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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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DEVON RAY HOCKEMIER,

Appellant,

CASE NO.83147

vs.

THE STATE OF NEVADA,

Respondent.

Appeal From The Fourth Judicial District Court
Of The State of Nevada
In And For The County Of Elko

RESPONDENT'S ANSWERING BRIEF

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1 jurisdiction over the case. The justice court held a hearing on the
2 motion, the police officer testified, and the justice court denied the
3 motion. . . Hockemier failed to demonstrate counsel was objectively
unreasonable for not reraising at the preliminary hearing the issue
he had just unsuccessfully litigated.

4 *Order of Affirmance*, 4. Seemingly ignoring this finding and the record that
5 aptly supports it¹, he asserts that trial counsel was ineffective for allegedly
6 not objecting in justice court to its having jurisdiction over the case.
7 *Appellant's Petition for Supreme Court Review* (hereinafter *Petition*), 6:3-
8 10.

9 Building on his disregard of what occurred before the preliminary
10 hearing, Hockemier pretends the preliminary hearing transcript shows that
11 the justice court lacked jurisdiction pursuant to NRS 62D.330. *Id.* The
12 problem with this approach is that a fair assessment of an attorney's
13 performance requires that every effort be made to reconstruct the
14 circumstances of counsel's challenged conduct and to evaluate the conduct
15 from counsel's perspective at the time. *Strickland*, 466 U.S. 668, 689 (1984).
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18 ¹ *Joint Appendix* 670(Vol. 3)(trial counsel testified to a hearing on his
19 motion before the preliminary hearing), 789-794(Vol. 4)(trial counsel's
20 motion challenging the age issue), 795-803(Vol. 4)(state's opposition),
757-769(Vol. 4)(Justice Court Full Case History).

1 A reconstruction of the circumstances shows that trial counsel filed a
2 motion before the preliminary hearing challenging the justice court's
3 jurisdiction. *JA* 779 or 790(Vol. 4) (motion filed July 28, 2014), 805(Vol. 4)
4 or 243(Vol. 2) (preliminary hearing transcript). The State opposed the
5 motion *JA* 795-803(Vol. 4) or 225-231(Vol. 2). A few days before the
6 preliminary hearing, the justice court held a hearing on the motion. *JA*
7 670(Vol.3). The investigating officer, Detective Hessing, testified at the
8 hearing and the justice court denied the motion. *Id.*

9 Pointing to the preliminary hearing transcript, Hockemier tries to
10 assert that there could not have been much more of a clearer showing that
11 NRS 62B.330(3)(c)(2)² put this case out of the purview of the justice court.
12 *Petition*, 6:14-21. This is not true. Jurisdiction over Hockemier's crimes
13 turns on when law enforcement *identified* him as having committed the
14 offense. *See* NRS 62B.330(3)(c)(2).

15 The preliminary hearing transcript is devoid of any specific testimony
16 about when law enforcement identified Hockemier as the perpetrator. *See*
17 *JA* 805-836(Vol. 4). Detective Hessing agrees on direct that he *began* his

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19 ² Although the language is the same, the correct subsection of the
20 version of NRS 62B.330 in effect at the time is NRS
62B.330(3)(e)(2)(2013 Nevada Code Archive).

1 investigation on November 21, 2013. *JA* 819(Vol. 4). He also confirms a
2 vague reference to identifying Hockemier, “at some point later on.” *JA*
3 820(Vol. 4). But an exact date is never made part of the preliminary hearing
4 transcript. *Id.* Hockemier ignores this lack of clarity and equates Detective
5 Hessing’s testimony that the investigation began on November 21, 2013,
6 with being the date on which Hockemier was identified as the perpetrator.
7 *Petition* 6:3-5, 7:12-14.

8 This handpicking and contorting of facts also requires Hockemier to
9 make no mention of Detective Hessing’s report, *JA* 722-730, which was
10 admitted at the habeas hearing as part of Respondent’s Exhibit A, *JA*
11 627(Vol. 3). In his report, Detective Hessing explains that he first learns the
12 identity of the then suspect when he interviewed the mother of the victims
13 on November 25, 2013. *JA* 723-724. Hockemier was born on November 24,
14 1992. *JA* 36(Vol. 1). This means that he would have turned 21 years old on
15 November 24, 2013, one day prior to Detective Hessing learning
16 Hockemier’s name.

17 In an apparent attempt to garner sympathy, Hockemier paints himself
18 as a juvenile who was robbed of his opportunity to be rehabilitated in the
19 juvenile system and instead given the “extreme” punishment of life
20

1 sentences. *Petition*, 7-8. First, charges were not filed against Hockemier
2 until April 30, 2014. *JA* 732-744(Vol.4). He had been an adult for more than
3 three years at that point. Second, the record in this case shows there is little
4 basis for sympathy. Hockemier recalled being between 17 and 18 years old
5 when he abused the two victims in this case. *JA* 727-729(Vol.4). The victims
6 were much younger than him at 10 and 5 or 6 years old. *JA* 724-725(Vol. 4).
7 Further, despite his own admission in which he described extensive sexual
8 abuse of both victims, he ultimately plead to just a single count for each
9 child. *JA* 727-729(Vol. 4). Even the psychosexual evaluator expressed
10 concerns that Hockemier would reoffend. *JA* 860-862(Vol. 4).

11 CONCLUSION

12 Respondent requests that Hockemier's petition be denied. He bears the
13 burden of demonstrating why he should be afforded this extraordinary
14 remedy. He has attempted to persuade this Court by handpicking and
15 contorting the facts instead of showing how, even after reconstructing the
16 circumstances of counsel's challenged conduct and evaluating the conduct
17 from counsel's perspective at the time, Hockemier's trial counsel was still
18 deficient.

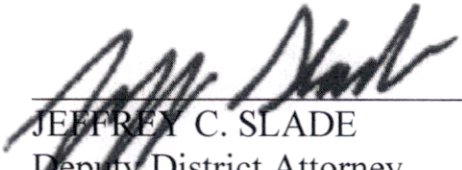
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RESPECTFULLY SUBMITTED this 9th day of June, 2022.

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By: 
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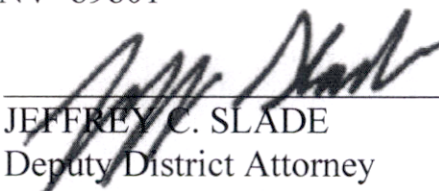
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1 Rules of Appellate Procedure.

2 DATED this 9th day of June, 2022.

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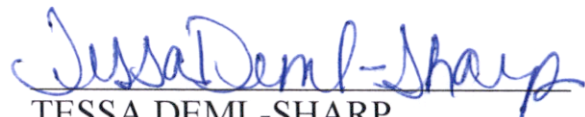
1 CERTIFICATE OF SERVICE

2 I certify that this document was filed electronically with the Nevada
3 Supreme Court on the 9th day of June, 2022. Electronic Service of the
4 Respondent's Answering Brief shall be made in accordance with the Master
5 Service List as follows:

6 Honorable Aaron D. Ford
7 Nevada Attorney General

8 and

9 BENJAMIN GAUMOND
10 Attorney for Appellant
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13 TESSA DEML-SHARP
14 CASEWORKER
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19 DA#: AP-21-01613
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