

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.

_____ /

No. 80009

District Court Case
No. CV19-01912

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

PETITIONER'S APPENDIX

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

5 Case No: 17-SCR-01838

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

7 * * *

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

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

13 Case No.: CR07-1211B

14 Disposition-- Convicted Conspiracy to Commit Burglary. Served 191 day
15 Regimental Treatment Program NDOC.
16 364 days Washoe County Jail suspended, probation granted
17 206 days credit time served.

- 18 2. The Petitioner requests that the Order to Seal Records apply to all records of the arrest
19 and of the proceedings in this court leading up to the conviction which are in the
20 custody of this Court, the Sparks Township Justice Court, the Reno Justice Court,
21 another Court in the State of Nevada, or of a public or private company or official in the
22 State of Nevada. This would include the Washoe County Sheriff's Department, the
23 Washoe County District Attorney's Office, the Sparks Police Department, the Nevada
24 Department of Public Safety, the Nevada Department of Corrections, the Federal
25 Bureau of Investigations and any other law enforcement agency reasonably known by
26 either the defendant or the Court to have possession of such records.
- 27 3. Further, Petitioner requests that any Order issued pursuant to this petition be sent to
28 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 12th, 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")¹. 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 ¹ 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

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

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

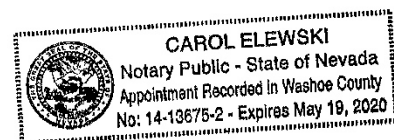
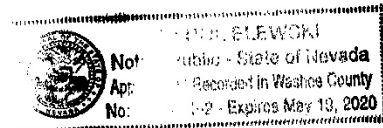
1. I am an attorney licensed to practice law in Nevada;
2. I represent the Petitioner in the foregoing Petition to Seal Records;
3. I have read the contents of the foregoing Petition for Sealing Records, and on my personal knowledge know the matters to be true, except as to those matters taken on information 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 **CODE 2610**

2
3
4
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**
7

8 **STATE OF NEVADA,**

9 **Plaintiff,**

Case No: CV19-01912

10 **vs.**

Dept. No: 1

11 **SEAN THOMAS MCKELVY MCCALL,**

12 **Defendant.**
13 _____/

14
15 **NOTICE OF FILING OF PETITION TO SEAL RECORDS**
16

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

20 Dated October 1, 2019.

21
22 _____
23 **JACQUELINE BRYANT**

Clerk of the Court

24 _____
25 **/s/S. HIGGINBOTHAM**

26 Deputy Clerk
27
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

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

13

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.

16

17 Dated October 1, 2019.

18

/s/ S.HIGGINBOTHAM

19

S. HIGGINBOTHAM
Deputy Clerk

20

21

22

23

24

25

26

27

28

1 CODE: 3860
Kenneth A. Stover
2 Bar #5792
P.O. Box 3072
3 Reno, NV 89505
(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
10 Petitioner,

CASE NO.: CV19-01912

11 v.

DEPT NO.: 1

12 THE STATE OF NEVADA,

13 Respondent.
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
28



KENNETH A. STOVER

3320

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

SEAN THOMAS MCKELVY MCCALL

Case No.: CV19-01912

Petitioners,

Dept. No.: 1

vs.

THE STATE OF NEVADA,

Respondent.


ORDER TO RESPOND

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.

Based on the foregoing and good cause appearing,

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.

DATED this 22nd day of October, 2019.


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 22nd 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:

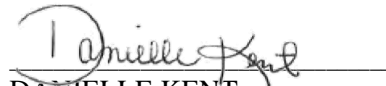
9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**
10 **notice of electronic filing to the following:**

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
2 CHRISTOPHER J. HICKS
3 #7747
4 One South Sierra Street
5 Reno, Nevada 89501
6 (775) 328-3200

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

9 * * *

10 SEAN THOMAS MCKELVY MCCALL

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