

1 And in looking at this case, what we'd  
2 suggest for this Court is that justice would be having  
3 these two life sentences run concurrently. Electronically Filed  
Nov 15 2021 06:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
4 couple reasons why I initially say that is a  
5 have to remember that at the point in time in  
6 Mr. Hockemier's life when he committed these offenses,  
7 he was a child himself. He was under the age of  
8 majority. He was 17.

9 And I would suggest to the Court that anyone  
10 who has been involved in this business, namely, criminal  
11 defense, whether it's prosecuting, defending, or  
12 presiding over the case, these types of cases, I think  
13 we all recognize that people, when they're under the age  
14 of 18, oftentimes make decisions that they would not  
15 make if they were over the age of 18. That's just the  
16 reality. As you get older, you mature and you make  
17 better decisions.

18 So that's the first thing I'd like to point  
19 out, Judge. It's not an excuse, but the fact that  
20 Mr. Hockemier was 17 at the time that these offenses  
21 were committed, certainly is a factor to be considered  
22 by this Court in determining whether these two sentences  
23 should be concurrent or consecutive.

24 The other thing I'd like to point out, Judge,  
25 is the actual interview that was played for this Court

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1 just a few minutes ago. We recognize that during that  
2 interview, there was some initial hesitation on  
3 Mr. Hockemier's part in terms of disclosing what he had  
4 done approximately four or so years previously. And I  
5 think that we can all understand that that is  
6 understandable; namely, suddenly, you are looking into  
7 the mah (phonetic) of some pretty serious allegations.  
8 I think you're initial reaction, for most people, would  
9 be to deny them.

10 But ultimately, Mr. Hockemier came clean, and  
11 he not only came clean, Judge, he ultimately provided  
12 information to Detective Hessing that the two victims in  
13 this case had not even provided for the officer. So  
14 ultimately stepped up to the plate, said yes, I did  
15 this. Not only did what these boys said I did, but I  
16 actually did more, and he provided that information to  
17 the detective.

18 If you run these two sentences concurrent,  
19 Mr. Hockemier is still looking at a life sentence. The  
20 only difference and the only question is is when would  
21 he be parole eligible. And if the two sentences are run  
22 concurrent, parole eligibility, and that's all it is is  
23 eligibility, begins after serving ten years.

24 And at this point in time, Mr. Hockemier has  
25 a little bit less than one year in in terms of credit

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1 for time served. So before he's even parole eligible,  
2 he's looking at an additional nine years. And that's  
3 all it is eligibility, Judge. Just because you're  
4 parole eligible does not mean that you are paroled. And  
5 it's been my experience in these types of cases over the  
6 last 24 years that it is very rare, very rare for a  
7 person in Mr. Hockemier's position to be paroled on the  
8 first go-around. It just doesn't happen, Judge.

9 So we know that Mr. Hockemier is going to be  
10 looking at a minimum of ten years, and it could be a  
11 great deal longer than that. But ultimately, whether  
12 Mr. Hockemier paroles, whether it's after 10 years, 15  
13 years, 20 years, he's not off the hook at that point in  
14 time, Judge, because he is subject to lifetime  
15 supervision.

16 And lifetime supervision is pretty draconian.  
17 At a minimum, you have to be on lifetime supervision for  
18 ten years before you can even apply to try and get off  
19 of lifetime supervision. And as I indicated, lifetime  
20 supervision, in terms of the conditions, can be  
21 extremely onerous. You are subject to being told where  
22 you're allowed to go, where you're allowed to live, no  
23 access to the Internet, no access to social media,  
24 subject to polygraph examinations, a laundry list of  
25 conditions that Mr. Hockemier is going to be subject to

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1 for an extended period of time.

2 Now, I understand where the State is coming  
3 from. I mean, it just sort of makes sense, I guess, if  
4 you wish to use that term, two victims, run the  
5 sentences consecutive. But what we're talking about  
6 here is justice, and justice does not always mandate the  
7 maximum sentence.

8 I've got a young man who, as a client, who is  
9 going to prison for a long period of time one way or  
10 another, and I have no idea what ultimately the Parole  
11 Board will do with Mr. Hockemier. I just do not know,  
12 but I suspect that they are going to be very leery about  
13 allowing Mr. Hockemier back out into society, and  
14 understandable. That's understandable.

15 But what I would really like to have, and  
16 this is for Mr. Hockemier, is I would like Mr. Hockemier  
17 to have some light at the end of the tunnel. I'm hoping  
18 that he will be provided programs in prison where he can  
19 deal with his issues so, ultimately, if he is released,  
20 he does not find himself back in this situation again.

21 And so what I'm suggesting to this Court,  
22 Judge, is when you look at all the factors, particularly  
23 Mr. Hockemier's age at the time these offenses occurred,  
24 justice is that the two sentences be run concurrent.

25 And I'm not suggesting that because I'm trying to make

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1 light of what Mr. Hockemier did to these young boys, but  
2 justice suggests that these two sentences should be run  
3 concurrently. And that is our recommendation, Your  
4 Honor.

5 THE COURT: Thank you.

6 Mr. Hockemier, you have the opportunity at  
7 this time to make a statement on your own behalf.  
8 You're not required to but you're entitled to. Is there  
9 anything further you'd like to state?

10 THE DEFENDANT: Yes, Your Honor. First off,  
11 I would like to apologize to the family and the kids  
12 because after hearing what they told me, it was already  
13 very heavy on my heart. It was a heavy burden I  
14 carried, and I just buried it deep within me instead of  
15 seeking out some help I needed. So I really want to get  
16 my apologies out there to this family.

17 Let's see, I do -- this has been a positive  
18 experience for me so far, and I will make the best of it  
19 I can. I will do any and all programs at all possible  
20 to get me some help, counseling, help me further my  
21 education and just basically keep myself busy within the  
22 Department of Corrections. And I'm just willing to do  
23 whatever I have to do to get back to my family and get  
24 back to work and get a sense of normalcy in my life.

25 But I really feel terrible for what I did

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1 back then. It has been years, and I just want to be  
2 able to move on from that, you know, get some help  
3 because I feel like I was the victim of a similar crime,  
4 and not just be an example, but somehow be a solution to  
5 this problem that we have going on in this country.  
6 It's pretty bad because it's just a constant cycle  
7 repeating itself.

8 And I do hope these boys get the help that  
9 they need, that O'Ryan can get counseling and so can  
10 Scotty so that they can move on with their lives as well  
11 and so they don't end up victimizing anybody or they  
12 don't have any further issues, and they can live with a  
13 sense of normalcy as well. And I think that about  
14 covers it, Your Honor.

15 THE COURT: Mr. MacFarlan was exactly right  
16 when he said these cases are very difficult. They're  
17 difficult for everyone. I can see all the sadness on  
18 everybody's faces when I look out into the courtroom.  
19 It's sad for these children who are victims, it's sad  
20 for their parents, it's sad for your family,  
21 Mr. Hockemier. I can see the pain on their face as  
22 well.

23 And I'm looking at a 22-year-old young man  
24 who's facing life in prison. I've thought about this  
25 situation a lot since this case was assigned to this

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1 court, and particularly a lot over the last several  
2 days. The only discretion this Court has is whether to  
3 sentence you concurrently or consecutively, and I have  
4 struggled with that for the reasons stated by both  
5 attorneys.

6 We have two victims here. You were  
7 originally charged in the Justice Court with 23 counts.  
8 You could have been convicted of up to eight counts.  
9 You did save these children and their families and your  
10 family a trial by entering a guilty plea and by  
11 admitting to what you had done. And I realize that you  
12 may have been 17 at the time some of these acts  
13 occurred, the charged timespan crosses over when you  
14 turned 18. Science says that people's brains aren't  
15 fully formed until age 25, but what you did here was  
16 very, very wrong. I see the fear in your face looking  
17 at you because you know that I hold your fate in my  
18 hands.

19 This Court is charged with the protection of  
20 the public. That's what I have to keep in mind at all  
21 times, and I'm very concerned that you don't understand  
22 the seriousness of what you did or the impact that it  
23 has had on other people. I think maybe you're beginning  
24 to, but I don't think you've fully taken that in. The  
25 evaluator for the sexual -- psychosexual evaluation is

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1 concerned that you will re-offend, and I am concerned as  
2 well.

3 The Court will order that a Judgment of  
4 Conviction be entered against the Defendant finding him  
5 guilty of Count 2, lewdness with a child under 14 years  
6 of age, a category A felony, and Count 14, lewdness with  
7 a child under 14 years of age, a category A felony.

8 The Defendant shall pay the \$25  
9 administrative assessment fee, the \$150 genetic testing  
10 fee, and \$855 for the psychosexual fee. The Defendant  
11 shall submit to testing of his blood and/or saliva for  
12 purposes of genetic markers.

13 For Count 2, the Defendant is sentenced to a  
14 maximum term of life with the possibility of parole  
15 after 10 years in the Nevada Department of Corrections  
16 with credit for 339 days previously served. For  
17 Count 14, the Defendant is sentenced to a maximum term  
18 of life with the possibility of parole after 10 years in  
19 the Nevada Department of Corrections. That sentence  
20 shall run consecutively with the sentence for Count 2.

21 (Celebration in the gallery)

22 THE COURT: All right, all right, no, no, no.  
23 One more word, and you're out of here.

24 Pursuant to NRS 176.0931, the Defendant is  
25 sentenced to lifetime supervision commencing after any

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1 period of probation or any term of imprisonment and any  
2 period of release on parole.

3 Mr. Hockemier, you also will be required to  
4 register. You have a duty to register initially with  
5 the local law enforcement agency of the jurisdiction in  
6 which you are convicted. You have a duty to register in  
7 this State during any period in which you are a resident  
8 of this State or a non-resident who is a student or  
9 worker within the State and the time within which you  
10 are required to register, pursuant to NRS 179D.460.

11 You have a duty to register in any other  
12 jurisdiction during any period in which you are a  
13 resident of the other jurisdiction or a non-resident who  
14 is a student or worker within the other jurisdiction.  
15 If you move from this State to another jurisdiction, you  
16 have a duty to register with the appropriate law  
17 enforcement agency in the other jurisdiction.

18 You have a duty to notify the local law  
19 enforcement agency in whose jurisdiction you formerly  
20 resided in person or in writing if you change the  
21 address at which you reside, including if you move from  
22 this State to another jurisdiction or change the primary  
23 address at which you were a student or worker.

24 You have a duty to notify immediately the  
25 appropriate local law enforcement agency if you are or

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1 expect to be or become enrolled as a student at an  
2 institution of higher education or change the date of  
3 commencement or termination of enrollment at an  
4 institution of higher education or if you are or expect  
5 to be or become a worker at an institution of higher  
6 education or change the date of commencement or  
7 termination of your work at an institution of higher  
8 education.

9 Let the record reflect that the Court Clerk  
10 has handed the Defendant a copy of the requirements for  
11 registration. Mr. Hockemier, I need you to read those  
12 fully and carefully and sign the form indicating you  
13 have read the requirements. So I need you to do that  
14 now.

15 THE DEFENDANT: Okay.

16 THE COURT: The record will reflect that the  
17 Defendant has read and signed the registration  
18 requirements.

19 Mr. Hockemier, the aggregate minimum term you  
20 will serve is 20 years with a maximum term of life with  
21 the possibility of parole. I am very mindful of the  
22 fact that I've just told a 22-year-old he's going to be  
23 in prison until he's at least 41 years old. I wish it  
24 didn't have to be that way, but it's my judgment that it  
25 does.

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1 I hope that you will get all the help that  
2 you need in prison like you said that you want to. I  
3 hope that you will, and I hope that you will find some  
4 way to make a positive life for yourself while you're  
5 there.

6 Is there anything further?

7 MR. SCHULMAN: No, Your Honor.

8 MR. MACFARLAN: No, Your Honor.

9 (Whereupon, proceeding concluded)

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(403)

(Exh. #55B)  
29 of 29

STATE OF NEVADA        )  
                              ) ss.  
COUNTY OF CARSON     )

I, Julie Rowan, Transcriptionist for the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, have transcribed the proceedings held in Department 1 of the above-entitled Court on May 21, 2015.

The foregoing transcript is an UNCERTIFIED ROUGH DRAFT TRANSCRIPT of the electronic tape recording of said proceedings. THIS TRANSCRIPT HAS NOT BEEN EDITED, PROOFREAD, FINALIZED, INDEXED OR CERTIFIED.

DATED: This 20th day of July, 2015.

  
Julie Rowan

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# 61



(Exh. #56)  
1044

1 CASE NO. CR-FP-14-635  
2 DEPT. NO. 1  
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FILED  
2015 JUN -9 AM 10:30  
ELKO CO DISTRICT COURT  
CLERK \_\_\_\_\_ DEPUTY VR

6  
7 IN THE FOURTH JUDICIAL DISTRICT COURT  
8 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

9 THE STATE OF NEVADA,  
10 Plaintiff,

JUDGMENT OF CONVICTION  
(Guilty Plea - Incarceration)

11 V.

12 DEVON RAY HOCKEMIER,  
13 Defendant.  
14

15 On March 16, 2015, above-named Defendant, DEVON RAY HOCKEMIER [who is further  
16 described as follows: Date of birth: 11/24/1992; (age 22); Place of birth: Elko, Nevada] was arraigned and  
17 entered a plea of guilty to the crimes described below and as more fully set forth in the criminal information  
18 filed herein. Legal counsel present at Defendant's arraignment were Sherburne M. Macfarlan, III, Esq.,  
19 representing Defendant, and Jonathan L. Schulman, Elko County Deputy District Attorney, representing the  
20 State. At the time above-named Defendant entered his plea of guilty, this Court informed him of all  
21 applicable constitutional rights, the elements of the crimes charged, and the maximum possible penalty for  
22 said crimes. After being so informed, above-named Defendant stated that he understood all of the applicable  
23 constitutional rights, the elements of the crimes charged and the maximum possible penalty for said crimes.  
24 This Court then made a finding that Defendant had entered his plea freely and voluntarily, and with full  
25 understanding of his constitutional rights, the nature of the charges and the consequences of his plea.  
26 ///

(405)

12 # 0393

### DESCRIPTION OF CONVICTIONS

COUNT 2: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230

COUNT 14: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230

On May 21, 2015, above-named Defendant appeared before this Court for the purpose of Sentencing and entry of a final judgment of conviction in this matter. This Court, the State, and defense counsel had previously received a Pre-Sentence Report which had been prepared by the Division of Parole and Probation. Legal counsel present at Defendant's sentencing were Sherburne M. Macfarlan, III, Esq., representing Defendant, and Jonathan L. Schulman, Elko County Deputy District Attorney, representing the State. Also present was Annis Seopaul, representing the Division of Parole and Probation.

After hearing from all parties and allowing Defendant an opportunity to personally address the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

### SENTENCE TERMS

For the conviction of Count 2, Defendant is sentenced to a maximum term of LIFE in the Nevada Department of Corrections with the possibility of parole after serving a minimum of 10 years. Defendant is credited with 339 days heretofore served as computed to and including the date of this sentencing (May 21, 2015).

For the conviction of Count 14, Defendant is sentenced to a maximum term of LIFE in the Nevada Department of Corrections with the possibility of parole after serving a minimum of 10 years. Said sentence shall run consecutively to the sentence for Count 2. The aggregate term for both counts is a minimum of 20 years with a maximum of LIFE.

Pursuant to NRS 176.0913 the name, social security number, date of birth and any other information identifying Defendant shall be submitted to the central repository for Nevada records of criminal history. Defendant shall submit to a blood and saliva test, to be made by qualified persons. The tests must include analyses of his blood to determine genetic markers and of his saliva to determine its secretor status. The results of the tests shall be submitted to the central repository for Nevada records of criminal history.

### FINANCIAL AND RESTITUTION REQUIREMENTS

Defendant is ordered to pay the administrative fee in the amount of \$25.00 as required by NRS 176.062. Said amount shall be deducted from any cash bail monies posted by Defendant before any remainder is returned upon the



1 exoneration of bail. It is further ordered that if Defendant has any monies in  
2 the possession of the Elko County Jail, that said monies shall be delivered  
3 directly to the Elko County Clerk and applied to this fee.

4 Defendant is ordered to pay the genetic testing fee of \$150.00 as required by  
5 NRS 176.0915. Said amount shall be deducted from any cash bail monies  
6 posted by Defendant before any remainder is returned upon the exoneration  
7 of bail. It is further ordered that if Defendant has any monies in the  
8 possession of the Elko County Jail, that said monies shall be delivered  
9 directly to the Elko County Clerk and applied to this fee.

10 Defendant is ordered to pay \$855.00 for the psychosexual evaluation fee.

11 Any cash bail or monies in the possession of the Elko County Jail which  
12 belong to Defendant shall be confiscated and applied to this debt.

### 13 OTHER REQUIREMENTS

14 Defendant is required to register as a sex offender pursuant to NRS 179D.441  
15 through NRS 179D.495, prior to being released from custody.

16 Pursuant to NRS 176.0931, a special sentence of lifetime supervision  
17 commences after any period of probation or any term of imprisonment and  
18 any period of release on parole.

### 19 BAIL

20 IT IS HEREBY ORDERED that any bail bond previously posted for said Defendant shall be  
21 exonerated. Any cash bail posted for said Defendant shall be applied first to fines and/or costs due  
22 pursuant to this judgment and, unless otherwise agreed to by the parties, any amount remaining shall be  
23 returned by the clerk to the person who posted said cash bail.

### 24 ENTRY OF JUDGMENT

25 IT IS FURTHER ORDERED that the clerk of the above-entitled Court enter this JUDGMENT  
26 OF CONVICTION as part of the record in the above-entitled matter.

SO ORDERED this 5 day of June, 2015.

*Nancy Porter*  
NANCY PORTER  
DISTRICT JUDGE - DEPARTMENT 1

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CERTIFICATE OF HAND DELIVERY

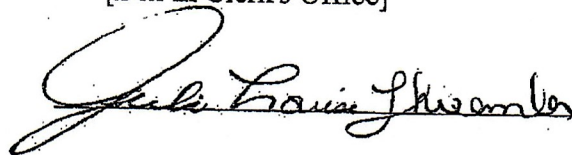
Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 9<sup>th</sup> day of June, 2015, I personally hand delivered a file stamped copy of the foregoing **JUDGMENT OF CONVICTION** (Guilty Plea - Incarceration) addressed to:

Dept. of Parole and Probation  
3920 E. Idaho Street  
Elko, NV 89801  
{1 File Stamped Copy}  
[Box in Clerk's Office]

Elko County Sheriff's Office  
775 W. Silver Street  
Elko, NV 89801  
{1 Certified Copy and 1 File Stamped Copy}  
[Box in Clerk's Office]

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

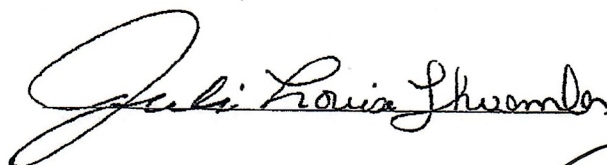
Sherburne M. Macfarlan, III, Esq.  
Lockie & Macfarlan, Ltd.  
919 Idaho Street  
Elko, NV 89801  
{1 File Stamped Copy}  
[Box in Clerk's Office]



CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department 1, Elko, Nevada, and that on this 9<sup>th</sup> day of June, 2015, I caused to be delivered via electronic-mail, a file stamped copy of the foregoing **JUDGMENT OF CONVICTION** (Guilty Plea - Incarceration), along with a copy of Defendant's Pre-Sentence Investigation Report addressed to:

Nevada Department of Corrections  
Offender Management Division, Sentence Management  
Attn: Shelly Williams, Records Supervisor  
E-mail: [skwilliams@doc.nv.gov](mailto:skwilliams@doc.nv.gov)  
Attn: Kristy Rodriguez  
E-mail: [kwinters@doc.nv.gov](mailto:kwinters@doc.nv.gov)



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6.12

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVON RAY HOCKEMIER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 68333

Electronically Filed  
Dec 10 2015 01:34 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

APPELLANT'S OPENING BRIEF

APPEAL FROM A JUDGMENT OF CONVICTION

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

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Attorneys for Appellant

Attorneys for Respondent

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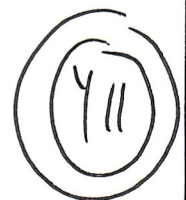
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I. JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction entered pursuant to pleas of guilty to two counts of LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230. App., p. 33. A Judgment of Conviction was filed on Jun 9, 2015. App., p. 33. A Notice of Appeal was filed on June 29, 2015. App., p. 37. This Court has jurisdiction pursuant to NRAP 4(b) and NRS 177.015(3).

II. STATEMENT OF THE CASE

On August 28, 2014, a Criminal Information was filed charging Mr. Hockemier with:

COUNT 1: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3).

In the alternative to Count 1

COUNT 2: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

In the alternatives to Counts 1 and 2

COUNT 3: OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210.

COUNT 4: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)

In the alternative to Count 4

COUNT 5: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

In the alternative to Counts 4 and 5

COUNT 6: OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210

COUNT 7: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14 YEARS, A CATEGORY A FELONY AS DEFINED BY NRS 200.366(3)

In the alternative to Count 7

COUNT 8: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A



CATEGORY A FELONY AS DEFINED BY NRS 201.230.

In the alternative to Counts 7 and 8

COUNT 9: OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR  
AS DEFINED BY NRS 201.210.

COUNT 10: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14  
YEARS, A CATEGORY A FELONY AS DEFINED BY NRS  
200.366(3).

In the alternative to Count 10

COUNT 11: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A  
CATEGORY A FELONY AS DEFINED BY NRS 201.230.

In the alternative to Count 10 and 11

COUNT 12: OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR  
AS DEFINED BY NRS 201.210.

COUNT 13: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14  
YEARS, A CATEGORY A FELONY AS DEFINED BY NRS  
200.366(3).

In the alternative to Count 13

COUNT 14: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A  
CATEGORY A FELONY AS DEFINED BY NRS 201.230.

In the alternative to Counts 13 and 14

COUNT 15: OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR  
AS DEFINED BY NRS 201.210.

COUNT 16: SEXUAL ASSAULT ON A CHILD UNDER THE AGE OF 14  
YEARS, A CATEGORY A FELONY AS DEFINED BY NRS  
200.366(3).

In the alternative to Count 16

COUNT 17: LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE, A  
CATEGORY A FELONY AS DEFINED BY NRS 201.230.

In the alternative to Counts 16 and 17

COUNT 18: OPEN OR GROSS LEWDNESS, A GROSS MISDEMEANOR  
AS DEFINED BY NRS 201.210.

COUNT 19: KIDNAPPING IN THE FIRST DEGREE, A CATEGORY A  
FELONY AS DEFINED BY NRS 200.310(1).

In the alternative to Count 19

COUNT 20: KIDNAPPING IN THE SECOND DEGREE, A CATEGORY B



FELONY AS DEFINED BY NRS 200.310(2).

App., p. 1. An Amended Memorandum of Plea Agreement was filed on February 18, 2015. App., p. 10. The Agreement contemplated that the parties would be free to argue for any sentences they deemed appropriate, including whether the sentences should be run concurrently or consecutively. App., p. 10. On March 16, 2015, Mr. Hockemier entered pleas of guilty to Counts 2 and 14 of the Criminal Information, both counts being LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE. App., p. 33. Sentencing occurred on May 21, 2015. On Count 2, Mr Hockemier was sentence to life in prison with the possibility of parole after 10 years, with credit for 339 days previously served. On Count 14, he was sentenced to life in prison with the possibility of parole after 10 years, said sentence to run consecutively with the sentence for Count 2. App., p. 34.

III. STATEMENT OF ISSUES

A. WHETHER THE DISTRICT COURT ERRED IN RUNNING APPELLANT'S TWO SENTENCES CONSECUTIVELY RATHER THAN CONCURRENTLY.

IV. STATEMENT OF FACTS

As noted above, the Criminal Information was filed on August 29, 2014. The offenses were alleged to have occurred "from on or about the 1<sup>st</sup> day of September, 2009, to on or about the 28<sup>th</sup> day of February, 2010." App., p. 1. Mr. Hockemier, whose date of birth is November 24, 1992, was seventeen (17) years of age when the offenses occurred. App., p. 18.

The victim in Count 2 of the Criminal Information was identified as "O.M." Count 14 of the Information identified the victim for that count as "S.B." App., p. 2, 6.

After Mr. Hockemier had entered his pleas of guilty on March 16, 2015, the Division of Parole and Probation (P & P) prepared a Presentence Investigation Report (PSI). App., p. 17. At the conclusion of the report P & P recommended that the

4/4



1 sentences for Counts 2 and 14 of the Criminal Information be run concurrently. App.,  
2 p. 25.

3 At the sentencing hearing, the State called two witnesses: Hydrie Overhooser  
4 and Charles Bridge. App., p. 45, 49. Ms. Overhooser is the mother of O.M. and the  
5 step-mother of S.B. App., p. 46. Mr. Bridge is the father of S.B. and the step-father  
6 of O.M. App., p. 50. Both parents recommended that the two sentences be run  
7 consecutively. App., p. 48, 51. The State also recommended that the sentences be  
8 run consecutively, while the defense argued for concurrent sentences. App., p. 55,  
9 60. At the conclusion of the sentencing hearing, Judge Porter ordered that the two  
10 sentences be run consecutively. App., p. 63, 34.

11 V. ARGUMENT

12 THE DISTRICT COURT ERRED IN RUNNING THE SENTENCES  
13 CONSECUTIVELY RATHER THAN CONCURRENTLY.

14 NRS 176.035(1) provides that a District Court has the discretion to run two or  
15 more sentences concurrently or consecutively with each other. Appellant recognizes  
16 that, normally, a sentence within statutory limits will not be disturbed on appeal  
17 unless the sentencing court relied on "highly suspect or impalpable information."  
18 Smith v. State, 112 Nev. 871, 873 (1996); Silks v. State, 92 Nev. 91, 94 (1976). In  
19 the instant case, the sentences imposed were within the statutory limits. However, the  
20 district court appeared to have simply ignored the recommendations made by both the  
21 defense counsel and the Division of Parole and Probation (PSI).

22 Of greatest concern to Appellant is that the sentencing court appears to have  
23 simply disregarded P & P's recommendation. Recommendations by P & P are not  
24 binding on the sentencing court. See Etcheverry v. State, 107 Nev. 782, 786 (1991).  
25 However, the upward deviation in this case was so dramatic that it can only be  
26 deduced that the lower court failed to give any weight or credence to the  
27 recommendation in the PSI.

28 It is Appellant's position that P & P is the entity with the greatest ability to

415



1 determine an appropriate sentencing structure. It was P & P's position that the  
2 appropriate structure was to have the two sentences be run concurrent. By ignoring  
3 this recommendation, and imposing the maximum sentence, the lower court abused  
4 its discretion in sentencing Appellant. Thus the matter should be remanded for an  
5 new sentencing hearing.

6 VI. CONCLUSION

7 Based on the foregoing, Appellant respectfully requests that the Court reverse  
8 and remand his case to the District Court for a new sentencing hearing.

9  
10 DATED this 10 day of December, 2015.

11  
12  
13 SHERBURNE M. MACFARLAN, III  
14 Nevada Bar #3999  
15 Lockie & Macfarlan, Ltd.  
16 919 Idaho Street  
17 Elko, Nevada 89801  
18 (775) 738-8084

19 CERTIFICATE OF COMPLIANCE

- 20 1. I hereby certify that this brief complies with the formatting requirements of  
21 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style  
22 requirements of NRAP 32(a)(6) because this brief has been prepared in a  
23 proportionally spaced typeface using WordPerfect Office x5 in 14-point Times New  
24 Roman font.
- 25 2. I further certify that this brief complies with the page or type-volume limitation  
26 of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP  
27 32(a)(7)(C), it does not exceed 30 pages.
- 28 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

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1 Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every  
2 assertion in the brief regarding matters in the record to be supported by a reference  
3 to the page and volume number, if any, of the transcript or appendix where the matter  
4 relied on is to be found. I understand that I may be subject to sanctions in the event  
5 that the accompanying brief is not in conformity with the requirements of the Nevada  
6 Rules of Appellate Procedure.

7 DATED this 10 day of December, 2015.

8  
9  
10 SHERBURNE M. MACFARLAN, III  
11 Nevada Bar # 3999  
12 Lockie & Macfarlan, Ltd.  
13 919 Idaho Street  
14 Elko, Nevada 89801  
15 (775) 738-8084

16 CERTIFICATE OF SERVICE

17 I certify that this document was filed electronically with the Nevada Supreme  
18 Court on the 10 day of December, 2015. Electronic service of the foregoing  
19 document shall be made in accordance with the Master Service List as follows:

20 Nevada Attorney General  
21 Sherburne M. Macfarlan, III  
22 Elko County District Attorney

23 I further certify that I served a copy of this document by mailing a true and  
24 correct copy thereof, postage prepaid to the following address(es):

25 Devon Hockemier, # 1140743  
26 c/o Lovelock Correctional Center  
27 1200 Prison Rd.  
28 Lovelock, NV 89419

Danielle Leyva  
Danielle Leyva

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(1)

(Exh. # 58)  
1 of 3

My Copy

RECEIVED

OCT 24 2016

DEVON Ray HOCKEMIER  
Unit 3A- #1140743  
LOVELOCK CORRECTIONAL CENTER  
1200 PRISON ROAD  
LOVELOCK, NEVADA ~ 89419~

"IN PROPER PERSON":

"IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE  
OF NEVADA IN AND FOR THE COUNTY OF ELKO.  
(Dept: \ Courtroom #1)"

DEVON Ray HOCKEMIER,  
Defendant \ Petitioner,

CASE No. # CR-FP-14-0635  
Direct Appeal: 68333

vs.

"Formal Letter"

State Of Nevada,  
Mark TORVINEN, District Attorney  
Plaintiff.

It comes now Defendant Devon Ray Hockemier,  
in proper person (i.e. in pro se) through the assistance of an inmate  
lay person does humbly present this "Formal Letter" as mentioned  
above in the titled caption for these foregoing reasons:

(1.) that this litigation is the defendants initial legal pro-  
cess to obtain his pertinent documents pertaining to the court re-  
cord in his case, so he can support claims within his "Post-Conviction  
Writ of Habeas Corpus".

(2.) that the defendant is preparing his "State Post-Conviction  
Petition Writ Of Habeas Corpus", and would be prejudiced if this

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(1.)

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HONORABLE Court denied the two motions he has before the Court, which is to say, that without the support of facts within the record the defendant would be presenting bare and naked allegations and by this meriting dismissal of his petition. (Please see: Motion For Production Of Transcripts At State Expense), and,

(3) that the defendant has the entitled Constitutional right to bring forth errors of counsel effective assistance during pre-trial plea negotiation, at plea negotiation, and post counsel effectiveness during sentencing phase. Moreover, the defendant also has the entitled Constitutional rights to challenge the errors committed by appointed counsel on direct appeal. These are absolute rights under the United States Constitution and Nevada Constitution. Therefore without an "Order" by this Honorable Fourth Judicial District Court granting the motions: "Motion For Production Of Transcripts At State Expense", and "Notice Of Motion And Motion For Order Of Delivery Of Records", the defendant would be clearly prejudiced because he would not be able to support his "grounds" within his post-conviction writ of habeas corpus petition. Peterson v. Warden, 87 Nev. 134, 483 P.2d 204, 205 (1971); see e.g. Gardner v. California, 393 U.S. 367, 89 S.Ct. 580, 582 (1969).

The defendant prays for this Honorable Courts just decision in granting his motions before the Court.

Respectfully submitted:

Dated this 22<sup>nd</sup> day of June 2016.

Mark Anthony Hansen  
Inmate Lay Person Assisting  
# 61332

Darren Habrin  
Defendant / Petitioner  
#1140743

(419)

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"CERTIFICATE OF SERVICE BY MAIL"

My Copy (Exh. # 56)  
3 of 3

I Devon Ray Hockemier, do certify that I mailed  
a true and correct copy of the foregoing "Formal Letter" to the  
party(s) as are addressed below on this 22<sup>nd</sup> day of June, 2016,  
by placing same in the U.S. Mail via the prison law library staff:

"Elko County District Att. Office"  
(Mark TORVINEN D.A.)  
540 COURT STREET  
Elko, Nevada ~ 89801~

"Fourth Judicial District Court"  
(Department: I, in care of Clerk)  
571 Idaho STREET  
Elko, Nevada ~ 89801~

"Elko County Clerk"  
(Lando Fosmo)  
550 COURT STREET  
Elko, Nevada ~ 89801~

Respectfully Submitted;

Dated this 22<sup>nd</sup> day of June, 2016.

Devon Hockemier  
DEFENDANT & PETITIONER

#1140743

(420)



Devon Ray Hockemier #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

My Copy (Exh. #58A)  
1 of 1  
RECEIVED

OCT 24 2016

June, 22<sup>nd</sup>, 2016

CLERK OF THE COURT  
4<sup>th</sup> Judicial District Court  
of the county of Elko  
Nevada 89801  
Carol Fosmo (Clerk)

RE: Devon Ray Hockemier #1140743, Case No. CR-FP-14-0000635  
Direct Appeal: 68333

Dear Clerk,

I am in need of the following document(s) in the above case for my files:

- ☒ Minutes of Hearing of \_\_\_\_\_
- ☒ Judgment of Conviction, filed on \_\_\_\_\_
- ☒ Docket sheet listing all documents which have been filed.
- ☒ ORDER \_\_\_\_\_  
filed/entered on \_\_\_\_\_, 20\_\_\_\_

☒ Other: All pertinent papers, pleadings, hearing transcripts, all plea agreement transcripts, and sentencing transcripts, all indictment, please send complete court record for juvenile records.

Would you please send me a copy of same at my address above? Thank you for your assistance in this matter. I await your response.

Sincerely,

Devon Hockemier #1140743  
Defendant In Pro SE

421

#0409

3

My Copy

(Exh. #58B)  
1066

Devon Ray Hockemier #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Defendant In Pro Se

IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Elko

\* \* \* \* \*

THE STATE OF NEVADA )  
Mark Torvinen, District Attorney )  
Plaintiff, )  
-vs- )  
Devon Ray Hockemier )  
Defendant. )

Case No. CR-FP-14-0000635  
Direct Appeal sub 8333  
Dept. No. 1

Date of Hearing: \_\_\_\_\_  
Time of Hearing: \_\_\_\_\_

NOTICE OF MOTION AND MOTION FOR  
ORDER OF DELIVERY OF RECORDS

COMES NOW Defendant Devon Ray Hockemier  
("Defendant"), in pro se, and submits his Notice of Motion and  
Motion for Order of Delivery of Records, moving the Court to  
Order that former counsel of record Sherbarne M. MacFarlan III  
("Counsel") deliver to Defendant at the above address all files,  
documents, papers, records and personal property which are in  
Counsel's possession and control.

This motion is made and based upon NRS 7.055; all documents  
on record herein; the below points and authorities; and the  
attached affidavit of Defendant in support hereof.

NOTICE OF MOTION

YOU, AND EACH OF YOU, WILL TAKE NOTICE that the undersigned  
will bring for hearing the foregoing motion before the above-

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#0410

Devon Hockemier #1140143  
LCC LL FORM 26.074



1 entitled Court and Department, on the date and time set forth on  
2 the caption above, or as soon thereafter as the matter may be  
3 heard. You may contact the Court Clerk for this information if  
4 such is not available above.

5  
6 POINTS AND AUTHORITIES

7 Counsel has withdrawn from this case, and therefore no  
8 longer represents Defendant. Upon being discharged, the  
9 attorney shall, upon demand of the client, "immediately deliver  
10 to the client all papers, documents, pleadings and items of  
11 tangible personal property which belong to or were prepared for  
12 that client." NRS 7.055(1). See also RPC 1.16(d) (upon  
13 discharge, attorney to surrender to former client all papers and  
14 property to which client is entitled).

15 Despite having been discharged, Counsel has failed to  
16 comply with Defendant's instructions to forward to him all  
17 papers and property which were prepared in relation to the  
18 above-entitled case and/or which belong to him. See Affidavit  
19 attached hereto. This failure of Counsel not only omits to  
20 protect Defendant's interests as required by RPC 1.16, but  
21 directly disregards the mandates of NRS 7.055(1).

22 Counsel has no lawful basis to withhold Defendant's papers  
23 in this matter, as Defendant owes Counsel NO fees which would  
24 permit Counsel to maintain same under a lien. Michel v. Eighth  
25 Judicial Dist. Court, 117 Nev. 145, 17 P.3d 1003, 1008 n. 2  
(2001). See also Affidavit.

26 CONCLUSION

27 For the reasons set forth above, the Court should order  
28 Counsel to deliver to Defendant the entirety of documentation in

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1 the above-entitled case, or should otherwise direct counsel to  
2 show cause why they have failed to do so.

3 Dated this 22<sup>nd</sup> day of June, 2016.

4  
5 Devon Ray Hockemier  
6 Unit: 3A Cell: 51B # 1140743  
7 Lovelock Correctional Center  
8 1200 Prison Road  
9 Lovelock, Nevada 89419

10 Defendant In Pro Se

11 CERTIFICATE OF SERVICE

12 I do certify that I mailed a true and correct copy of  
13 the foregoing to the below addresses on this 22<sup>nd</sup> day of  
14 June, 2016, by placing same in the U.S. Mail via  
15 prison law library staff:

16 DISTRICT ATTORNEY  
17 Elko County  
18 Mark Torvinen D.A.  
19 540 Court Street  
20 Elko, Nevada  
21 89801

22 Fourth Judicial District Court  
23 (Department: 1 in care of Clerk)  
24 571 Idaho Street  
25 Elko, Nevada  
26 89801

27 Attorney for Plaintiff

28 Former Counsel of Record

18 Elko County Clerk  
19 (Carol Fasmio)  
20 550 Court Street  
21 Elko, Nevada, 89801

22 Sherburne M. MacFarlan III  
23 919 Idaho St. Elko, NV, 89801

24 Defendant In Pro Se

25 AFFIRMATION PURSUANT TO NRS 239B.030

26 The undersigned does hereby affirm that the preceding  
27 NOTICE OF MOTION AND MOTION FOR ORDER OF DELIVERY OF RECORDS  
28 does not contain the social security number of any person.

1 Dated this 22<sup>nd</sup> day of June, 2016.

2 Devon Hockemier  
3 #1140743

4 Defendant In Pro Se



Affidavit of Defendant In Support of Motion

(Exh.#58B)  
4 of 6

STATE OF NEVADA )  
 ) ss:  
COUNTY OF PERSHING )

COMES NOW, I, Devon Ray Hockemier, who first being duly sworn and on my own oath, do hereby depose and state the following:

(1) I am the Defendant in the above-entitled matter.

(2) My former attorney Sherburne M. MacFarlan III has been removed as my counsel of record in these criminal proceedings. I have instructed counsel to forward to me my case files in accordance with NRS 7.055, inasmuch as the following has occurred (explain what you have done to attempt to obtain your records from counsel, and what, if anything, has been counsel's response to such attempts):

I, Devon Ray Hockemier, have requested from former counsel, Sherburne M. MacFarlan III, on May, 12<sup>th</sup>, 2016, to please send all documents, papers, pleadings, transcripts - including transcripts of motion to bring defendant to juvenile court. Counsel still has not complied with this request, which is a violation of NRS 7.055. My request with this honorable court is to order former counsel to comply with NRS 7.055. Lastly, I am under the one year time constraints of Nevada's post-conviction Habeas Corpus.

Sincerely, Devon Hockemier

(3) Counsel fails to forward to me said records. I am therefore submitting the instant motion in good faith, as I have no other remedy than this Court's power to enforce my interests under NRS 7.055.

Dated this 22<sup>nd</sup> day of June, 2016.

Devon Hockemier  
Unit: 3A Cell: 513 #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Affiant/Defendant In Pro Se

VERIFICATION UNDER PENALTY OF PERJURY

I do verify under penalty of perjury that the above affidavit is true and correct and is stated to the best of my knowledge, and is made without benefit of a notary pursuant to NRS 208.165, as I am an incarcerated person.

Dennis Harkin  
#1140743

Affiant/Defendant In Pro Se

(425)

Devon Hockemier #1140743

(Exh. #583)  
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OCT 24 2016

Devon Ray Hockemier # 1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Defendant In Pro Se

IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Elko

\* \* \* \* \*

THE STATE OF NEVADA,  
Mark Torviny, District Attorney  
Plaintiff,  
  
-vs-  
  
Devon Ray Hockemier,  
Defendant.

Case No. CR-EP-14-0000635  
Dept. No. 1  
Direct Appeal: 68333

ORDER DIRECTING DELIVERY OF RECORDS

THIS MATTER, having been duly considered by the Court, it is hereby ORDERED that Defendant's Motion for Order of Delivery of Records is hereby GRANTED.

Counsel Sherburne M. MacFarlan III is directed to forthwith send to Defendant, at the Lovelock Correctional Center, all pleadings, papers, documents and other tangible personal property which were prepared for and in relation to the above-entitled action which are in counsel's possession and control. Such mailing or other form of delivery is to be affected at counsel's expense.

IT IS SO ORDERED.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

District Court Judge

926

#

Devon Hockemier #1140743



1 Case No. CR-F, 14-0000635  
2 Direct Appeal: 68333  
3 Dept. No.: 1

(Exh. #58B)  
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**RECEIVED**  
OCT 24 2016

4  
5  
6 IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF Elko

8 \* \* \* \* \*

9 Devon Ray Hockemier )

10 Petitioner/Defendant, )

11 -vs- )

12 State of Nevada )

13 Mark Tervinen, District Attorney )

14 Respondent/Plaintiff. )

**ORDER TO PRODUCE  
TRANSCRIPTS**

15  
16 THE COURT, having considered Petitioner's MOTION FOR PRODUCTION OF  
17 TRANSCRIPTS, and with good cause appearing, it is hereby ORDERED that the  
18 motion is granted.

19 The Clerk of the Court is directed to cause to be prepared the transcripts  
20 of the \_\_\_\_\_ of  
21 \_\_\_\_\_, 20 \_\_\_\_, and to provide same to Petitioner at his place of  
22 confinement, i.e., Lovelock Correctional Center, Lovelock, Nevada 89419.  
23 Such shall be effectuated at State expense.

24 IT IS SO ORDERED.

25 Dated this \_\_\_\_ day of \_\_\_\_\_, 20 16.

26  
27 \_\_\_\_\_  
28 DISTRICT COURT JUDGE

(427)

#0115

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My Copy (Exh. #586)  
1 of 4

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OCT 24 2016

Case No. CR-FP-14-0000635  
Direct Appeal: 68333  
Dept. No. 1

IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Elko

\* \* \* \* \*

Devon Ray Hockemier, )  
 )  
Defendant, )  
 )  
-vs- )  
 )  
State of Nevada, )  
Mark Torvinen, District Attorney, )  
Plaintiff. )

MOTION FOR PRODUCTION  
OF TRANSCRIPTS  
AT STATE EXPENSE

COMES NOW Defendant, Devon Ray Hockemier, in pro se,  
and moves the Court for an order directing the Clerk of the  
Court to prepare or cause to be prepared, transcripts of the  
(list the hearing(s)/date(s) for which you request transcripts):  
Please see LCC LL Form 26.040 - requesting All pertinent papers, pleadings,  
hearing transcripts, all plea agreement transcripts, and sentencing transcripts, please  
send complete court record (I.E. including juvenile records.) pertaining to  
case at hand, also, all indictments,  
and to serve same upon him at his place of confinement.

This motion is made and based upon the requirements of NRS  
34.370(4); NRS 34.760(2); all papers, pleadings and documents on  
file herein; the instant (check applicable pending action to  
which this motion relates) ☒ petition for writ of habeas  
corpus \_\_\_ motion to/for \_\_\_\_\_;

//  
//  
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#

Devon Hockemier #1140743

LCC LL FORM 26.054



1 and the following points and authorities.

2 POINTS AND AUTHORITIES

3 Petitioner/Defendant has filed a ☒ petition for writ of  
4 habeas corpus \_\_\_ motion to/for \_\_\_  
5 \_\_\_, presenting ground(s)/claim(s) for relief. NRS  
6 34.730(4) and NRS 34.760(2) require that the presentation of  
7 habeas petitions be supported by affidavits, records,  
8 transcripts or other relevant evidence. Id. Petitions and  
9 motions which are not supported by such evidence render the  
10 claims therein to be bare and naked allegations, unsupported by  
11 the record and meriting dismissal. Hargrove v. State, 100 Nev.  
12 498, 686 P.2d 222 (1984). See also Griffin v. State, 122 Nev.  
13 737, 137 P.3d 1165, 1170 (2006) (defendant must support his  
14 claims with "specific facts" demonstrating entitlement to relief  
15 sought); Berjarano v. Warden, 112 Nev. 1466, 929 P.2d 922 (1996)  
16 (defendant bears burden of establishing factual allegations in  
17 support of his claims).

18 In order to obtain this Court's order to produce the  
19 requested transcripts, Petitioner/Defendant need show that they  
20 would serve a useful purpose and that he would be prejudiced  
21 without them. Peterson v. Warden, 87 Nev. 134, 483 P.2d 204,  
22 205 (1971). Petitioner/Defendant requires the transcripts at  
23 bar in order to support his ground(s)/claim(s), which have  
24 merit, as shown on the separate page(s) annexed hereto as page  
25 (s) See <sup>"formal letter," attached</sup> (you must describe your grounds/claims and  
26 demonstrate how the requested transcripts are necessary to avoid  
27 a dismissal/denial of same), and as are incorporated as if set  
28 forth herein. Prejudice is demonstrated inasmuch as due to the

Devon for "quiner" # 1140143

merit of Petitioner/Defendant's claims, same would be dismissed/denied without the transcripts at issue.

Petitioner/Defendant is a pauper, as evidenced by his having proceeded as a pauper in these proceedings. Therefore, the transcripts must be provided at State expense so as to satisfy the concerns of due process and fairness herein. See e.g. Gardner v. California, 393 U.S. 367, 89 S.Ct. 580, 582 (1969) (transcripts in habeas proceedings may not be supplied those who can afford them and denied to those who cannot).

CONCLUSION

For the reasons set forth above, the Court should grant the instant motion via ordering the Clerk of the Court to produce the above-described transcripts and serve same upon Petitioner/Defendant at his place of confinement.

Dated this 22nd day of June, 2016.

Devon Ray Hockemier  
Unit: 3A Cell: 51B # 1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Devon Hockemier In Pro Se  
#1140743

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR PRODUCTION OF TRANSCRIPTS to the below address on this 22<sup>nd</sup> day of June, 2016, by placing same in the U.S. Mail via prison law library staff:

Mark Torvinen  
Elko County District Attorney's Office  
540 Court street  
Elko, NV, 89801

Fourth Judicial District Court  
(Department: 1, in care of Clerk)  
571 Idaho street.  
Elko, Nevada, 89801

Elko County Clerk  
(Carol Fosmo)  
550 Court street.  
Elko, Nevada, 89801

Attorney For Respondent

Devon Ray Hockemier  
Unit: 3A Cell: 513 #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Devon Hockemier In Pro Se  
#1140743

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR PRODUCTION OF TRANSCRIPTS AT STATE EXPENSE does not contain the social security number of any person.

Dated this 22<sup>nd</sup> day of June, 2016.

Lovelock Correctional Center, 1200 Prison rd  
Lovelock, NV, 89419  
Devon Ray Hockemier #1140743  
Devon Hockemier In Pro Se

My Copy (Exh# 580) 10f1  
**RECEIVED**  
OCT 24 2016

1 Case No. CR-FP-14-0000635  
2 Dept. No. Direct Appeal: 68333  
3  
4  
5

6 IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF Elko  
8 \* \* \* \* \*

9 Devon Ray Hockemier, )  
10 Defendant, )  
11 -vs- )  
12 State of Nevada, )  
13 Mark Torvinen, District Attorney, )  
14 Plaintiff. )

**ORDER TO PROCEED  
IN FORMA PAUPERIS**

15 Upon consideration of \_\_\_\_\_'s Application to Proceed  
16 In Forma Pauperis and it appearing that there is not sufficient  
17 income, property or resources with which to commence and  
18 maintain the action, and with good cause appearing:

19 IT IS HEREBY ORDERED that Defendant, Devon Ray Hockemier,  
20 shall be permitted to proceed In Forma Pauperis in this action,  
21 with no fees, costs or securities being necessary towards the  
22 filing or issuance of any writ, process, pleading or papers.

23 IT IS FURTHER ORDERED that the Sheriff shall make personal  
24 service of any necessary pleadings in this action without fees.

25 IT IS SO ORDERED.

26 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

27 \_\_\_\_\_  
28 District Court Judge

(432)



Case No. CR-FP-14-0000635  
Dept. No. Direct Appeals 68333  
1

My Copy

RECEIVED

OCT 24 2016

IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Elko

\* \* \* \* \*

Devon Ray Hockemier, )  
 )  
Defendant, )

-vs-

State of Nevada, )  
Mark Tervinen District Attorney, )  
Plaintiff. )

APPLICATION TO PROCEED  
IN FORMA PAUPERIS

COMES NOW Defendant, Devon Ray Hockemier, in  
pro se, and moves the Court for an order granting him leave to  
proceed in the above-entitled action without paying the costs  
and/or security of proceeding herein.

This motion is made and based upon NRS 12.015 and the  
attached affidavit and certificate of inmate's institutional  
account.

Dated this 22nd day of June, 2016.

Devon Ray Hockemier  
Unit: 3A Cell: 51B #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Dana Harkin In Pro Se  
#1140743

433

(Exh. #58E)  
20 f3

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS does not contain the social security number of any person.

Dated this 22<sup>nd</sup> day of June, 2016.

Devon Ray Hockemier  
Unit: 3A cell: 51B #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Dennis Harkin In Pro Se  
#1140743

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434

#0422



Affidavit in Support of Application  
to Proceed In Forma Pauperis

My Copy (Exh. # 58E)  
30 f3

State of Nevada )

County of Pershing )

ss:

COMES NOW, I, Devon Ray Hockemier, who first being duly sworn and on my own oath, do hereby depose and state the following in support of my foregoing motion:

(1) Because of my poverty I am unable to pay the costs of the proceedings in the foregoing action or to give security therefore; I am entitled to relief. This application is made in good faith.

(2) I swear that the responses below are true and correct and to the best of my knowledge, information and belief:

(a) I    am    ☒ (am not) presently employed. I currently earn salary or wages per month in the following amount at Lovelock Correctional Center or, if I am not presently employed, the date of my last employment and the amount of salary or wages I earned per month were as follows: \_\_\_\_\_

(b) I have NOT received any money from any of the following sources within the past 12 months: business, profession, self-employment, rent payments, pensions, interests or dividends, annuities, insurance payments, gifts or inheritances. Money, if any, placed on my prison account from sources such as family or friends, is in the amount as indicated on the attached Certificate of Inmate's Institutional Account, which reflects the total amount of money in my prison account.

(c) I do NOT own any real estate, stocks, bonds, notes, automobiles or other valuable property, and I do not have any money in a checking account.

(d) I    do    ☒ (do not) have persons dependent upon me for support. The person(s) I support, if any, are as follows, with my relationship to them and the amount of my contribution towards their support being as follows: \_\_\_\_\_

(3) I swear under the penalty of perjury that the above is true and correct and to the best of my personal knowledge, and that the foregoing is rendered without notary per NRS 208.165.

Dated this 22nd day of June, 2016.

Devon Ray Hockemier  
Unit: 3A Cell: 51B #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419  
Devon Hockemier In Pro Se  
#1140743

(435)  
#0423

LCC

NAME & BACK

(Exh #58F)  
Devon Ray Hockemier 101  
# 1140743

RECEIVED

OCT 24 2016

Case No. CR-EP-14-0000635

Dept. No. Direct Appeal: 68333  
I

IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Elko

Devon Ray Hockemier,  
Defendant,

vs.

State of Nevada,  
Mark Torrinen, District Attorney.

CERTIFICATE OF INMATE'S  
INSTITUTIONAL ACCOUNT

I, the undersigned, do certify that Devon Ray Hockemier,  
NDOC # 1140743, above-named, has a balance of \$ 23.52 on account  
to his credit in the prisoner's personal property fund for his use at  
Lovelock Correctional Center, in Pershing County.

I further certify that said prisoner owes departmental charges in the  
amount of \$ 0 and that the solitary security to his credit is a  
savings account established pursuant to NRS § 209.247(5) with a balance of  
\$ 156.58 which is inaccessible to him.

Dated this 09 day of JUNE, 2016.

Elizabeth Campbell  
Accounting Technician  
Inmate Services Division  
Nevada Department of Corrections

Submitted by Devon Harkin, # 1140743, on 26/01/16.

This is for a civil habeas matter.

436

# 1022



(Exh. #59)

RECEIVED

FILED OCT 24 2016

2016 AUG 17 PM 4:08

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY mm

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

THE STATE OF NEVADA,

Plaintiff,

V.

DEVON RAY HOCKEMIER,

Defendant.

**ORDER DENYING  
APPLICATION TO PROCEED  
IN FORMA PAUPERIS**

Before the Court is an Application to Proceed *In Forma Pauperis* filed by Devon Ray Hockemier (hereinafter "Defendant") on June 28, 2016.

In order to proceed *in forma pauperis* a person must desire to prosecute or defend a civil action. NRS 12.015. Defendant has not stated any cause of action that he wishes to prosecute or defend.

Therefore, **IT IS HEREBY ORDERED** that the Application to Proceed *In Forma Pauperis* is DENIED.

SO ORDERED this 17 day of August, 2016.

Nancy Porter  
NANCY PORTER  
DISTRICT JUDGE - DEPT. 1

437

#0025

(Exh. #59)  
2012

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 17<sup>th</sup> day of August, 2016, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a copy of the foregoing **ORDER DENYING APPLICATION TO PROCEED IN FORMA PAUPERIS** addressed to:

DEVON RAY HOCKEMIER, #1140743  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419



438

#0426