petitioner has been charged with any offense for which the charges are pending or convicted of any offense during the waiting period, the [c]ourt does not have discretion to seal that particular criminal record. On the other hand, if a petitioner has legally satisfied the waiting period by not being arrested or convicted of a new criminal offense(s), he/she may petition to seal his/her record, although the decision to seal any criminal record remains discretionary.

HAB at 12. Henderson makes this argument without considering how such a rule would actually look in practice. In order to explain this more clearly, consider the following examples:

Defendant A is arrested for and subsequently convicted of misdemeanor trespassing in January 2018. He successfully completes the imposed sentence and the case is closed. In July 2018, Defendant A receives a citation and is later convicted of misdemeanor jaywalking. Defendant pays a fine and the case is closed. According to Henderson's logic, Defendant A will never be eligible to seal the trespassing because the conviction for jaywalking occurred during the waiting period required to seal the

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trespassing offense. (Misdemeanor offenses are sealable after one year. *See* NRS 179.245(1)(g)).

Now consider Defendant B. Defendant B was arrested for and later convicted of DUI in January 2000. Defendant B successfully completed the imposed sentence and received an honorable discharge from probation. In January 2009, Defendant B was arrested for and later convicted of Battery Constituting Domestic Violence. Defendant B completed the imposed sentence and received an honorable discharge from probation. In this example, Defendant B's second conviction occurred more than 7 years after the DUI, so according to Henderson's logic, Defendant B will be eligible to have his record sealed (subject to the district court's discretion) because he did not have a subsequent conviction during the required waiting period to seal the DUI.

Now consider this: in January 2019, Defendant A and Defendant B both decide to petition the district court to seal their criminal records. Both Defendants file petitions listing both offenses in a single petition as provided in NRS 179.2595. If we continue to apply Henderson's logic, the district court will not have discretion to even consider Defendant A's petition because his second arrest and conviction occurred during the waiting period to seal the first conviction. Defendant A will never be able to seal his misdemeanor trespassing. Meanwhile, Defendant B who was convicted of

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more serious offenses[3] will be eligible because Defendant B's convictions happen to be far enough apart in time that Defendant B's domestic violence conviction occurred more than 7 years after Defendant B's DUI. In this example, the petitioner who is seeking to seal a DUI and a Domestic Violence conviction will be eligible, but the Defendant who wants to seal trespassing and jaywalking is not. Why? Because, according to Henderson, Defendant A was convicted of another crime during the required waiting period. This rationale defies all logic and reason. It cannot be the case that the Legislature intended "in the prescribed period" to result in this sort of absurd result.

Moreover, 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

[3]What is more serious is, at least in part, subjective. However, Finley points out that both DUI and Battery Constituting Domestic Violence are subject to a 7 year waiting period pursuant to NRS 179.245(e), which is far greater than the one year waiting period for misdemeanors. Hence, it is reasonable to say that DUI and Domestic Violence are more serious offenses than trespassing and jaywalking.

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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 criminal record. *Id.* at 570-71. If Henderson's logic were to prevail, Defendant B from our example above will be afforded an opportunity to present the merits of his petition to the district court. Defendant B will be given an opportunity to show that he has paid his debt to society and that he should be able to seek future meaningful employment opportunities without the encumbrance of a social stigma that comes from a DUI and domestic violence conviction. On the other hand, Defendant A in our example above, who arguably was convicted of less serious offenses, will not be afford the same opportunity. To say that the Defendant with more serious offenses is eligible to present the merits of his petition while the Defendant with a less serious criminal history is not is an absolutely absurd result. Not only does Henderson's logic lead to this type of absurd result, Henderson's logic violates the spirit of the statute. This Court's statutory interpretation should avoid absurd results as well as interpretations that violate the spirit of the statute. *Banks v. Sunrise Hosp.,* 120 Nev. 822, 846 (2004). As such, Henderson's suggested interpretation, namely: "if a petitioner has been charged with any offense for which the charges are pending or convicted of any offense during the waiting period, the [c]ourt does not have discretion to seal that particular criminal record," fails and this

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Court should reject the same as being absurd and in violation of the spirit of NRS 179.245 *et. seq.*

2. Henderson's Calculation of Time under NRS 179.245 Renders NRS 179.2595 Meaningless

a. Abuse of Discretion is not Relevant to this Appeal

Henderson next argues that "the [d]istrict [c]ourt interpreted NRS 179.245 according to its plain language. As such, the [d]istrict [c]ourt did not abuse its discretion when it denied Appellant's petition..." *HAB* at 17. Once again, Henderson is trying to make this appeal about the merits of Finley's petition and whether or not his record should be sealed. As explained *supra*, the district court did not reach the merits of the petition in the first instance, and therefore no discretion was exercised. Abuse of discretion is not the standard of review for this appeal because no discretion was exercised.

b. But for Henderson's Calculation of Time Under NRS 179.245, NRS 179.2595 Would be Unaffected

Not only does Henderson's interpretation of NRS 179.245 lead to arbitrary outcomes and absurd results, Henderson's interpretation also renders NRS 179.2595 meaningless. Henderson goes through an extensive recitation of NRS 179.245 *et. seq.* and points out the recurrence of the phrase "from the date" of release with respect to any particular conviction. However, what Henderson fails to appreciate is that NRS

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179.245 cannot be read alone. NRS 179.245 has to be read and applied in harmony with the remainder of NRS 179. Henderson offers no explanation of how Henderson's suggested interpretation of NRS 179.245 is to be squared with the legislatures' enactment of NRS 179.2595. Henderson avoids this issue because Henderson knows that it cannot reconcile the "from the date" language in NRS 179.245 with the notion that multiple records can be sealed at one time pursuant to NRS 179.2595. It is this disconnect between Henderson's suggested interpretation of NRS 179.245 and the Legislature's enactment of NRS 179.2595 that renders NRS 179.2595 meaningless.

As explained *supra* in reply to the State of Nevada's arguments, if petitioners such as Finley cannot list all of their arrests and convictions on a single petition and still be eligible to have the merits of the petition considered by the district court, then NRS 179.2595 has no legal purpose. The purpose of NRS 179.2595 is to facilitate judicial efficiency by allowing petitioners to bring multiple arrests and convictions in one single petition so that valuable - and limited - resources are not expended reviewing multiple briefs and multiple petitions all for the same one individual petitioner. *See SAB* at 7.

The State of Nevada and Henderson both fail to appreciate that if a petitioner is going to be ineligible to have the merits of his or her petition considered simply because a petition contains multiple arrests and convictions, then there is no purpose

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whatsoever to having a law that allows for multiple arrests and multiple convictions to be brought before the court in one consolidated petition. To accept the State and Henderson's argument would be to discourage petitioners from filing consolidated petitions under NRS 179.2595, and instead encourage each and every petitioner to file separate petitions for each arrest or conviction so as to avoid a district court declaring them ineligible without considering the merits of the petition. In essence, petitioners would be encouraged try and manipulate the system by filing piece-meal record sealing petitions in order to avoid having any one subsequent conviction stand in the way of sealing an earlier conviction.

To accept State and Henderson's argument as true would render NRS 179.2595 meaningless because NRS 179.2595 only applies to petitioners who have multiple arrests or convictions; NRS 179.2595 says "[i]f a person wishes to have more than one record sealed..." (emphasis added). The plain language of NRS 179.2595 anticipates that every petitioner who petitions the district court under the authority of NRS 17.2595 will have multiple arrests and multiple convictions. **It cannot be the case that the Nevada Legislature intended to create a new law[4] to allow for the sealing of multiple arrests and multiple convictions if, in fact, the existence of multiple arrests and multiple convictions on a single petition renders the petition**

[4] NRS 179.2595 became law in 2017.

ineligible without even reaching the merits. Such an outcome would also be absurd; and moreover, to say that petitioners with multiple arrests and multiple convictions are ineligible unless they just so happen to have occurred in time such that no two offenses overlap within the required waiting period for record sealing would also be absurd. To accept such an argument as the law of our state would mean this Court has to ignore the very purpose and intent of the Nevada Legislature's enactment of NRS 179.2595. If it was not the case that petitioners with multiple arrests and multiple convictions should be eligible to present the merits of their petition, why did the Nevada Legislature reduce the waiting periods for all crimes in 2017, and at the very same time, pass a new law that allows for sealing of multiple criminal records in one singular petition? Stated differently, Henderson (and the State of Nevada) are asking this Court to rewrite NRS 179.2595 so that it would say that if a person who has more than one record that does not over lap with the required waiting periods set forth in NRS 179.245, then the person may file a petition in the district court to seal all such records. Fortunately, our Legislature in its wisdom did not include such a limitation. Instead, the Nevada Legislature created NRS 179.2595 so that petitioners such as Finley can bring all of their past crimes and convictions in a single petition before the district court and show cause why he should, after paying his debt to society, be allowed to seal his records. To accept Henderson's logic as true would not only defy

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the spirit and purpose of NRS 179.2595 but would also render NRS 179.2595 meaningless.

Finally, Henderson says that this Court should affirm the district court because Finley is requesting this Court to read and interpret NRS 179.245 in a way in which it has not previously been interpreted. *HAB* at p. 19. This Court is not limited to one interpretation per statute forever. This Court's statutory interpretation will necessarily change over time as the Nevada Legislature adds to, removes from and changes Nevada law. As such, it only makes sense that in light of the Nevada Legislature's addition of NRS 179.2595 that this Court would also revise its interpretation of NRS 179.245 so that the entirety of NRS 179 can be read and applied without rendering any one section meaningless.

D. Public Policy Considerations

Henderson keeps with its theme of arguing about the merits of the petition by saying that "...the [d]istrict [c]ourt's ruling actually furthers the policy that only individuals who truly change their life by not engaging in further criminal conduct are statutorily eligible to seal their record." HAB at p.20. This argument is completely untrue and meritless because the district court made no such findings or conclusions. The district court's decision in no way, shape, or form adopts or promotes a policy that only individuals who have changed their lives are eligible, because the district

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court did not reach the merits of the petition. Thus far, Finley has not had an opportunity to present the merits of his petition. Finley has not had an opportunity to present evidence to the district court that he has changed his life and that he should be eligible to seal his records. Henderson's argument to the contrary is baseless and lacks merit.

Henderson next goes through an analysis about how the facts of an underlying case and the harm caused by criminal activity still remains even when the criminal record is sealed. *HAB* at 22. This is similar to the argument made the by State of Nevada. As explained in response to the State's arguments *supra*, this discussion once again goes to the district court's consideration of the merits of the petition even though the merits of the petition is not at issue in this appeal. Finley fully understands that if this Court agrees with Finley and remands this case for further proceedings, Finley may or may not succeed on the merits of his petition. Contrary to Henderson's argument that although sealed, an arrest and conviction do not become factually secret (*HAB* at p. 22), there is a distinction between (1) saying that a conviction is so completely eliminated that it is beyond judicial review when considering the merits of a petition (*see SAB* at p. 8), and (2) saying that a petitioner with multiple convictions cannot be eligible to present the merits of his or her petition. Here, Henderson is trying to use the facts of Finley's prior bad acts as a means of

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preventing Finley from presenting the merits of his petition. While Henderson has the undeniable right to oppose the merits of Finley's petition, Henderson has no legal right to prevent Finley from presenting the merits of his petition to the district court for consideration.

Simply stated, Henderson's argument is misplaced. Henderson's argument speaks to the merits of the petition and why the district court should exercise its discretion to not seal Finley's records. Henderson's offers no compelling argument as to why Finley should be denied the opportunity to have the district court consider the merits of his petition in the first instance. *See generally HAB* at pp. 22-25. Furthermore, Henderson says that "..the lower court's interpretation promotes a fair process, which only confers this statutory benefit to those petitioners who actually change their life directly after their criminal case is closed." *HAB* at p. 25. There is no basis for such an argument. Nowhere in NRS 179.245 does it say that only petitioners who change their life immediately after their first and only arrest are eligible to seek a record sealing. In fact, the Legislature's enactment of NRS 179.2595 which explicitly applies to petitioners with more than one criminal record shows this Court that the purpose and intent behind Nevada's record sealing scheme is to allow all petitioners, regardless of their criminal past, an opportunity to show the district court that they have changed their life and that they deserve an opportunity

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to lead their changed life without the scarlet letter that is, according to Henderson, a forever unsealable criminal record.

Finally, Finley points out that Henderson completely failed to address the district court's application of the outdated version of NRS 179.245. As this point is well discussed by both the State of Nevada and in Reply to the State's arguments *supra*, Finley will rest on those arguments at this juncture and simply remind the Court that the district court's application of the incorrect version of NRS 179.245 was clearly erroneous and is cause for reversal and remand.

CONCLUSION

The State and Finely both agree that the district court erred as a matter of law by applying the wrong version of NRS 179.245. To this point, Henderson offers no response. On that reason alone, the district court's judgment should be reversed.

Moreover, Finley has shown how the State and Henderson's arbitrary interpretation of NRS 179.245 leads to absurd and unjust results. Finley has also shown that the State and Henderson's arguments render NRS179.2595 meaningless. Finally, Finley has shown that the overwhelming majority of the State and Henderson's argument goes to the merits of Finley's petition, which is not at issue before this Court. In sum, State and Henderson both fail to offer any compelling rationale for why Finley should be prevented from presenting the merits of his

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petition to the district court in the first instance.

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 22nd day of January, 2019.

/s/ Christopher B. Phillips

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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 5,661 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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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.

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CERTIFICATE OF SERVICE

I certify that I electronically filed on January 22, 2019, the foregoing **APPELLANT'S REPLY BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[X] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

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