

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

THE STATE OF NEVADA,

Petitioner,

v.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE; AND THE HONORABLE  
KATHLEEN DRAKULICH, DISTRICT JUDGE,

Respondents.

\_\_\_\_\_ /

**PETITIONER'S APPENDIX**

No. 80009

District Court Case  
No. CV19-01912

Electronically Filed  
Nov 13 2019 04:00 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## TABLE OF CONTENTS

	<u>Page</u>
1. Motion to Stay Proceedings, filed October 30, 2019.....	14-17
2. Notice of Filing of Petition to Seal Records, filed October 1, 2019.....	8-10
3. Order to Respond, filed October 22, 2019.....	12-13
4. Petition to Seal Records, filed October 1, 2019.....	1-7
5. Request for Submission, filed October 15, 2019.....	11

1 CODE: 2440  
Kenneth A. Stover  
2 Bar #5792  
P.O. Box 3072  
3 Reno, NV 89505  
(775) 329-4554  
4 Attorney for Defendant

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE

7 \* \* \*

8 SEAN THOMAS MCKELVY MCCALL,

9 Petitioner,

CASE NO.:

10 v.

DEPT NO.:

11 THE STATE OF NEVADA,

12 Respondent.  
13

14 PETITION TO SEAL RECORDS

15  
16 SEAN THOMAS MCKELVY MCCALL, by and through his attorney, KENNETH A.  
17 STOVER, ESQ., hereby petitions this Court to enter an order:

- 18  
19 1. Sealing all of the records relating to the arrests and convictions of SEAN THOMAS  
20 MCKELVY MCCALL in regard to the charges of CHILD ABUSE OR NEGLECT,  
21 BURGLARY, BURGLARY (CONSPIRACY), and FRADULENT USE OF CREDIT  
22 CARD. The arrests and charges listed in paragraph 1 are based on the following  
23 records:

24 NAME: SEAN THOMAS MCKELVY MCCALL  
25 SOCIAL SECURITY: \*\*\*-\*\*-5574  
26 DATE OF BIRTH: 11/22/1988  
27 SID: NV04209934  
28

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  
26  
27  
28

Date of Arrest: 10/19/2017  
PCN: SPPD0055620C  
Arresting Agency: Sparks Police Department  
Charges: 1. CHILD ABUSE OR NEGLECT (1<sup>ST</sup>)

Case No: 17-SCR-01838

Final Disposition: 1. Dismissed on 03/12/2018.

\* \* \*

(2)--Date of Arrest: 01/26/2007

Arresting Agency: Reno Justice Court  
Charges: 1. BURGLARY  
2. CONSPIRACY TO COMMIT BURGLARY  
3. FRAUDULENT USE OF A CREDIT CARD

Case No.: CR07-1211B

Disposition-- Convicted Conspiracy to Commit Burglary. Served 191 day  
Regimental Treatment Program NDOC.  
364 days Washoe County Jail suspended, probation granted  
206 days credit time served.

- 2. The Petitioner requests that the Order to Seal Records apply to all records of the arrest and of the proceedings in this court leading up to the conviction which are in the custody of this Court, the Sparks Township Justice Court, the Reno Justice Court, another Court in the State of Nevada, or of a public or private company or official in the State of Nevada. This would include the Washoe County Sheriff's Department, the Washoe County District Attorney's Office, the Sparks Police Department, the Nevada Department of Public Safety, the Nevada Department of Corrections, the Federal Bureau of Investigations and any other law enforcement agency reasonably known by either the defendant or the Court to have possession of such records.
- 3. Further, Petitioner requests that any Order issued pursuant to this petition be sent to each public or private company, agency or official named in the order, and requiring such organization or individual to seal the records in its custody which relate to the

1 matters contained in the order, and advise the Court of its compliance, and then seal the  
2 order.

3 4. That, except as provided in NRS 179.301, all proceedings recounted in the record are  
4 deemed never to have occurred, and that SEAN THOMAS MCKELVY MCCALL, the  
5 defendant herein, may properly answer accordingly to any inquiry concerning his arrest  
6 leading up to her convictions.

7 This petition is made and based upon the following points and authorities:

8  
9 **POINTS AND AUTHORITIES IN SUPPORT**  
10 **OF PETITION TO SEAL RECORDS**

11 On October 10th, 2017 the Petitioner was arrested by the Sparks police Department on  
12 charges of Child Abuse or Neglect. Those charges were dismissed on March 12<sup>th</sup>, 2018.

13 On January 26, 2007, the Petitioner was arrested and charged with Burglary, Conspiracy to  
14 Commit Burglary, and Fraudulent Use of a Credit Card. The Petitioner entered a guilty plea to the  
15 charges and was ordered to attend the 191-day Regimental Boot Camp Program at the Nevada  
16 Department of Corrections. The Petitioner successfully completed that program and was convicted  
17 in District Court of Conspiracy to Commit Burglary, a gross misdemeanor.

18 Attached to this petition is the record of Petitioner's criminal history obtained from the  
19 Nevada Department of Public Safety Criminal History Records Repository. (See Attached Exhibit  
20 "1")<sup>1</sup>. As all of Petitioner's charges are resolved and his obligations to his sentence fulfilled and  
21 Petitioner had no further charges attached to his criminal history, this court has the statutory  
22 authority to order that this record be sealed. See, NRS 179.245. This Court also has the authority  
23 to entertain one petition for all arrests. See, NRS 179.2595. Further there is now a rebuttable  
24 presumption that this petition should be granted. See, NRS 179.2445.

25  
26  
27 

---

<sup>1</sup> In Exhibit "1" there is also an arrest listed for Felony Driving Under the Influence. However that  
28 arrest is erroneously listed in my client's criminal record. CR07-2433 is a Washoe District Court  
case that involved a defendant named Vincent Elmer Kotka.

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  
26  
27  
28

**CONCLUSION**

Based on the foregoing Points and Authorities, and the attached Exhibits, Defendant prays this court for an Order Sealing Records of the Petitioner's conviction and arrest.

RESPECTFULLY SUBMITTED this \_\_\_ day of \_\_\_\_\_, 2019.

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that this document contains the Social Security number of Petitioner and for the purpose of this Motion has been redacted to only the last four digits.

---

KENNETH A. STOVER  
BAR #05792  
ATTORNEY FOR PETITIONER

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  
26  
27  
28

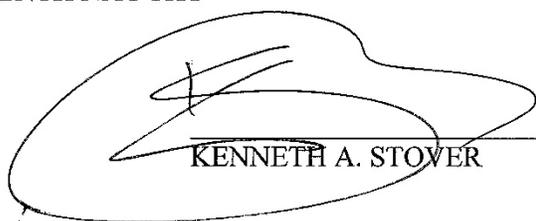
AFFIDAVIT OF COUNSEL

STATE OF NEVADA )  
 : ss.  
COUNTY OF WASHOE )

I, KENNETH A. STOVER, being first duly sworn, depose and say that:

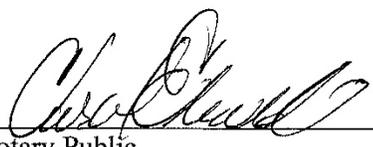
- 1. I am an attorney licensed to practice law in Nevada;
- 2. I represent the Petitioner in the foregoing Petition to Seal Records;
- 3. I have read the contents of the foregoing Petition for Sealing Records, and on my personal knowledge know the matters to be true, except as to those matters taken on information and belief, and as to those matters, I believe them to be true.

FURTHER AFFIANT SAYETH NAUGHT

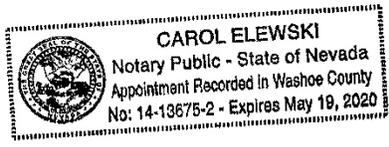
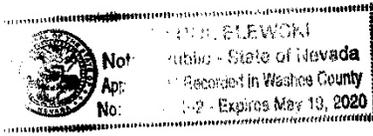


KENNETH A. STOVER

SUBSCRIBED AND SWORN to before me  
This 10 day of October, 2019 by  
Kenneth A. Stover.



Notary Public



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  
26  
27  
28

## LIST OF EXHIBITS

EXHIBIT 1- CENTRAL REPOSITORY RECORD

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  
26  
27  
28

EXHIBIT "1"

EXHIBIT "1"

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  
26  
27  
28

**CODE 2610**

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

**STATE OF NEVADA,**

**Plaintiff,**

**Case No: CV19-01912**

**vs.**

**Dept. No: 1**

**SEAN THOMAS MCKELVY MCCALL,**

**Defendant.**

\_\_\_\_\_ /

**NOTICE OF FILING OF PETITION TO SEAL RECORDS**

Notice is hereby given that **SEAN THOMAS MCKELVY MCCALL**, filed a  
Petition to Seal Records on October 1, 2019. This notice is provided in accordance with  
NRS 179.245(3).

Dated October 1, 2019.

\_\_\_\_\_  
JACQUELINE BRYANT  
Clerk of the Court

\_\_\_\_\_  
/s/ S. HIGGINBOTHAM  
Deputy Clerk

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  
26  
27  
28

**CERTIFICATE OF SERVICE**

Case No. CV19-01912

Pursuant to NRCP 5 (b), I certify that I am an employee of the Second Judicial District Court; that on October 1, 2019, I electronically filed the Notice of Filing of Petition to Seal Records with the Court System which will send a notice of electronic filing to the following:

MATTHEW LEE, ESQ. for STATE OF NEVADA  
KENNETH A. STOVER for SEAN THOMAS MCKELVY MCCALL

I further certify that on October 1, 2019, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the attached document, addressed to:

Sparks Police Department  
Attn: Records  
1701 East Prater Way  
Sparks, NV 89434

Sparks City Attorney  
Attn: Kristen Aaquist  
431 Prater Way, P.O. Box 857  
Sparks, NV 89432

Nevada Parole & Probation  
Attn: Records  
1445 Hot Springs Road, Suite 104  
Carson City, NV 89701

Michael Kovac, Chief DA  
General, 555 East Washington Drive  
Suite 3900  
Las Vegas, NV 89101

1 Reno Police Department  
2 Attn: Records  
3 455 East Second Street  
4 Reno, NV 89501

4 Reno City Attorney: Penie Colter  
5 1 E. First Street, 3rd Floor  
6 P.O. Box 1900  
7 Reno, NV 89505

7 Washoe County Sheriff  
8 Attn: Records  
9 911 East Parr Boulevard  
10 Reno, NV 89512

10 Washoe County District Attorney  
11 Attn: Brandi Mandeville  
12 1 S. Sierra Street  
13 Reno, NV 89501

14  
15 The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding  
16 document does not contain the personal information of any person.

17 Dated October 1, 2019.

18 /s/ S.HIGGINBOTHAM  
19 S. HIGGINBOTHAM  
20 Deputy Clerk  
21  
22  
23  
24  
25  
26  
27  
28

1 CODE: 3860  
Kenneth A. Stover  
Bar #5792  
2 P.O. Box 3072  
Reno, NV 89505  
3 (775) 329-4554  
4 Attorney for Petitioner

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE

7 \* \* \*

8 SEAN THOMAS MCKELVY MCCALL.,

9 Petitioner,

CASE NO.: CV19-01912

10 v.

DEPT NO.: 1

11 THE STATE OF NEVADA,

12 Respondent.  
13 \_\_\_\_\_ /  
14

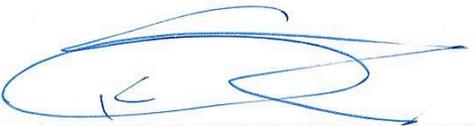
15 **REQUEST FOR SUBMISSION**

16 IT is requested that the Petition to Seal Records filed in this matter be submitted to the  
17 Court for consideration.

18 **AFFIRMATION**

19 **Pursuant to NRS 239B.030**

20 The undersigned does hereby affirm that this document does not contain the Social Security  
21 number of any person.  
22  
23  
24

25 

26  
27 KENNETH A. STOVER  
28

1 3320

2

3

4

5

6

**IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

7

8

9

SEAN THOMAS MCKELVY MCCALL

10

Petitioners,

Case No.: CV19-01912

11

vs.

Dept. No.: 1

12

THE STATE OF NEVADA,

13

14

Respondent.

15

16

**ORDER TO RESPOND**

17

Currently before the Court is Petitioner Sean Thomas McKelvy McCall's *Petition to Seal Records* ("Petition") filed on October 1, 2019. No opposition was filed. The matter was submitted to the Court for decision on October 15, 2019.

18

19

20

Based on the foregoing and good cause appearing,

21

IT IS HEREBY ORDERED that the District Attorney will file a response or opposition to the *Petition to Seal Records* which shall include whether the representations of Petitioner's criminal history are consistent with the records of the Washoe County District Attorney's Office no later than ten (10) days from the date of this Order.

22

23

24

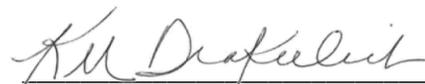
25

DATED this 22<sup>nd</sup> day of October, 2019.

26

27

28



KATHLEEN M. DRAKULICH  
District Judge

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-01912

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 22<sup>nd</sup> day of October, 2019, I  
5 electronically filed the **ORDER TO RESPOND** with the Clerk of the Court by using the ECF  
6 system.

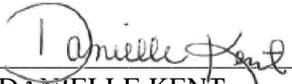
7 I further certify that I transmitted a true and correct copy of the foregoing document by the  
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**  
10 **notice of electronic filing to the following:**

11 KENNETH STOVER, ESQ. for SEAN THOMAS MCCALL  
12 MATTHEW LEE, ESQ. for STATE OF NEVADA  
13

14 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**  
15 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

16  
17 NONE

18  
19   
20 DANIELLE KENT  
21 Department 1 Judicial Assistant  
22  
23  
24  
25  
26  
27  
28

1 CODE No. 2190  
CHRISTOPHER J. HICKS  
2 #7747  
One South Sierra Street  
3 Reno, Nevada 89501  
(775) 328-3200  
4

5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 SEAN THOMAS MCKELVY MCCALL

10 Case No. CV19-01912

11 DOB 11/22/1988,

Dept. No. 1

12 Petitioner.  
13 \_\_\_\_\_/

14 MOTION TO STAY ORDER TO RESPOND PENDING RESOLUTION  
15 OF PETITION FOR EXTRAORDINARY RELIEF

16 COMES NOW, the State of Nevada, by and through JENNIFER P. NOBLE, Chief  
17 Deputy District Attorney, and moves this Honorable Court to stay its Order to Respond  
18 issued October 22, 2019.

19 POINTS AND AUTHORITIES

20 On October 22, 2019, this Court issued an Order to Respond which required the  
21 Washoe County District Attorney's Office, hereafter "WCDA," to "file a response or  
22 opposition to the Petition to Seal Records Pursuant to NRS 179.245 and NRS 179.255,  
23 which shall include whether the representations of Petitioner's criminal history are  
24 consistent with the records of the Washoe County District Attorney's Office no later than  
25 ten (10) days from the date of this Order."

26 ///

1           Respectfully, it is the WCDA’s position that the Order to Respond exceeds this  
2 Court’s jurisdiction by imposing requirements not authorized by the Nevada Revised  
3 Statutes. Specifically, the WCDA asserts that the provisions of NRS Chapter 179 make  
4 participation in sealing proceedings entirely optional for the WCDA, and that no  
5 provision of Nevada’s sealing statutes supports compelling the WCDA to serve a  
6 research or fact-finding function regarding the criminal history submitted by a  
7 petitioner.

8           Because the WCDA has no other adequate remedy at law, it will seek  
9 extraordinary relief via a Petition for Writ of Mandamus and/or Prohibition regarding  
10 the Order to Respond. Importantly, the WCDA is *not* requesting that the Court stay its  
11 decision regarding McKelvy McCall’s Petition for Sealing. The WCDA does not stipulate  
12 to, nor oppose, McKelvy McCall’s Petition for Sealing. Pursuant to NRS 179.245 (3), this  
13 Court has already fulfilled its obligation to notify the WCDA of the petition for sealing,  
14 and can make a determination as to whether or not to grant McKelvy McCall’s petition  
15 without participation by the WCDA.

16           NRAP 8 generally requires that an application for stay be made in the District  
17 Court before seeking such an order from the Nevada Supreme Court. In general, the  
18 factors to be considered in determining whether to grant a stay are set out in *State v.*  
19 *Robles-Nieves*, 129 Adv. Op. No 55, 306 P.3d 399 (2013). While the WCDA would not  
20 expect the Court to agree that the WCDA is likely to succeed in the appellate court, the  
21 other factors weigh in favor of a stay, including the likelihood that denying the stay will  
22 render the petition moot. Additionally, granting the stay will not prejudice McKelvy  
23 McCall, as the requested stay is for the Order to Respond only, and this Court may  
24 decide the Petition for Sealing without the participation of the WCDA.

25     ///

26     ///

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  
26

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: October 30, 2019.

CHRISTOPHER J. HICKS  
District Attorney

By /s/ JENNIFER P. NOBLE  
JENNIFER P. NOBLE  
Chief Appellate Deputy

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  
26

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Second Judicial District Court on October 30, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Kenneth Stover, Esq.

/s/ Margaret Ford  
MARGARET FORD

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on November 13, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Kenneth A. Stover, Esq.

I further certify that on this date, a copy of this document was hand delivered to the Chambers of the Honorable Kathleen Drakulich of the Second Judicial District Court.

Margaret Ford  
Washoe County District Attorney's Office