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2	IN THE SUPREME COURT OF THE STATE OF NEVADA	
3	Electronically Filed Jun 09 2022 09:22	a.m.
4	DEVON RAY HOCKEMIER, Elizabeth A. Brown Clerk of Supreme C	ourt
5	Appellant,	
6	CASE NO.83147	
7	VS.	
8	THE STATE OF NEVADA,	
9	Respondent.	
10		
11	Appeal From The Fourth Judicial District Court Of The State of Nevada	
12	In And For The County Of Elko	
13	RESPONDENT'S ANSWERING BRIEF	
14	THE HONORABLE AARON D. FORD	
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ARGUMENT

Hockemier has the burden of persuading a majority of the Justices that his case merits the extraordinary remedy of having this Court question the decision of the Court of Appeals. *See* NRAP 40B. He is required to state the question(s) presented for review and the reason(s) review is warranted. *Id.* Hockemier seeks to reimagine the facts of this case in his bid to persuade this Court to overturn the Court of Appeals. Such an extraordinary remedy, which is neither available as a matter of right nor within the normal process of appellate review, should be earned through factual candor and convincing claims of general statewide importance.

He presents no issue of first impression or conflicting precedent or a fundamental issue of statewide public importance. *See* NRAP 40B. Instead, he rehashes his factually inaccurate argument and cites his personal punishment for permanently damaging innocent children as cause for this extraordinary remedy.

The Court of Appeals found that:

Hockemier unsuccessfully litigated the age issue prior to the preliminary hearing. Trial counsel filed a motion to transfer the case to juvenile court wherein he asserted that police officers learned the identity of Hockemier prior to his turning 21 years old and, therefore, that the juvenile court and not the justice court had

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

Order of Affirmance, 4. Seemingly ignoring this finding and the record that aptly supports it¹, he asserts that trial counsel was ineffective for allegedly not objecting in justice court to its having jurisdiction over the case.

Appellant's Petition for Supreme Court Review (hereinafter Petition), 6:3-10.

Building on his disregard of what occurred before the preliminary hearing, Hockemier pretends the preliminary hearing transcript shows that the justice court lacked jurisdiction pursuant to NRS 62D.330. *Id.* The problem with this approach is that a fair assessment of an attorney's performance requires that every effort be made to reconstruct the circumstances of counsel's challenged conduct and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. 668, 689 (1984).

¹ *Joint Appendix* 670(Vol. 3)(trial counsel testified to a hearing on his motion before the preliminary hearing), 789-794(Vol. 4)(trial counsel's motion challenging the age issue), 795-803(Vol. 4)(state's opposition), 757-769(Vol. 4)(Justice Court Full Case History).

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

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

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

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

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

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

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

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

CONCLUSION

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

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1	RESPECTFULLY SUBMITTED this 9 th day of June, 2022.
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4	By:
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CERTIFICATE OF COMPLIANCE

I hereby certify that this Respondent's Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This Respondent's Answering Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013, in size 14-point Times New Roman font.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Respondent's Answering Brief exempted by NRAP32(a)(7)(C), because it contains 1405 words.

I hereby certify that I have read the Respondent's Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada

1	Rules of Appellate Procedure.
2	DATED this 9 th 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 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
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DA#: AP-21-01613