IN THE SUPREME COURT OF THE STATE OF NEVADA

Hamza Zalyaul, Appellant vs. The State of Nevada, Respondent,	)	Supreme Court Case No.: 83334 Electronically Filed Dec 21 2021 01:57 p.m. Elizabeth A. Brown Clerk of Supreme Court **APPELLANT'S APPENDIX INDEX** **Vol. I** **Pages 001-114**

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAMZA ZALYAUL, #7091105,

Defendant.

CASE NO: C-21-354047-1

DEPT NO: XXI

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **ATTEMPT SEXUAL ASSAULT (Category B Felony - NRS 200.364, 200.366, 193.330 - NOC 50119),** as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State will have no opposition to probation with a drop down to OPEN OR GROSS LEWDNESS (Gross Misdemeanor - NRS 201.210 - NOC 50971), if successful. The State will have no objection to sealing the instant case after the requisite time period. The State will retain the right to argue terms and conditions. The State will seek intensive supervision at entry of plea. The Defendant agrees to have no contact with the victim.

I agree to the forfeiture of any and all electronic storage devices, computers, and/or related equipment and/or weapons or any interest in any electronic storage devices, computers and/or related equipment and/or weapons seized and/or impounded in connection with the

instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

I understand and agree that, if I fail to interview with the Department of Parole and Probation (P&P), fail to appear at any subsequent hearings in this case, or an independent magistrate, by affidavit review, confirms probable cause against me for new criminal charges including reckless driving or DUI, but excluding minor traffic violations, the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, Life without the possibility of parole, Life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

Otherwise I am entitled to receive the benefits of these negotiations as stated in this plea agreement.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than TWO (2) years and a maximum term of not more than TWENTY (20) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to $. I understand that the law requires me to pay an Administrative Assessment Fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offense(s) to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for any expenses related to my extradition, if any.

I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or

Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation and may receive a higher sentencing range.

I understand that pursuant to NRS 176.139 and my plea of guilty to a sexual offense for which the suspension of sentence or the granting of probation is permitted, P&P shall arrange for a psychosexual evaluation as part of the Division's Presentence Investigation (PSI) Report to the court.

I understand that I am not eligible for probation pursuant to NRS 176A.110 unless the psychosexual evaluation certifies that I do not represent a high risk to reoffend based upon a currently accepted standard of assessment. I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge.

I understand that, before I am eligible for parole a panel consisting of the Administrator of the Mental Health and Developmental Services of the Department of Human Resources or his designee; the Director of the Department of Corrections or his designee; and a psychologist licensed to practice in this state or a psychiatrist licensed to practice medicine in this state certifies that I was under observation while confined in an institution of the department of corrections and that I do not represent a high risk to reoffend based upon a currently accepted standard of assessment.

I understand that, pursuant to NRS 176.0931, the Court must include as part of my sentence, in addition to any other penalties provided by law, a special sentence of lifetime supervision commencing after any period of probation or any term of imprisonment and period of release upon parole.

I understand that the Court will include as part of my sentence, in addition to any other penalties provided by law, pursuant to NRS 179D.441 to 179D.550, inclusive, I must register as a sex offender within forty-eight (48) hours of release from custody onto probation or parole.

I understand that I must submit to blood and/or saliva tests under the direction of P&P to determine genetic markers and/or secretor status.

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order

the sentences served concurrently or consecutively.

I understand that information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.

I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

I understand that if the State of Nevada has agreed to recommend or stipulate a particular sentence or has agreed not to present argument regarding the sentence, or agreed not to oppose a particular sentence, such agreement is contingent upon my appearance in court on the initial sentencing date (and any subsequent dates if the sentencing is continued). I understand that if I fail to appear for the scheduled sentencing date or I commit a new criminal offense prior to sentencing the State of Nevada would regain the full right to argue for any lawful sentence.

I understand if the offense(s) to which I am pleading guilty to was committed while I was incarcerated on another charge or while I was on probation or parole that I am not eligible for credit for time served toward the instant offense(s).

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious negative immigration consequences including but not limited to:

1. The removal from the United States through deportation;
2. An inability to reenter the United States;
3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that P&P will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, then the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 8 day of March, 2021.

Signature affixed by Kelsey Bernstein at the request of:

Hamza Zalyaul

HAMZA ZALYAUL, #7091105
Defendant

AGREED TO BY:

GENEVIEVE C. CRAGGS
Chief Deputy District Attorney
Nevada Bar #013469

CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:

   a. The removal from the United States through deportation;

   b. An inability to reenter the United States;

   c. The inability to gain United States citizenship or legal residency;

   d. An inability to renew and/or retain any legal residency status; and/or

   e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

   Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This 8 day of March, 2021.

Kelsey Bemster
DAMIAN SHEETS, ESQ.

mlb/SVU

INFM
STEVEN B. WOLFSON
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Nevada Bar #001565
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I.A. 3/9/21
3:00 PM
D. SHEETS, ESQ.

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAMZA ZALYAUL, #7091105

Defendant.

CASE NO: C-21-354047-1

DEPT NO: XXI

INFORMATION

STATE OF NEVADA)
} ss.
COUNTY OF CLARK)

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That HAMZA ZALYAUL, the Defendant above named, having committed the crime of **ATTEMPT SEXUAL ASSAULT (Category B Felony - NRS 200.364, 200.366, 193.330 - NOC 50119)**, on or between the June 1, 2013 and September 30, 2013, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did then and there willfully, unlawfully, and feloniously attempt to sexually assault and subject S.D., a female person, to sexual penetration, to wit: sexual intercourse: by attempting to place his penis into the genital opening of S.D, and/or fellatio: by attempting to place his penis on or in the mouth of S.D., and/or anal intercourse: by attempting to place his penis into the anal opening of S.D and/or digital penetration: by attempting to insert his finger(s) into the genital opening of S.D

against her will, or under conditions in which Defendant knew, or should have known, that S.D. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
GENEVIEVE C. CRAGGS
Chief Deputy District Attorney
Nevada Bar #013469

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. HAMZA ZALYAUL, Defendant.	CASE NO. C-21-354047-1 DEPT. XXI

BEFORE THE HONORABLE TARA CLARK NEWBERRY,

DISTRICT COURT JUDGE

TUESDAY, MARCH 9, 2021

RECORDER'S TRANSCRIPT OF HEARING RE: INITIAL ARRAIGNMENT

APPEARANCES BY VIDEOCONFERENCE:

For the State: LAURA ROSE-GOODMAN, ESQ.
Deputy District Attorney

For the Defendant: ALEXIS E. MINICHINI, ESQ.

RECORDED BY: ROBIN PAGE, COURT RECORDER

Las Vegas, Nevada; Tuesday, March 9, 2021

* * * * * *

[Proceeding commenced at 3:10 p.m.]

THE CLERK: Page 1, Hamza Zalyaul, C354047.

MS. MINICHINI: Good afternoon, Your Honor, this is Alexis Minichini for Damian Sheets.

MS. GOODMAN: And Laura Goodman for the State.

THE COURT: All right.

Counsel, this is set for arraignment, but I think there was a guilty plea agreement entered recently, correct?

MS. MINICHINI: Correct. And Mr. Hamza is present out of -- Mr. Zalyaul is present out of custody.

THE COURT: Okay. All right.

Mr. Zalyaul, can you announce yourself, sir?

THE DEFENDANT: My name is Hamza Zalyaul.

THE COURT: Oh, you're present in the courtroom. Okay. Thank you, sir.

THE DEFENDANT: Yes, Judge, I'm sorry.

THE COURT: All right. That's okay. All right.

Are the parties ready to proceed with the entry of plea?

MS. MINICHINI: Yes, Your Honor.

THE COURT: All right. Ms. Minichini --

MS. GOODMAN: Yes, Your Honor.

THE COURT: Okay, thank you, Ms. Goodman.

Ms. Minichini, could you put the terms of the negotiation on

the record?

MS. MINICHINI: Sure. Court's indulgence.

Today Mr. Zalyaul will be pleading to one count of attempt sexual assault, a Category B felony. The State agrees to have no opposition to probation with a dropdown upon successful completion to open or gross lewdness, a gross misdemeanor, if successful on probation if sentenced to that.

The State will have no objection to sealing the instant case after the requisite time period. The State retains the right to argue terms and conditions of probation. In addition, we'll seek intensive supervision at entry of plea and agree -- and Defendant agrees to have no contact with the named victim.

THE COURT: All right.

Mr. Zalyaul, is that your understanding of what has been negotiated in your case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Could you please state your full legal name for the record, sir?

THE DEFENDANT: Hamza Zalyaul.

THE COURT: How old are you?

THE DEFENDANT: 22, Your Honor.

THE COURT: How far did you get in school?

THE DEFENDANT: I graduated overseas.

THE COURT: Do you have any type of learning disability that affects your reading comprehension?

THE DEFENDANT: No, Your Honor.

THE COURT: Do you read, write, and understand the English language?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you recently been treated for any mental health or substance abuse issues?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you currently under the influence of any drug, medication, or alcoholic beverage today?

THE DEFENDANT: No, Your Honor.

THE COURT: Do you understand the proceedings that are happening today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you received a copy of the information in this case charging you with an attempt sexual assault?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Do you understand you're facing a Category B felony?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And do you understand the charges that are contained in the information?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you've had an opportunity to discuss those charges with your counsel?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you fully satisfied with the advice given to you by your attorney and your attorney's representation of you in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: As to the charge of an attempt sexual assault, how do you plead, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Are you making this plea freely and voluntarily?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Has anyone forced or threatened you or anyone close to you to get you to enter the plea?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone made you a promise, other than what's contained in the guilty plea agreement to get you to enter the plea?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. A guilty plea agreement was filed in your case yesterday, late afternoon. Did you personally sign that guilty plea agreement?

THE DEFENDANT: No, Your Honor, I gave my attorney the authority to.

THE COURT: All right. And it's my understanding that due to Coronavirus precautions that there are instances where a guilty plea agreement may be signed at the direction of counsel, so I have a few questions to ask about that. Prior to instructing your attorney to sign the

guilty plea agreement on your behalf, did you have an opportunity to read and fully have all of your questions answered by your counsel?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Before directing your attorney to sign the guilty plea agreement, did you understand all of the terms and conditions of it?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you knowingly, willingly, and voluntarily direct your attorney to sign it on your behalf?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand that your attorney's signature in your stead has the same effect as though you had signed the document yourself?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand that at a later time if you try to withdraw your plea, a basis to do so cannot be that your attorney signed it for you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Do you understand that by pleading guilty you're giving up certain constitutional rights, including the right to a jury trial and the right to have the State put on sufficient evidence to prove beyond a reasonable doubt that you are in fact guilty of the offense?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand that you're giving up

certain appellate rights by pleading guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that if you're not a United States citizen that entering a plea of guilt may have immigration consequences including deportation?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand that in this case you're facing a range of punishment in the Nevada Department of Corrections not less than 2 years and not more than 20 years and that you could be facing a fine of up to $10,000?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that this offense may not be probationable?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. All right. Do you understand that sentencing is solely up to the Court, including whether the count would run consecutive or concurrent?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you also understand that no one can promise you probation, leniency, or any special treatment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In this case, there's an agreement between you and the State that if you successfully complete probation and receive an honorable discharge from probation, and the conditions are met, then you may be eligible to withdraw your plea of guilt to an attempt sexual

assault and plead guilty to open or gross lewdness, which is a gross misdemeanor if you success -- if you're successful in completing all of those terms and conditions.

Is that your understanding?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. If those conditions are met, do you authorize your attorney to enter a plea to a reduced charge on your behalf?

THE DEFENDANT: Yes, Your Honor.

THE COURT: If for some reason you cannot make an appearance at the probation discharge hearing, do you authorize your attorney willingly and voluntarily to enter a plea on your behalf?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions regarding that authorization?

THE DEFENDANT: No, Your Honor.

THE COURT: Do you understand that the State -- in the guilty plea agreement, the State has indicated it will seek intensive supervision as a term and condition of entry of your plea, do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you also understand the guilty plea agreement you have agreed to have no contact with the victim?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And your guilty plea agreement, I want to make sure you understand that pursuant to NRS 176.0931, the

Court must include as part of your sentence, in addition to any other penalties provided by law, a special sentence of lifetime supervision commencing after any period of probation or term of imprisonment and period of release upon parole if you are incarcerated. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Do you also understand as a term and condition of accepting this entry of plea, you must submit for a presentence investigation, including a psychosexual evaluation and that if it certifies that you do not represent a high risk to reoffend, then you may be eligible for probation. However, if it comes back that you are high risk; you will not be eligible for probation. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. All right.

Are you pleading guilty because in truth and in fact between June 1st of 2013, and September 30th of 2013, within the County of Clark, State of Nevada, contrary to the form, force and effect of the laws within the State of Nevada, you willfully, unlawfully, and feloniously attempted to sexually assault victim S.D., a female, by sexual penetration, to wit: sexual intercourse, by attempting to place your penis into the genital opening of S.D.; and/or fellatio, by attempting to place your penis or in -- or mouth or of S.D.; and/or anal intercourse, by attempting to place your penis into the anal opening of S.D.; and/or digital penetration, by attempting to insert your finger into the genital hole opening of S.D., against her will or under conditions in which the

Defendant knew, or should have known, that S.D. was mentally or physically incapable of resisting or understanding the nature of your conduct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Before I accept your plea, do you have any questions you'd like to ask of the Court or your counsel?

THE DEFENDANT: No, Your Honor.

THE COURT: All right. The Court finds the Defendant's plea of guilt's freely and voluntarily made. The Defendant understands the nature of the offense and the consequence of his plea, therefore, accepts the plea of guilt.

This matter will be referred to the Department of Parole & Probation for a presentence investigation report and will be set for sentencing on my out of custody calendar. You must report to Probation & Parole within 24 hours to interview for a presentence investigation report, including a psychosexual examination that you will have to pay for at your own expense.

Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Anything else on behalf of the State?

MS. GOODMAN: No, Your Honor.

THE COURT: All right. The State has asked for Probation & Parole to provide intensive supervision during the presentence investigation; is that right, Ms. Goodman?

MS. GOODMAN: Yes, Your Honor.

THE COURT: All right. So the record will reflect the Court is ordering Probation & Parole to conduct intensive supervision during the presentence investigation process and this will be set for, Madam Clerk.

THE CLERK: July 1st at 3 o'clock.

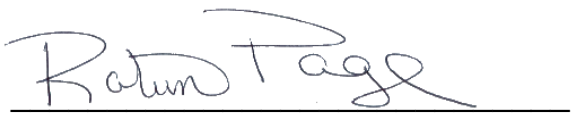
MS. MINICHINI: Thank you.

THE COURT: All right. Thank you, Counsel.

[Proceeding concluded at 3:23 p.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Robin Page
Court Recorder/Transcriber

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. HAMZA ZALYAUL, Defendant.	CASE NO. C-21-354047-1 DEPT. XXI

BEFORE THE HONORABLE TARA CLARK NEWBERRY,

DISTRICT COURT JUDGE

THURSDAY, JULY 1, 2021

RECORDER'S TRANSCRIPT OF HEARING RE: SENTENCING

APPEARANCES:

For the State:	LINDSEY D. MOORS, ESQ. Chief Deputy District Attorney
For the Defendant:	DAMIAN R. SHEETS, ESQ. KELSEY L. BERNSTEIN, ESQ.
Also Present: Victim Impact Speakers	REGEENA HUSSEIN SHAYMAA DAHROUCH

RECORDED BY: ANGELICA MICHAUX, COURT RECORDER

Las Vegas, Nevada; Thursday, July 1, 2021

* * * * * *

[Proceeding commenced at 3:23 p.m.]

THE CLERK: Calling Page 6, Hamza Zalyaul, C354047.

THE COURT: All right.

Counsel, state your appearances please.

MS. MOORS: Good afternoon, Your Honor, Lindsey Moors on behalf of Tyler Smith for the State.

MR. SHEETS: Good afternoon, Your Honor, Damian Sheets on behalf of Mr. Zalyaul, who's present at liberty.

THE COURT: All right. This is the time and place for sentencing. Are the parties ready to proceed?

MR. SHEETS: Yes, Your Honor. We have reviewed the presentence investigation report and the psychosexual. We have no objections pursuant to *Stockmeier*.

THE COURT: All right.

MS. MOORS: Yes, Your Honor, the State is also ready to proceed. I would point out that I have two victim speakers and I would request that they go last pursuant to statute.

THE COURT: Thank you, Counsel. All right.

Mr. Zalyaul, by virtue of your plea of guilty, you're hereby adjudged guilty of the offense of an attempt sexual assault. The State can proceed with its argument.

MS. MOORS: Your Honor, the State had agreed to have no opposition to probation with a dropdown to a gross a misdemeanor if the

Defendant were honorably discharged, we would stand by those negotiations.

THE COURT: All right. Thank you.

Mr. Zalyaul, you have an opportunity to make a statement to the Court on your behalf if you choose to do so. You're not required and your counsel will be able to speak after you regardless. Do you wish to make a statement to the Court?

THE DEFENDANT: No, thank you, Your Honor.

THE COURT: All right.

Mr. Sheets.

MR. SHEETS: Yes, Your Honor. I'd ask that you follow the negotiation in this case. I would put forth that this negotiation is a combination examination into Mr. Zalyaul, his background, the facts of this case, jurisdictional issues that rose out of this case, the age of the case, potential *Doggett* issues, and a variety of very real issues that existed when this came about.

In particular, Your Honor, I would -- I would put forth that this case was negotiated between myself and Genevieve Craggs and actually it did involve the very top of the District Attorney's Office and did require the approval at the top of the office as part of this process. Ms. Craggs is no longer with the office. I did reach out in the event that Your Honor had any questions as to why the negotiation was entered. I reached out to her to see if she'd be available for a call, she hasn't responded. It's my understanding that she moved to the other side of the country,

Ms. Craggs, the Deputy in this particular matter.

MS. MOORS: That's correct, she moved to Ohio.

MR. SHEETS: Go Buckeyes.

I would point out, Your Honor, that once understanding and realizing that these charges were active, Mr. Zalyaul did not have to -- he did not desire to subject the victim in this case to a preliminary hearing. He did not -- it was never his intention and never his desire, it was his desire to enter into acceptance of responsibility at an early stage. And if Your Honor were, I think -- were to have access to the full file, he actually wrote an apology when originally confronted by police about this and taken into custody, so there was an admission.

At the time that this offense occurred, Your Honor, my client was 15 years old and he's currently now substantially older. And this was a situation where approximately seven years passed between when the accusation came in when he was picked up. And part of that was because, you know, his family had to move out of country for a while, but then they did return to the country and that's obviously as a 15-year-old, that's something that's beyond his control. But then they did return to the United States and when confronted about this again, he -- he quickly accepted responsibility.

From the standpoint of a jurisdictional, and this is why the negotiation was structured the way it was, it's our office's belief that there is somewhat of a -- I would say maybe a blind spot in the jurisdictional statute as it relates to the age of an offense of this nature and the original court of jurisdiction being family court. And what

happens is there are some compulsory rules regarding a child who's the age of 16 or 17 and then there are not compulsory rules in this type of a case when you have somebody of 15 years of age.

And our office was prepared to, and had discussed at length with the District Attorney, the possibility that jurisdiction with this case would rest with the juvenile court and that's based on the fact that the statutes indicate or would have required if he's apprehended at 21-years-old that it is mandatorily in the juvenile court system, but the statutes stay silent as to an apprehension beyond that particular age. And it was our office's position, obviously, because you're dealing with somebody who's in a very different developmental state of mind and that's why the jurisdictional statute exists.

And as part of that, there was the discussion of possibly briefing the case, sending it to juvenile court, and arguing back and forth with the District Attorneys, interestingly enough the second case we've had in this same set of facts and I've actually approached a state legislature before this session talking about the issue and that it needed to be cleaned up, it never got addressed. And so this case continues on in the circumstance.

So when we were trying to structure a deal, we were trying to look at what the situation would be had he been charged a juvenile, what were the potential punishments. And the potential punishments were that he could have been incarcerated up to 21 and then after a number of years, 27. You can seek to have things amended down, you can seek to have things sealed, and that's essentially what we tried to structure

here as well at the adult level waiving any of the jurisdictional arguments.

We created a situation where the negotiation would be similar where he's allowed that opportunity to do probation. Obviously, he will have conditions. I'm certain sex offender counseling. And he, because of the nature of the charge, will be subject to those enhanced levels of scrutiny because of the sexually based offense. But then it would give him the same opportunity that he would have been given had he been notified and apprehended as juvenile to earn the ability to change to slate at the end of the day and giving him that opportunity for the gross misdemeanor.

And, again, normally as an adult, there's some dispute and a break in opinions between the district courts as to whether or not the amended charge is sealable if the original charge is one of this nature. And in some instances, we've been successful in our petitions to seal on the amended charge and in others we have not. And there hasn't really been any guidance from the top. So that's why the State in this particular matter agrees that sealing would be appropriate, so long as he complies with all of those conditions and prerequisites of probation and then once the dropdown, the timeframes and not getting new arrests, subsequent to the probation grant for record sealing.

And that, if everything went perfectly for my client, would set that potential record sealing date just about the same age that he would have been given that ability to petition for it as a juvenile. And so I hope that provides a level of guidance to Your Honor as to why such a specific

negotiation and why it was contemplated because when you just read synopsis, it sure doesn't read so well. And from the standpoint of a lack of criminal history, I'd indicate that my client was a low/moderate. He has no prior criminal history.

When confronted by the police, he didn't run from it, he didn't hide from it, he admitted to it, he wrote an apology, he accepted responsibility, did not attempt to subject her through any type of additional pain and discomfort that came from this. And all he can do is stand here. I can note he's been on monitoring for a significant amount of time in this case, has been perfectly compliant there with. And I think that he is a good candidate for supervision and I think that the interest of justice, given all of the age, mental state when it happened, the issues, and the negotiation, I believe this negotiation is the fair and just way to handle the mater.

And I would submit, Your Honor, and ask that you follow it.

MS. MOORS: And, Your Honor, I just need to make a little point of clarification. I saw in the negotiation certainly that we weren't objecting to that sealing, if however -- who, you know -- if it's Your Honor at that time or a different judge, if they believe that to be illegal or not allowed, obviously we're not going to advocate for something if the judge believes that it's an illegal sentence.

So it remains as it's stated that we don't have an objection to it, but certainly if the judge at that point in time believes that it's illegal, obviously, we would not be advocating for that.

THE COURT: Thank you for the clarification. I'll hear from

the victim witnesses.

MS. MOORS: Okay.

THE COURT: Everyone else may be seated.

MS. MOORS: Your Honor, the first speaker is Regeena Hussein.

THE COURT: Okay. The Clerk's going to swear you in, ma'am.

REGEENA HUSSEIN

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Please state and spell your name for the record.

THE SPEAKER: My name is Regeena Hussein; I'm the mom of Shaymaa Dahrouch. I'm here today hoping that Hamza held accountable for his action. I'm very sad I'm standing here because my daughter went through enough and I felt Hamza is not held accountable for anything he has done. I'm sorry, Your Honor, but when everything happened his family took him out of the country and hide him. It was not your choice to go there because of emergency; they took him out of the country, Your Honor. They don't even care about anybody's pain.

Your Honor, I am so disturbed and hurt. A real parent advised their kids to tell the truth and nothing but the truth. Your Honor, instead to take him out of the country and kept him there and lie about everything and didn't look back at the pain that they caused my family, especially my daughter. Your Honor, I'm asking you -- I hope Hamza

does not deserve probation, Hamza deserve jail. I'm sorry for my pain and for my daughter's pain. Thank you so much.

THE COURT: Thank you, ma'am.

MS. MOORS: And our next speaker is Shaymaa Dahrouch.

SHAYMAA DAHROUCH

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Please state and spell your name for the record, please.

THE SPEAKER: S-H-A-Y-M-A-A, D-A-H-R-O-U-C-H. And before I begin my testimony, I just want to say that he didn't just leave the country out of -- excuse me -- out of what he wanted. His parents knew that certain situations like this happened and they took him out on purpose, so that he didn't have to serve any type of jail time.

MR. SHEETS: And I hate to object, Your Honor, to victim statements, but impact statements are supposed to be focused on impact versus allegations of the factual nature.

THE SPEAKER: I apologize. I apologize.

MS. MOORS: And, Your Honor, no, I'm going to object. Everything she is saying is how it impacted her and there's -- that's not objectionable whatsoever.

THE COURT: Yeah, I'm going to overrule. She can say that.

Go ahead, ma'am.

THE SPEAKER: And on top of that I was 10, I did not even know about any of those type of things until a month later when I

finished school. When the incident first started, I never really thought about what it actually was, nor did I really know how to really interpret it. When I found out what it was, I was completely mortified and it made me feel so hurt, empty, and isolated. My parents were in disbelief at the incident happening and we withdrew from the community we used to be a part of 24/7.

I suffered mentally, emotionally, and physically for a very long time. And it's still continuing to this very day. I always end up getting feelings of sadness when I see people look at me as if they are judging me, judging me for what happened. And it's always that bitter and miserable feeling that's always is making its way through my barrier. And I would always have to tell my counselors what was wrong. It hurts so much just to be talking about it over and over again. It's like reliving a nightmare repetitively and it just never ends. And for what, to have them judge me.

I wasn't allowed to be with anyone, not even friends, good friends that I had at the time. And needless to say, it put a strain on my health and well-being all together. It felt as though the world just turned away just secluded me. I had such low self-esteem at this point from this incident occurring and had never recovered from that negativity. I still call myself things that I'm not and even when I'm undressed, I just stare myself thinking, I'm never going to be able to be normal again.

Normal, that word sends a bitter taste to my mouth, as if it's a term that I wish to be. But I can't, never again. I've lost so many things, even myself, throughout all of these years waiting for Hamza to suffer for

what he did to me, suffer for what he's done to me to other people that went through I went through. I had high hopes during the first year that they would catch him and bring him to justice. But after the first year it just disappeared, having developed the sinking feeling of he got away with what he did. He got away with hurting someone who was an innocent minor.

I could never ever look at myself in the mirror the same without thinking there is no justice. There is nothing to be done. This was for five years, five dreadful years that I lost -- I apologize -- that I lost because I couldn't be myself anymore. I lost my way of socializing, I lost my way of communication, I've lost my way from everything. It even put a strain of a relationship between my parents. It brings tears to my eyes that I live in fear that Hamza may try to do it again and that his parents will never ever believe me just like when they found out about what happened. They called me a liar, a fabricator.

I live in fear of what his family may do to me or worse to my family. I lost all sense of emotion as I just feel cold, almost like I have nothing left to express but tears. I've been successful at placing a barrier around myself to stand tall and not dwell in the past, but it's still haunts me to this present time and day of what happened and I always keep asking myself, why me. I hope, Your Honor, that this testimony helps make you -- oh, sorry, help you make your decision and I hope that he does not get probation. And I feel as though he deserves to serve time. Thank you.

THE COURT: Thank you.

Any other witnesses from the State?

MS. MOORS: No, Your Honor.

THE COURT: All right.

In accordance with laws of the State of Nevada and the Court having found you guilty of an attempt sexual assault, which was the amended information I believe that had been agreed upon in the guilty plea agreement in this case, a Category B felony, the Court's going to sentence you as follows.

I must say that I found the factual allegations of this case quite disturbing and from what I've heard here today, I don't really believe there's any remorse, nor an acceptance of accountability. And while the Court in most instances follows the recommendations and agreed upon sentence of the parties, in this instance I'm going to deviate from that. I am going to sentence you and remand you into custody and I'm going to sentence you as follows.

For the offense of an attempt sexual assault penalty in which, under Category B felony, holds a potential charge of between 2 and 20 years. I'm going to impose the following sentence. You're hereby sentenced 48 to 120 months in the Nevada Department of Corrections. I'm going to impose the following fines, $25 Administrative Assessment fee; a $35 DNA Fee -- I'm sorry, $3 DNA Fee; $150 DNA fee. You must submit for DNA genetic marker testing and pay $150 fee. I do see a credit for time served of 23 days.

Anybody have a different calculation then that?

MR. SHEETS: No, Your Honor.

MS. MOORS: Your Honor, I apologize, I thought it said seven in the PSI. Did I misread that?

THE COURT: Oh, I'm sorry. It is seven days, you're right, Counsel.

MS. MOORS: Okay.

THE COURT: I was looking at a different note.

There's also a psychosexual examination fee of $1,676.70 that is imposed.

Anything else for the record, counsel?

MR. SHEETS: I'd ask if Your Honor considered him setting him bail, pending appeal on this matter.

THE COURT: Not at this time, you can file a motion.

MR. SHEETS: Yes, Your Honor.

MS. MOORS: And I apologize, Your Honor, what was that amount for the psychosexual fee?

THE COURT: It's $1,676.70.

MS. MOORS: Thank you, Your Honor.

MR. SHEETS: He indicates that he did pay the psychosexual fee, Your Honor.

THE COURT: It's already been paid?

MR. SHEETS: That's what he indicates to me.

THE COURT: Make sure you show proof of that and file it with the Court or provide it to the DA and it can be adjusted on the JOC.

MR. SHEETS: Yes, Your Honor.

MS. BERNSTEIN: Your Honor, I apologize, this is Kelsey

Bernstein with Damian Sheets office. We are -- Mr. Sheets and I are from the same office, so I'm just making an appearance on this as well, Bar Number 13825.

Given Your Honor's upward deviation from the plea agreement, we would like to make a record that as a result of that upward deviation, we do believe that Mr. Hamza -- or Mr. Zalyaul is entitled to withdraw his plea because the expectations of the parties were thwarted and the just -- and the District Court has already accepted the plea agreement as what the terms contain therein.

So we believe that by deviating from that plea agreement, he waived constitutional rights with the expectation of receiving a particular sentence. And as a result of him not receiving that sentence, despite the waiver of those rights, he's entitled to be placed in the position had he not entered that plea. So I understand Your Honor's ruling regarding the sentence, but based on that substantial upward deviation, we do believe he has a right to withdraw his plea at this time.

MS. MOORS: And, Your Honor, may I orally respond?

THE COURT: State.

MS. MOORS: That's categorically incorrect. He was canvased on the fact that Your Honor does not have to accept the pleas. I am not advocating on behalf of -- like, we stood by our negotiations as was required, but that motion that was just made, like I said, is categorically incorrect based on the standard language of all of the GPAs from the District Attorney's Office, so there is no cause for withdrawal of plea.

MR. SHEETS: And, Your Honor, with all due respect, we respectfully disagree with that position. It's our position that when a deal is premised upon certain specific conditions, and then it is at that point rejected, it essentially creates an illusory contract between the Defendant and the State where the Defendant gives the State benefits, but does not receive any benefits in return.

THE COURT: I understand that --

MS. MOORS: And that's also, again, incorrect because there are the ability to make conditional pleas where it would bind the judge. This to my knowledge was not a conditional plea, so just so the record is clear -- and, again, I'm not advocating, I'm just arguing this particular legal issue, defense is wrong.

MR. SHEETS: Furthermore, I would also disagree --

THE COURT: Counsel --

MR. SHEETS: -- jurisdiction --

THE COURT: -- counsel --

MR. SHEETS: -- is not waivable.

THE COURT: Counsel, counsel, the State doesn't need to make this argument, I'm fully aware. It's not a conditional plea and the Court certainly has the ability to deviate from the agreement. While it's unusual and certainly for myself unusual, in this instance, I find it the appropriate sentence in a rendering of justice given all of the facts and circumstances. I understand that he wishes to withdraw his plea. Your motion is denied.

This was not a conditional plea if he was properly canvased,

which I believe he was. He certainly was asked if he understood that sentencing is solely up to the Court and his acknowledgment to that factor, he was cognizant of that potential possibility that the Court would not sentence within the parameters of the recommendations of the stipulations of the party in this instance. The Court believes it's warranted, given the facts and circumstances and upon the review of the PSI, as well as the psychosexual evaluation, that this Defendant should serve time based on the crime that committed.

MR. SHEETS: If Your Honor would be inclined to set a briefing schedule, so that the record could be more thorough as to the basis for the motion to withdraw the plea. I think that would be probably more appropriate as this will be a subject on appeal, as well.

THE COURT: I'm denying the motion. The motion's been denied.

MR. SHEETS: Okay.

THE COURT: The basis of it with regards to it being a conditional plea, it's not a conditional plea.

MR. SHEETS: So briefing would not be of any guidance to the Court?

THE COURT: No.

MR. SHEETS: Thank you, Your Honor.

THE COURT: With regards to anything else relative to this, Counsel, is there anything for the record?

MS. MOORS: Nothing from the State, Your Honor.

MR. SHEETS: Not at the moment, Your Honor. We'll file the

appropriate motions.

THE COURT: All right.

MR. SHEETS: Thank you.

MS. MOORS: Thank you.

[Proceeding concluded at 3:46 p.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Robin Page
Court Recorder/Transcriber

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAMZA ZALYAUL
#7091105

Defendant.

CASE NO. C-21-354047-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of ATTEMPT SEXUAL ASSAULT (Category B Felony) in violation of NRS 200.364, 200.366, 193.330; thereafter, on the 1st day of July, 2021, the Defendant was present in court for sentencing with counsel DAMIAN R. SHEETS, ESQ. and KELSEY L. BERNSTEIN, ESQ., via Blue jeans, and good cause appearing,

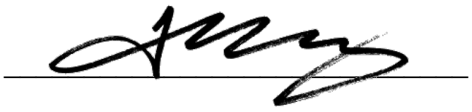
THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the $25.00 Administrative Assessment Fee, $1,676.70 Psychosexual Evaluation Fee and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA

Collection Fee, the Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows: a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS; with SEVEN (7) DAYS credit for time served.

FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of imprisonment, probation or parole. In addition, before the Defendant is eligible for parole, a panel consisting of the Administrator of the Mental Health and Development Services of the Department of Human Resources or his designee; the Director of the Department of Corrections or his designee; and a psychologist licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada must certify that the Defendant does not represent a high risk to re-offend based on current accepted standards of assessment.

ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from custody.

Dated this 7th day of July, 2021



E0B 4EA AA78 D4EA
Tara Clark Newberry
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-21-354047-1
vs	DEPT. NO. Department 21
Hamza Zalyaul	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment of Conviction was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/7/2021

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada, Plaintiff, vs. Hamza Zalyaul, Defendant.	Case No: C-21-354047-1 Dept. No: XXI **MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO RECONSIDER SENTENCE** **Hearing Requested**

COMES NOW the defendant, HAMZA ZALYAUL, by and through his attorney of record, DAMIAN SHEETS, ESQ. of the law firm NEVADA DEFENSE GROUP, hereby submits this Defendant's Motion to Dismiss or, in the Alternative, Motion to Reconsider Sentence.

This Motion is made and based upon the Memorandum of Points and Authorities attached hereto and any arguments deemed necessary by this Honorable Court, and further is brought in good faith and not for the purpose of delay.

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NOTICE OF MOTION

TO: State of Nevada, Plaintiff;

TO: Clark County District, Attorney for Plaintiff.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before this court, on the _____ day of _____, 2021, at the hour of _____:_____ ___.m., or as soon thereafter as counsel may be heard.

DATED this 9th day of July, 2021.

NEVADA DEFENSE GROUP

BY /s/ Damian Sheets
DAMIAN R. SHEETS, ESQ.
Nevada Bar No. 10755
714 S. 4th Street
Las Vegas, Nevada 89101
(702) 988-2600
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural History

Hamza Zalyaul was charged by way of criminal complaint with six counts of Sexual Assault Against a Child Under Fourteen (Category A felony). The complaint alleged that Mr. Zalyaul assaulted a family friend during the summer of 2013, when she was eleven years old and he was **fourteen** years old. The named victim, S.D., and her mother reported the assaults to law enforcement in September 2013, shortly after the reported incidents took place, but the case closed without any further action at that time. Almost six years later, in February 2019, a different detective was assigned to reopen the case and reinterviewed S.D. and her mother later in July 2019. Several months after these second interviews, law enforcement applied for an arrest warrant which was granted on October 17, 2019. Mr. Zalyaul, now 21 years old, was eventually arrested in January 2020.

Following lengthy negotiations, Mr. Zalyaul ultimately waived his right to a preliminary hearing in the Las Vegas Justice Court on March 1, 2021. When he appeared in the Eighth Judicial District Court, Mr. Zalyaul pled guilty to one count of Attempt Sexual Assault (Category B felony). Pursuant to the negotiations, the State had no opposition to probation with a dropdown to Open or Gross Lewdness (Gross Misdemeanor) if Mr. Zalyaul successfully completed probation. Additionally, the State agreed to have no objection to sealing the case after the requisite time period. The State did retain the right to argue terms and conditions of probation and would seek intensive supervision at entry of plea. Mr. Zalyaul agreed to have no contact with the named victim. The negotiations were designed to take into account various issues with the case, including factual anomalies, proof issues, jurisdictional defects, and Mr. Zalyaul's age at the time (in fact, the negotiations were specifically crafted to mirror what Mr. Zalyaul's sentence would have been had he been properly charged in juvenile court when the report was initially made).

At sentencing on July 1, 2021, the Court did not follow the negotiations of the parties but instead sentenced Mr. Zalyaul to 4-10 years in the Nevada Department of Corrections, with 7 days credit for time served. This Motion to Dismiss follows.

II. The District Court Lacks Subject-Matter Jurisdiction in this Case and Must Dismiss the Action

Subject matter jurisdiction is not waivable by the parties, and can be raised at any time. *Colwell v. State*, 118 Nev. 807, 812 (2002) (holding that lack of subject matter jurisdiction can be raised for the first time on appeal). Additionally, NRS 174.105(3) provides that lack of jurisdiction or the failure of the indictment, information or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding. Jurisdiction issues involving the juvenile court can also be raised at any time.[1]

a. The Juvenile Court is the Proper Venue for this Case

The Juvenile Courts for the State of Nevada are a creation of statute. *Kell v. State*, 96 Nev. 791, 792, 681 P.2d 350 (1980). "Although the juvenile court is structurally organized as a division of the district court, the juvenile court is separate court with separate and exclusive jurisdiction" *Castillo v. State,* 106 Nev. 349, 353 n.2 (1990).

By statute, "the juvenile court has exclusive original jurisdiction over a *child* living or found within the county who is alleged or adjudicated to have committed a *delinquent* act." NRS 62B.330(1) (emphasis added). A "child" is defined as "[a] person who is less than 21 years of age and subject to the jurisdiction of the juvenile court for an unlawful act that was committed before the person reached 18 years of age." NRS 62A.030(1)(b). The juvenile court does not have

[1] "While Barber did not challenged jurisdiction in juvenile court or district court, jurisdiction issues can be raised at any time." *Barber v. State*, 131 Nev. 1065 (2015) (citing *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011).

jurisdiction over acts that are not considered to be "delinquent acts," as outlined in NRS 62B.330(3):

> For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act:
>
> ….
>
> (b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:
>
> > (1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and
> >
> > (2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated for an act that would have been a felony if committed by an adult.
>
> ….
>
> (e) A category A or B felony and any other related offense arising out of the same facts as the Category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:
>
> ….
>
> > (1) the person is not identified by law enforcement as having committed the offense before the person is at least 20 years, 3 months of age, but less than 21 years of age…

It is important to note that neither of these criteria for non-delinquent acts here fully apply to Mr. Zalyaul's case. Mr. Zalyaul was only fourteen years old at the time the alleged acts occurred and, while he turned fifteen during the initial investigation periode, he was not apprehended by law enforcement until well after he turned twenty-one (thus, whether intentionally or negligently, defeating juvenile jurisdiction). Had the State prosecuted Mr. Zalyaul at the time the allegations were made, or within a reasonable period of time thereafter, a petition

would have been filed in the juvenile court alleging him to be a child having committed a delinquent act against another child, and falling squarely within the purview of the juvenile court. Once the delinquency petition is filed, the juvenile court would determine whether Mr. Zalyaul would remain in the juvenile court for delinquency proceedings or transfer to the adult criminal court depending on a variety of statutory factors.

NRS 62B.390 sets forth the process for transferring jurisdiction from the juvenile court to the adult court, formally known as certification.[2] Unlike the mandatory certification set forth in NRS 62B390(2),[3] Mr. Zalyaul's case falls within discretionary certification pursuant to NRS 62B.390(1).[4] The certification process requires a motion filed by the district attorney and a full investigation by the juvenile court. The statute also sets forth factors for the juvenile court to consider against certification. If the juvenile court does not certify the child, the juvenile court retains jurisdiction over the child until the child reaches twenty-one years of age.[5]

---

[2] "The juvenile court **may** certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult." NRS 62B.390(1) (emphasis added)

[3] "Except as otherwise provided in subsection 3, upon a motion by the district attorney and after a full investigation, the juvenile court **shall** certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child:

(a) Is charged with:

a. A sexual assault involving the use or threatened use of force or violence against the victim; or

b. An offense or attempted offense involving the use or threatened use of a firearm; and

(b) Was 16 years of age or older at the time the child allegedly committed the offense." (emphasis added)

[4] "Except as otherwise provided in subsection 2 and NRS 62B.400, upon a motion by the district attorney and after a full investigation, the juvenile court **may** certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child:

(a) Except as otherwise provided in paragraph (b), is charged with an offense that would have been a felony if committed by an adult and was 14 years of age or older at the time the child allegedly committed the offense…" (emphasis added)

[5] NRS 62B.410(2).

In light of these statutes, there is a gap when determining what process exists for defendants alleged to have committed a delinquent act while *under* the age of eighteen but who are not prosecuted until *after* they turn twenty-one and are no longer eligible for the juvenile court's exercise of jurisdiction. NRS 62B.335 grants the juvenile court jurisdiction over an adult charged with delinquent acts committed as a child:

> 1. If:
>
> (a) A person is charged with the commission of a delinquent act that occurred when the person was at least 16 years of age but less than 18 years of age;
>
> (b) The delinquent act would have been a category A or B felony if committed by an adult;
>
> (c) The person is identified by law enforcement as having committed the delinquent act before the person reaches 21 years of age; and
>
> (d) The person is apprehended by law enforcement after the person reaches 21 years of age, the juvenile court has jurisdiction over the person to conduct a hearing and make the determinations required by this section in accordance with the provisions of this section.
>
> 2. The juvenile court shall conduct a hearing to determine whether there is probable cause to believe that the person committed the delinquent act.
>
> 3. If the juvenile court determines that there is not probable cause to believe that the person committed the delinquent act, the juvenile court shall dismiss the charges and discharge the person.
>
> 4. If the juvenile court determines that there is probable cause to believe that the person committed the delinquent act, the juvenile court shall determine whether, based upon the interests of justice and the need for protection of the public, to:
>
> (a) Dismiss the charges; or
>
> (b) Transfer the case for proper criminal proceedings to any court that would have jurisdiction over the delinquent act if the delinquent act were committed by an adult."

Under this section, the juvenile court must conduct a hearing to determine whether there is probable cause to believe that the person committed the delinquent act.[6] If the juvenile court determines there is not probable cause, or insufficient probable cause, the charges must be dismissed.[7] If the juvenile court determines that there is probable cause, the analysis then goes to determine whether to dismiss the charges or transfer the case to adult court, "based upon the interest of justice and the need for protection to the public."[8]

The juvenile court must consider the following factors in making that determination: (1) the number, date, nature and gravity of the delinquent acts committed by the person; (2) whether the delinquent acts involved the use of a weapon, violence or infliction of serious bodily injury; (3) the impact to any victim of the person; (4) the extent to which the person has already received punishment, counseling, therapy or treatment after the commission of the delinquent acts, and the response of the person to any such punishment, counseling, therapy or treatment; (5) the behavior of the person since the date on which the person committed the delinquent acts, including, without limitation, the character, maturity, educational progress and work history of the person; (6) any evidence that the person engaged in recent threats against any person or expressed the intent to commit a crime in the future; (7) psychological or psychiatric evidence that indicates a risk of recidivism; (8) any emotional or mental health condition that existed at the time of the commission of the delinquent act; (9) any physical conditions that minimizes the risk of recidivism, including, without limitation, physical disability or illness; (10) any other factor the juvenile court finds relevant.[9]

Here, again, the criteria for a juvenile court to have jurisdiction over an adult charged with delinquent acts committed as a child does not fully apply to Mr. Zalyaul. Factors B, C, and D apply, but factor A does not; Mr. Zalyaul was not at least sixteen years of age at the time the

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[6] NRS 62B.335(2).
[7] NRS 62B.335(3).
[8] NRS 62B.335(4).
[9] NRS 62B.335(5).

alleged offenses occurred. The State's delay in taking the allegations against Mr. Zalyaul seriously has placed him in a limbo of sorts, where none of the juvenile court statutes clearly apply to his case and no clear jurisdictional determination exists in either the juvenile or district court. "The determination of whether to transfer a child from the statutory structure of the Juvenile Court to the criminal processes of the District Court is critically important." *Kent v. United States*, 383 U.S. 541, 560 (1966) (internal quotations omitted).

Additionally, there exists no sufficient justification to excuse the State's delay in prosecuting Mr. Zalyaul. The named victim, S. D., and her mother filed a report with the Las Vegas Metropolitan Police Department on September 13, 2013. Mr. Zalyaul had turned fifteen two days prior on September 11. S.D. reported that Mr. Zalyaul sexually assaulted her various times between June and September 2013. Specific dates were not disclosed. S. D. underwent a general medical examination at Sunrise Hospital on September 13, 2013. According to the police report, attempts were made to locate Mr. Zalyaul, but S.D. and her mother provided information that he and his family had relocated back to Morocco where he attended high school. Mr. Zalyaul and his family returned to Las Vegas, Nevada in 2016, but still no action was taken for many years. In February 2019, LVMPD reopened their investigation. Five months later, on July 30, 2019, S.D. and her mother were again interviewed by LVMPD. LVMPD applied for an arrest warrant on or around October 14, 2019, which the Las Vegas Justice Court granted. Mr. Zalyaul was arrested on the warrant on January 7, 2020.

But for the State's delay, Mr. Zalyaul would have been prosecuted as a juvenile in the juvenile court, afforded all of the rights and resources available to juveniles deemed delinquent.[10]

[10] *See*, NRS 62 – Disposition of Cases by Juvenile Court (setting forth options for juveniles after adjudication, including but not limited to, commitment, restitution, community service, and alternative programs).

The entire purpose of the juvenile court serves to treat juveniles rather than punish them.[11] The juvenile system focuses on treatment and rehabilitation more than punishment and incarceration.[12]

Given that the adult courts, both the Justice Court nor the District Court, lack subject-matter jurisdiction over Mr. Zalyaul's case, due to his age and juvenile status at the time of the alleged offenses, the instant case in the District Court must be dismissed; further, the case cannot be transferred back to the juvenile court due to Mr. Zalyaul now being over the age of twenty-one.

b. Absent Any Available Remedy in Juvenile Court, the Instant Case Must Be Dismissed for Violation of Mr. Zalyaul's Right to a Speedy Trial

The Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. The right to a speedy trial is a "fundamental right" applied to the states through the Fourteenth Amendment. *Barker v. Wingo,* 407 U.S. 514, 515, 92 S. Ct. 2182 (1972). The definition of "speedy trial" has been explored by the Supreme Court of the United States in *Barker v. Wingo* and more recently *Doggett v. United States,*[13] both of which set forth the standard utilized by the Nevada Supreme Court in *Inzunza v. State*.[14]

Put simply, excessive delay between accusation or the filing of criminal charges and eventual apprehension or arrest of the accused unfairly prejudices a defendant. In *Barker,* the U.S. Supreme Court set forth four factors the courts should use to determine whether a defendant has been deprived his speedy trial right: (1) length of delay, (2) the reason for the delay, (3) the

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[11] "Truly we want to keep children in juvenile court if we can help them. We do not want to escalate them up into adult circumstances and give them a record at such a young age and perhaps impact the rest of their lives." Hearing on S.B. 197 Before the Senate Judiciary Comm., 72d Leg. (Nev., March 7, 2003) (statement by Judge Cynthia Dianne Steel).

[12] "A child who is adjudicated pursuant to the provisions of this title is not a criminal and any adjudication is not a conviction, and a child may be charged with a crime or convicted in a criminal proceeding only as provided in this title." NRS 62E.010(1).

[13] 505 U.S. 647, 112 S. Ct. 2686 (1992).

[14] 135 Nev. Adv. Rep. 69, 454 P.3d 727 (2019).

defendant's assertion of his right, and (4) prejudice to the defendant. 407 U.S. at 530. While none of the factors hold more weight than the others,[15] the first factor, length of delay, "is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors." *Id*. *Doggett* furthered the applicability of *Barker* by establishing not a bright-line rule, but a guideline for courts to consider, holding that delay in excess of one year supports a finding of prejudice to the accused.[16] The Nevada Supreme Court has also held that one-year between accusation and arrest supports a finding of prejudice against the Defendant.[17]

The purpose behind the speedy trial right granted by *Barker* and *Doggett*, is to protect the following interests of the defendant:

> (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurate events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.[18]

"No one factor is determinative; rather, they are related factors which must be considered together with such other circumstances as may be relevant." *United States v. Ferreira*, 665 F.3d 701, 705 (6th Cir. 2011) (internal quotation marks omitted).

All four-factors in the Barker and Doggett analysis favor dismissal of the instant case. The first factor, the length of the delay, is a "double [i]nquiry." *Doggett*, 505 U.S. at 651 (1992). The

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[15] "We regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." *Barker*, 407 U.S. at 533 (1972).

[16] "The length of time extending beyond the threshold one-year mark tends to correlate with the degree of prejudice the defendant suffers and will be considered under factor four – the prejudice to the defendant." *Doggett v. United States*, 505 U.S. 647, 652, 112 S. Ct. 2686 (1992).

[17] *Inzunza*, 454 P.3d at 731 (2019), *quoting*, *Doggett*, 505 U.S. at 652 n.1 (1992).

[18] *Barker*, 407 U.S. at 532 (1972).

first question asks whether the length of the delay is presumptively prejudicial; consistent with the federal analysis, the Nevada Supreme Court has held that delay approaching one year supports this factor. The second question asks the court to consider "the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim" because the "presumption that pretrial delay has prejudiced the accused intensifies over time." *Id.*

The second factor, the reason for the delay, examines whether the government is responsible for the delay and its justification. *Inzunza*, 454 P.3d at 731 (2019). Here, clearly the responsibility for the excessive, prejudicial delay rests with the State. No efforts were made to locate Mr. Zalyaul, despite the breadth of information provided by S.D. and her mother regarding Mr. Zalyaul and his family. Even though Mr. Zalyaul was no longer in the United States, the government still had an obligation to make attempts to find him.[19] Similarly, the U.S. Supreme Court found that law enforcement's efforts to locate *Doggett*, who had also left the country, were equally lacking.

The accused is under no obligation to bring himself to trial,[20] but his assertion of or failure to assert his speedy trial right is one of the factors for the court to consider in determining if that right has been violated. "[A] defendant must know that the State has filed charges against him to have it weighed against him." *Inzunza*, 454 P.3d at 732. There is nothing in the record to suggest that Mr. Zalyaul knew of pending charges against him until his arrest, more than six years after the alleged incidents.

While the State may claim that Mr. Zalyaul knew or should have known of the pending charges against him because, according to the facts alleged in the police report, he and his family

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[19] "Even though Mendoza left the country prior to his indictment, the government still had an obligation to attempt to find him and bring him to trial. After *Doggett*, the government was required to make some effort to notify Mendoza of the indictment, or otherwise continue to actively attempt to bring him to trial, or else risk that Mendoza would remain abroad while the constitutional speedy-trial clock ticked. However, the government made no serious efforts to do so. Further, there is no evidence that Mendoza was keeping his whereabouts unknown. Although he refused to give his own contact information, the government still had his relative's contact information." *United States v. Mendoza*, 530 F.3d 758, 763 (9th Cir. 2008).

[20] *Barker*, 407 U.S. at 527 (1972).

were confronted about the allegations by S.D.'s father. This contention holds no merit. To assume the police report's veracity on this fact requires accepting the entire report as true, including the statement that S.D.'s father told Mr. Zalyaul their discussion about the accusations that day would be kept there. That statement directly refutes any suggestion that Mr. Zalyaul should have known criminal charges were filed against him. Indeed, the fact that no charges were formally filed until more than six years after the incident would support a belief that no charges would arise.[21]

The final factor, prejudice against the defendant, holds particular significance here. Examining prejudice against Mr. Zalyaul applies to two proceedings: criminal trial proceedings in the adult court and certification proceedings in the juvenile court. Clearly a speedy trial violation affects a defendant's trial proceeding, but here the same prejudice created must also be considered toward the certification hearing that never happened. Pursuant to NRS 62B.390 (1) explained above, Mr. Zalyaul's case needed to originate in the juvenile court system as a delinquency petition. Only after a proper certification hearing in which the juvenile court determined to certify Mr. Zalyaul to the adult criminal court could the State file a criminal complaint in the Las Vegas Justice Court. The speedy trial delay not only prevent such a process from occurring, but also leaves Mr. Zalyaul with no available remedy. To attempt a certification hearing now would prove futile; the same obstacles present in a speedy trial violation[22] exist here. Mr. Zalyaul's ability to adequately prepare evidence to refute certification has been hindered by the lengthy delay between accusations made in 2013 and a hearing now in 2021. It would be impossible to attempt to now demonstrate Mr. Zalyaul's intent or lack thereof at the time of the alleged incidents.

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[21] "[A] defendant must know that the State had filed charges against him to have it weighed against him." *Inzunza*, 454 P.3d at 732 (2019).

[22] "[T]he inability of the defendant to adequately prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown." *Barker*, 407 U.S. at 532 (1972).

"Once triggered by arrest, indictment or *other official accusations*, however, the speedy trial enquiry must weigh the effect of delay on the accused's defense just as it has to weigh any other form of prejudice that *Barker* recognized." *Doggett v. United States*, 505 at 655 (1992) (emphasis added). Though the *Barker*, *Doggett*, *Inzunza* analysis primarily finds itself applied to post-warrant delays, nothing in these seminal cases requires the filing of an arrest warrant or a charging document. All three cases utilize the term "accusation"[23] as a starting point in the timeframe analysis, which must be determined on a case-by-case basis.[24]

Mr. Zalyaul was arrested on January 7, 2020 in the instant case, more than six years after the alleged incidents occurred; it was more than six years after the named victim and her mother made a formal report to the Las Vegas Metropolitan Police Department; it was almost an entire year after LVMPD reopened the investigation, having allowed it to grow cold years earlier. Mr. Zalyaul and his family returned to Las Vegas in 2016 after he completed high school in Morocco and yet nothing related to this case was waiting for him. No officers, no warrants, and no criminal charges.

Here, excessive delay is clearly evident and prejudicial. Calculating the delay from S.D.'s initial disclosure, more than six years passed before Mr. Zalyaul's arrest. LVMPD knew of the allegations, knew who the suspect was, knew where to find him. LVMPD even knew that Mr. Zalyaul might no longer be in the country. And yet, no further action was taken following S.D.'s initial disclosure and medical examination. LVMPD did not apply for an arrest warrant, reach out to Mr. Zalyaul or his family, investigate locations or addresses he frequented, conduct internet searches for his social media, or make any significant steps toward apprehending him.[25] Clearly,

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[23] "[U]nreasonable delay between formal accusation and trial threatens to produce more than one sort of harm." *Doggett*, 505 U.S. at 654 (1992).

[24] "What is prevalent throughout speedy trial challenges is that "there [are] no hard and fast rule[s] to apply . . ., and each case must be decided on its own facts." *Inzunza*, 454 P.3d at 731 (2019), quoting *United States v. Clark*, 83 F.3d 1350, 1354 (11th Cir. 1996).

[25] *See, United States v. Hidalgo*, 711 Fed. Appx. 819, 822 n.1 (9th Cir. 2017) (holding that the Government's efforts – which included conducting surveillance, placing a warrant into the NCIC database, seeking the assistance of the local police department, conducting internet searches for the defendant, including on social media websites, and arresting him at the airport after receiving

bringing Mr. Zalyaul to justice in a timely fashion was not a priority while he was a juvenile but suddenly became a priority when he was an adult, despite having no previous arrests or citations.[26]

III. Alternatively, Mr. Zalyaul Moves This Court to Reconsider the Imposed Sentence

The issues raised above were clear issues from the onset of this case. Both the State and Defense were aware of the legal complexity present in this case and the unique circumstances surrounding the eventual filing of charges against Mr. Zalyaul. As such, the parties considered the various issues and ultimately reached the contemplated resolution. Mr. Zalyaul respectfully requests this Court reconsider the imposed sentence of 48 to 120 months and instead follow the negotiations of the parties.

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information that he was scheduled to return to the United States – were sustained and targeted efforts to locate the defendant).

[26] "Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it." *Doggett*, 505 U.S. at 657 (1992).

IV. CONCLUSION

Though dismissal constitutes a severe remedy to the constitutional issues in the instant case, it remains the only proper remedy available to Mr. Zalyaul. The adult court lacks subject matter jurisdiction over this case, a fatal procedural flaw that cannot be waived. Additionally, the juvenile court with its limited statutory authority cannot exercise jurisdiction over Mr. Zalyaul due to his age. The fault of the State to swiftly prosecute Mr. Zalyaul leaves no other option than dismissal of the instant case.

NEVADA DEFENSE GROUP

BY /s/ Damian Sheets
DAMIAN R. SHEETS, ESQ
Nevada Bar No. 10755

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of July, 2021 I served a true and correct copy of the foregoing Defendant's Motion to Address Custody Status, upon each of the parties by electronic service through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed envelope in the United States mail, Postage Pre-Paid, addressed as follows:

Clark County District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
motions@clarkcountyda.com
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__/s /____Baylie Hellman_____
An Attorney at Nevada Defense Group

OPPS
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAMZA YALYAUL,
#7091105

Defendant.

CASE NO: C-21-354047-1

DEPT NO: XXI

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO RECONSIDER SENTENCE

DATE OF HEARING: July 27, 2021
TIME OF HEARING: 3:00 PM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through LINDSEY MOORS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in opposition to Defendant's Motion to Dismiss or, in the Alternative, Motion to Reconsider Sentence. .

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and any oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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STATEMENT OF THE CASE

Defendant was arraigned on the instant case on January 8, 2020. On that date bail was set at $60,000 and a preliminary hearing was set for February 11, 2020. On that date, the parties were still discussing a negotiation and set a status check on negotiations for February 25, 2020. The matter was continued many times in 2020, until the Defendant waived up on in instant negotiations and was set for initial arraignment on March 3, 2021.

Defendant ultimately entered into a Guilty Plea Agreement with the State of Nevada. A sentencing date was set for July 1, 2021. On that date, this Honorable Court chose not to follow the negotiations between the parties and Defendant was sentenced to 48 to 120 months in the Nevada Department of Corrections and was remanded. Defense requested bail pending an appeal, which was denied. Defense also requested a briefing schedule, which was denied. Defense also requested to withdraw the plea after the sentence had already been imposed, and that was denied as well.

STATEMENT OF FACTS

The following statement of facts is taken from the PSI in the instant matter.

On September 13, 2014, the mother of the victim (DOB: 07/11/02) reported her juvenile daughter had been sexually assaulted, by the defendant Hamza Zalyaul, multiple times between the months of June and September of 2013. The victim did not immediately disclose the sexual abuse because she was scared no one would believe her. The victim was brought to the hospital where a general exam was conducted. Attempts were made to locate and positively identify Mr. Zalyaul but were unsuccessful because his family had relocated to Morocco.

At a later date, during an unrelated investigation, it was discovered Mr. Zalyaul was living back in Las Vegas. In February 2019, the case was reopened. The victim was interviewed and reported during the summer of 2013, the defendant sexually assaulted her on numerous occasions. The first incident occurred at the defendant's family apartment. The victim, her sibling and the defendant's mother were there. Mr. Zalyaul asked the victim to come into the kitchen she accompanied him. He instructed her to crouch down on the kitchen

floor and pull her pants down. He slid his pants down and inserted his penis into her vagina. After about ten minutes, he pulled out and ejaculated. The victim cried afterward stating "it hurt" and was "disgusting."

The following Sunday, while at the Mosque, Mr. Zalyaul came over to the women's section and told the victim to come to the restroom. They entered a stall in the restroom where the defendant told the victim to grab his penis and "suck it like a lollipop." While she was positioned against a wall, he instructed her to spread open the cheeks of her buttocks. He engaged her in anal intercourse and ejaculated. The victim remained in the stall for a few minutes then left. Later, she appeared to be limping and her father asked if she was okay. She told him she was fine because the defendant instructed her not to tell anyone about what had occurred.

The next incident occurred a week later at the defendant's family apartment. While the victim was in the bathroom, Mr. Zalyaul picked the lock with a paperclip. The defendant had the victim pull down her pants, bend over and he anally penetrated her. The victim tried to call for help but the defendant covered her mouth. The defendant's mother came into the bathroom; however, the defendant and victim were already dressed. The defendant told his mother that everything was fine, and the victim had stubbed her toe. As soon as the mother left, Mr. Zalyaul penetrated the victim's vagina. She told him it hurt, and he responded it was okay.

On another occasion, the victim's family and the defendant's family went to the lake to swim. The victim went to the van to change out of her wet clothes. When she entered the van, the defendant was inside. She asked him to exit the van so she could change; however, he refused. She took off her shirt and the defendant made her perform fellatio. When she attempted to leave the van, Mr. Zalyaul discouraged her by saying she would smell like him.

On two separate occasions the defendant showed the victim pornography depicting young teens between the ages of thirteen and sixteen engaged in sexual acts. Mr. Zalyaul told the victim it was normal. The victim did not know if the defendant ever filmed the assaults on her as her back was to him.

Approximately three weeks after Mr. Zalyaul moved to Morocco, the victim disclosed he sexual abuse to her mother who disclosed the abuse to the victim's father. Her father contacted the defendant's uncle and told him Mr. Zalyaul had raped his daughter.

At a later date, the victim saw Mr. Zalyaul during a religious event. She informed her father, but he was unable to locate the defendant. A week later, her father located the defendant and questioned him about the assault. Mr. Zalyaul told the father he was young and did not know why he committed the offenses. A short time later, the victim's father brought her to the defendant's family apartment where the families sat and discussed the abuse. He asked the defendant why he abused his daughter and Mr. Zalyaul again stated he did not know why. Mr. Zalyaul and the victim's father began arguing. Following the argument, her father told everyone in attendance that what was said that day would be kept there and told the defendant not to go near the places he frequents. At the conclusion of the investigation, a warrant was issued for the arrest of Mr. Zalyaul.

On January 7, 2020 Mr. Zalyaul was arrested, transported to the Clark County Detention Center, and booked accordingly.

ARGUMENT

I. The District Court has no Jurisdiction to Hear this Matter

a. Defendant has Already Been Sentenced

"A district judge's pronouncement of judgment and sentence from the bench is not a final judgment and does not, without more, oust the district court of jurisdiction over the defendant. Only after a judgment of conviction is 'signed by the judge and entered by the clerk,' as provided by NRS 176.105, does it become final and does the defendant begin to serve a sentence of imprisonment." Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979); NRS 176A.100.

Defendant was sentenced on July 1, 2021 and was remanded into custody in open court. The Court entered the Judgment of Conviction on July 7, 2021. Accordingly, Defendant began serving his sentence on the instant date. Defendant did not file the current motion until July 9,

2021. Respectfully, this Court lacks jurisdiction to consider Defendant's motion, and therefore it should be summarily denied.

b. Juvenile Court Is Not/Was Not the Proper Venue for this Case

Juvenile Court is not the proper venue for this case and was not at the time of the plea in this case. Juvenile Court is a Court of limited jurisdiction created by statute. NRS 62B.330, states in pertinent part:

> **1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.**
>
> 2. For the purposes of this section, a child commits a delinquent act if the child: . . .
>
> (c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada.
>
> **3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act: . .**
>
> (b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:
>
> (1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and . . .
>
> **(e) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:**
>
> (1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or
>
> **(2) The person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.**

Accordingly, as Defendant was 13 when he committed the instant offenses, he was not 16-18 year of age, and he was no apprehended until he was over the age of 21, the Juvenile Court does not have jurisdiction. NRS 62B.335 discusses the Jurisdiction of Juvenile Court

over Adults who committed Certain Delinquent Acts as children and reads in pertinent part:

> 1. **If:**
>
> **(a) A person is charged with the commission of a delinquent act that occurred when the person was at least 16 years of age but less than 18 years of age;**
>
> (b) The delinquent act would have been a category A or B felony if committed by an adult;
>
> (c) The person is identified by law enforcement as having committed the delinquent act before the person reaches 21 years of age; and
>
> **(d) The person is apprehended by law enforcement after the person reaches 21 years of age,**
>
> **the juvenile court has jurisdiction over the person to conduct a hearing and make the determinations required by this section in accordance with the provisions of this section.**
>
> 2. The juvenile court shall conduct a hearing to determine whether there is probable cause to believe that the person committed the delinquent act.
>
> 3. If the juvenile court determines that there is not probable cause to believe that the person committed the delinquent act, the juvenile court shall dismiss the charges and discharge the person.

The Juvenile Court does not have jurisdiction over Defendant under this statute as well as he was under 16 years of age when the crimes occurred an over 21 years of age when apprehended.

This issue is further discussed in Stave v. Barren, 128 Nev. 337 (2012). The Barren court held that:

> some court always has jurisdiction over a criminal defendant. *See* NRS 171.110 ("Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States."); see also *Castillo v. State*, 110 Nev. 535, 542, 874 P.2d 1252, 1257 (1994) (rejecting a defendant's claim that he was "home free" from any court's jurisdiction), *disapproved of on other grounds* by *Wood v. State*, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995); *D'Urbano v. Commonwealth*, 345 Mass. 466, 187 N.E.2d 831, 835 (1963) (holding that "[t]he absence of valid juvenile procedure did not deprive the Superior Court of jurisdiction" and noting that "[t]he statute [did] not intend, for example. That a person who committed

> murder at [16] and is apprehended at [23] should be beyond the reach of criminal statutes"); *State ex rel. Elliot v. District Court*, 211 Mont. 1, 684 P.2d 481, 485 (1984) ("[L]ack of jurisdiction in Youth Court does not limit a district court's jurisdiction."); *Trujillo v. State*, 79 N.M. 618, 447 P.2d 279, 280 (1968) (explaining that the district court had jurisdiction to try the defendant because he was over 21 years of age and "the district court is one of general jurisdiction," while the juvenile court is limited, by statute, to persons less than 21 years of age); *State v. Hodges*, 63 P.3d 66, 68-69 (Utah 2002) (noting that a statute that gave a juvenile court jurisdiction in proceedings over a person younger than 21 years of age did "not limit ***341** the general grant of jurisdiction made to the district court . . . so as to preclude its jurisdiction over proceedings against persons [21] years of age or older"); *State v. Bradley*, 20 Wash.App. 222, 580 P.2d 640, 642 (1978) ("Want of jurisdiction of the juvenile court merely precludes acts of that court. It does not invalidate an otherwise valid act of the superior court which property had jurisdiction of the subject matter and the person.").

Id. at 340-341. Accordingly, some court must have jurisdiction of this case. The Juvenile Court is a court of limited jurisdiction defined by statute, and as discussed above, those statutes do not delineate jurisdiction over Defendant. In this case, Defendant committed these crimes when he was under 16, but was not apprehended until after he was 21 years of age. And as some court must have jurisdiction, and as juvenile jurisdiction does not apply here per NRS 62B.330 and NRS 62B.335, the District Court must properly have jurisdiction as a court of general jurisdiction.

II. Defendant is Not Entitled to Dismissal Based on a Speedy Trial Violation

Defendant argues, citing federal case law, that this Court should dismiss his case. Defendant bases this argument on two cases: Barker v. Wingo, 407 U.S. 514 (1972) and Doggett v. U.S., 505 U.S. 647 (1992). Defendant's understanding of the law in this case is incorrect, so his motion should be denied. "Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay." Doggett, 505 U.S. at 651-52. If this hurdle is overcome, a court determines if a constitutional speedy trial violation has occurred by applying the four-part test laid out in Barker, which examines the "[l]ength of delay, the

reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Prince v. State, 118 Nev. 634, 640, 55 P.3d 947, 951 (2002) (quoting, Barker, 407 U.S. at 530)).

The Barker factors must be considered collectively as no single element is necessary or sufficient. Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189 (1973) (quoting, Barker, 407 U.S. at 533). However, to warrant relief, "failure to accord a speedy trial must be shown to have resulted in prejudice attributable to the delay." Anderson v. State, 86 Nev. 829, 833, 477 P.2d 595, 598 (1970). Here, the collective consideration of the Barker factors show that Defendant is not entitled to dismissal of this case.

a. Length of Delay

In Doggett the Supreme Court examined the threshold requirement and the length of delay element together. Doggett, 505 U.S. at 651-52, 112 S. Ct. at 2690. The first part of this double inquiry is the threshold requirement. In order to meet the threshold requirement appellants must demonstrate "that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay. Id. The Court justified the imposition of this threshold requirement by noting that "by definition he cannot complain that the government has denied him a 'speedy trial' if it has, in fact, prosecuted the case with customary promptness." Id. at 651-52.

Lower courts have generally found post-accusation delays to be presumptively prejudicial as they approach the one-year mark. Id. at 652 n.1, 112 S. Ct. at 2691 n.1. However, there is no binding rule on the length of time necessary to presume prejudice; nor does presumptive prejudice indicate that the remaining factors need not be considered. See id. In Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998), the Nevada Supreme Court held that a delay of two and one-half years did not deprive the defendant of his right to a speedy trial, particularly where the defense was responsible for most of the delay and was not prejudiced by the delay. Indeed, even if a defendant satisfies the threshold question, the court is still required to consider "the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." Doggett, 505 U.S. at 652.

Here, Defendant did not address anything more than the threshold question in his Motion. The lapse in time from the filing of the criminal complaint to the Defendant's initial arraignment was 87 days (the criminal complaint was filed on October 14, 2019, and Defendant was arraigned on January 8, 2020). While this is a delay, it is not so lengthy as to greatly prejudice Defendant. The length of the delay in this case is significantly less than the eight-and-one-half years in the Doggett case, and the circumstances vary greatly. Furthermore, it should be pointed out that Speedy Trial Rights only attach after a complaint has been filed, Defense would have them attach to pre filing delay, which is not the legal standard.

The Court in Doggett discussed that the defendant had moved in and out of the United States, interacted with government authorities, married, gone to college, found steady work, lived openly under his own name, and stayed within the law. Id. at 526-27. The length of time and change in the defendant's circumstances in that case would cause a reasonable person to believe the authorities were no longer interested in them.

In this case, however, not all of the same factors may apply to Defendant, the length of time was not nearly as long, nor was it sufficient to cause a reasonable person to believe there would be no legal repercussions for his actions. As such, the length of delay should not weigh in his favor. Here, the State submits that the delay in this case does not raise to the considerable delay in Doggett and therefore this factor should not weigh in favor of Defendant.

b. The Reason for the Delay

As for the second factor, the Barker Court made clear that different weights should be assigned to different reasons for delay. Barker, 407 U.S. at 531. While delaying in order to hamper the defense is weighed heavily against the State, negligence is weighed less heavily. Id. Similarly, delay for "a valid reason, such as a missing witness, should serve to justify appropriate delay." Id.

While there was a delay in arresting Defendant on this case, the delay was not extraordinarily long. There is no indication that the delay in arraigning the Defendant was in any way to hamper the Defense. In fact, it should also be pointed out that Defendant had moved to Morocco and the State waited to charge him until he had been located within the

United State, honoring his speedy trial rights. At worst, there was negligence in arresting Defendant. At best, there was a valid reason for the delay. Even assuming, *arguendo*, that the State was negligent in arresting Defendant, as the Barker Court ruled, negligence on behalf of the State is a factor to be considered but is not determinative. Barker, 407 U.S. at 531; see also, Sondergaard v. Sheriff, 91 Nev. 93, 95, 531 P.2d 474, 475 (1975) (wherein the State's inability to give any reason for the delay was "exceedingly disturbing" but did not outweigh the other factors).

Indeed, in Barker, the Court found that the government *purposefully* delayed the accused's trial in order to strengthen its case, but even that purposeful delay that was not sufficient to overcome the other factors. Barker, 407 U.S. at 516, 536. The reason for the delay must be weighed against the other facts, and Defendant has failed to show that he is entitled to relief under the other factors nor show any evidence of bad-faith delay on part of the prosecution in this case.

Defendant asserts that victim knew how to find him, even though he had left the country. These are nothing but bare and naked allegations. "Bare" and "naked" allegations are not sufficient to warrant relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). In fact, nothing in the record shows that the State had any means of tracking down Defendant. Thus, this factor should not weigh in Defendant's favor.

c. Defendant's Assertion of His Right

Defendant has not affirmatively asserted his right to a speedy trial, as this case has already been plead and sentenced in District Court. The Court in Barker discussed in length the unique nature of the speedy trial right and how it is "impossible to determine with precision when the right has been denied." Barker, 407 U.S. at 521. Additionally, Courts have found no violation when defendant "only became interested in invoking the Sixth Amendment when it became an avenue to dismiss the indictment or obtain release." United States v. Avalos, 541 F.2d 1100, 1115 (5th Cir.) (1976) ("promptness in asserting the right is important"); Barker, 407 U.S. at 531-32 ("failure to assert the right will make it more difficult for a defendant to

prove that he was denied a speedy trial"); United States v. Trueber, 238 F.3d 79, 90 (1st Cir.) (2001). This factor is another reason that this Motion should be denied for lack of jurisdiction as stated in section one-a of this opposition.

d. Prejudice to the Defendant

As for the fourth Barker factor, Defendant was not harmed by the delay. When examining prejudice, courts look to "oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the [accused's] defense will be impaired by dimming memories and loss of exculpatory evidence." Doggett, 505 U.S. at 654 (internal citations omitted). As in Doggett, and as Defendant concedes, the only one of these which could apply to Defendant is the last form of prejudice. Id. Because this type of prejudice is difficult to prove, it is presumed to exist, and it is presumed to grow stronger over time. Id. at 656.

However, in Doggett, the Court also held that "to warrant granting relief, negligence unaccompanied by ***particularized*** trial prejudice must have lasted longer than negligence demonstrably causing such prejudice." Doggett, 505 U.S. at 657 (emphasis added). Indeed, presumptive prejudice alone is not sufficient to support a Sixth Amendment claim without regard to the other factors. Id. at 656. Defendant has failed to demonstrate particularized trial prejudice, and instead relies entirely on the presumptive prejudice.

First, Defendant did not face pre-trial incarceration based on this case. Defendant was not in custody on this case until the arrest warrant return. Therefore, there is no prejudice from pre-trial incarceration, as Defendant has spent only a small amount of time in custody based on this case. Second, Defendant does not allege that any delay has caused him anxiety and that factor should not be considered.

Finally, Defendant is tasked with arguing "particularized" trial prejudices. Defendant does not assert that any exculpatory evidence is inaccessible or that witnesses may not be available. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. In fact, the record as it currently stands does not indicate any evidence that is exculpatory or inculpatory, thereby showing that this limited jurisdiction court is the improper venue to file this motion. Defendant does not to discuss any particular prejudice he believes he suffered, but instead argues that he is entitled

a presumption of prejudice to such a degree that the case should be dismissed.

However, the length of delay is not sufficient for the presumptive prejudice to justify dismissal of the case. Unlike Doggett, wherein *eight-and-a-half years* had passed, Defendant was arrested 87 days after the initial Criminal Complaint was filed. The Supreme Court made clear that presumptive prejudice increases over time, and it was only where a significant amount of time had passed that the Court found that presumptive prejudice was sufficient to justify dismissal. Here, half of the time elapsed in Dogget has passed, and Defendant has failed to show that the other factors weigh in his favor. Finally, this entire section of argument is moot as the State maintains this Court no longer has jurisdiction to hear this type of motion as Defendant has already plead guilty, been sentenced, and a judgment of conviction has been filed.

III. Reconsideration of Sentence

The State takes no position on this portion of Defendant's Motion.

CONCLUSION

Based on the foregoing, Defendant's Motion to Dismiss, or in the Alternative, Motion to Reconsider Sentence should be denied.

DATED this _____ day of July, 2021.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
LINDSEY MOORS
Chief Deputy District Attorney
Nevada Bar #12232

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition to Defendant's Motion for Reconsideration of Sentencing was made this 20th day of July, 2021, by Electronic Filing to:

DAMIAN SHEETS, ESQ.

EMAIL: dsheets@defendingnevada.com

BY _____

Secretary for the District Attorney

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. HAMZA ZALYAUL, Defendant.	CASE NO. C-21-354047-1 DEPT. XXI

BEFORE THE HONORABLE TARA CLARK NEWBERRY,

DISTRICT COURT JUDGE

TUESDAY, JULY 27, 2021

RECORDER'S TRANSCRIPT OF HEARING RE: DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO RECONSIDER SENTENCE

APPEARANCES BY VIDEOCONFERENCE:

For the State: LINDSEY D. MOORS, ESQ.
Chief Deputy District Attorney

For the Defendant: KELSEY L. BERNSTEIN, ESQ.

RECORDED BY: ROBIN PAGE, COURT RECORDER

Las Vegas, Nevada; Tuesday, July 27, 2021

* * * * * *

[Proceeding commenced at 3:33 p.m.]

THE COURT: State of Nevada versus Hamza Zalyaul, C-21-354047-1.

MS. MOORS: Good afternoon, Your Honor, Lindsey Moors on behalf of the State.

THE COURT: Okay.

Anyone appearing on behalf of Mr. Zalyaul?

MS. MOORS: I believe someone had logged on earlier.

THE CLERK: Ms. Hellman.

MS. MOORS: I thought it was miss --

MS. BERNSTEIN: Your Honor, I'm sorry, Kelsey Bernstein on Mr. Zalyaul's behalf.

THE COURT: All right.

MS. BERNSTEIN: I was having trouble unmuting.

THE COURT: All right. It appears that Mr. Zalyaul is not present. Is he at NDOC, Counsel?

MS. BERNSTEIN: Yes, Your Honor, that's my understanding. So in preparation for this hearing, we did notice that the State filed their opposition yesterday. We are going to be asking for a brief continuance to file a reply [audio distortion].

THE CLERK: Ms. Bernstein, you're going to have to repeat that for us.

THE RECORDER: Yes.

THE COURT: Yeah, there was a motorcycle in the background, we didn't hear you.

MS. BERNSTEIN: I was just going to ask if we can continue this briefly to file a written reply. We noticed that the State had filed their opposition yesterday, that given the technical arguments that we raised I think are written [audio dropped].

THE COURT: All right. I have no problem granting a continuance. I also believe the Defendant needs to be present unless, Ms. Bernstein, you have already discussed with him waiving his appearance.

MS. BERNSTEIN: I have not, Your Honor. The only problem with his appearance is that I know a transport order takes a couple of weeks.

THE COURT: And also he just went and so they won't transport him for at least 30 days anyway.

MS. BERNSTEIN: Right. And the problem that we have is that we are up against the notice of appeal deadline because I don't believe this would toll that, so I was going to ask if we could reset this possibly Thursday or at the latest next Tuesday.

THE COURT: I can set it for next Tuesday, but we still need to address the fact that your client's not present.

MS. BERNSTEIN: And I can't say that I've discussed with him waiving his presence. However, given that it is a post-conviction motion, I'm not sure his presence is required. I know ordinarily for example for petitions for writ of habeas corpus and other post-conviction motions that

unless there is [audio dropped] so I'm not sure if his --

THE COURT: All right. Ms. Bernstein, it's -- you can make the record on Tuesday as to whether he's aware of the hearing, but certainly if you're acknowledging that it's a post-conviction motion then the Court will waive his appearance.

Ms. Moors.

MS. MOORS: I think, You Honor, because -- I mean, I'm sure Your Honor saw our opposition, we don't even believe that there's jurisdiction to hear the case. But I think that Ms. Bernstein would need to contact her client prior to Tuesday's date, we're happy to accommodate the Tuesday date. But I do think that she needs to contact him and have him agree to not be present.

THE COURT: Yes, I agree. All right. This will be set for Tuesday and that'll allow enough time for you to try to reach him and make sure you get his acknowledgment and make representations to that affect, Ms. Bernstein, at the hearing on Tuesday. And it'll be -- we'll set this on the out of custody calendar since we know he's not going to be present, 3 o'clock.

THE CLERK: Judge, are you waiving his presence for today? Not for --

MS. BERNSTEIN: Thank you, Your Honor.

THE COURT: For today's purposes, yes, the Defendant is waived, as it is a motion that's being continued without substantive argument.

THE CLERK: So that new date will be August 3rd at 3:00 p.m.

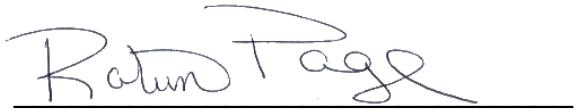
MS. MOORS: Thank you.

THE COURT: All right. Thank you, counsel.

[Proceeding concluded at 3:37 p.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches in the BlueJeans audio/video which resulted in distortion and/or audio cutting out completely were experienced and are reflected in the transcript.



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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada, Plaintiff, vs. Hamza Zalyaul, Defendant.	Case No: C-21-354047-1 Dept. No: XXI **DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

COMES NOW the defendant, HAMZA ZALYAUL, by and through his attorney of record, DAMIAN SHEETS, ESQ. of the law firm NEVADA DEFENSE GROUP, hereby submits this Reply to State's Opposition to Defendant's Motion to Dismiss.

This Motion is made and based upon the Memorandum of Points and Authorities attached hereto and any arguments deemed necessary by this Honorable Court, and further is brought in good faith and not for the purpose of delay.

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MEMORANDUM OF POINTS AND AUTHORITIES

The State raises several objections to Mr. Zalyaul's Motion none of which, upon examination, support denying the Motion to Dismiss.

1. Mr. Zalyaul's Motion to Dismiss is Properly Before this Court

The State claims that because the Judgment of Conviction in this case was filed prior to the filing of the Motion to Dismiss, this Court lacks jurisdiction to consider the Motion. Pursuant to NRS 176.555, the court may correct an illegal sentence at any time. An illegal sentence is "one at variance with the controlling sentencing statute, or illegal in the sense that the court goes beyond it's authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided" *Edwards v. State*, 112 Nev. 704, 708 (1996) (internal quotations omitted). "A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time." *Id.* "It is the sentencing court that has the inherent authority to correct its sentence." *Passanisi v. State*, 108 Nev. 318, 320, 831, P.2d 1371 (1992).

"Generally, a district court lacks jurisdiction to suspend or modify a sentence after the defendant has begun to serve it," however, the Nevada Supreme Court has found an exception when the sentencing court has made 'a mistake in rendering a judgment which works to the extreme detriment of the defendant.'" *Id*. at 322, quoting *State v. District Court*, 100 Nev. 90, 95, 677 P.2d 1044, 1047 (1984). The trial court is the proper venue for correcting an illegal sentence.[1] "A motion to correct an illegal sentence may only be granted when the sentence is "'at variance

[1] "We believe that a motion to modify a sentence is the functional equivalent of a motion for a new trial. Rather than seeking a new trial, the defendant seeks only a new sentencing. IN both instances, however, the defendant seeks an entirely new proceeding based on the claim that the factual underpinnings of the district court's decision are incorrect. Such challenges are direct attacks on the decision itself, rather than collateral, postconviction attacks, and the district court's authority to consider such motions is 'incident to the proceeding in the trial court.'" *Passanisi*, 108 Nev. at 321 (quoting, NRS 177.315(2)).

with the controlling sentencing statute,' or 'illegal' in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided." *Haney v. State*, 124 Nev. 408, 411, 185 P.3d 350 (2008).

In the instant case, Mr. Zalyaul's sentence constitutes an illegal sentence; firstly, for the jurisdictional reasons set forth in the Motion to Dismiss and readdressed below, and secondly, because this Court's sentence did not comport with NRS 176.017(1):

> "If a person is convicted as an adult for an offense that the person committed when he or she was less than 18 years of age, in addition to any other factor that the court is required to consider before imposing a sentence upon such a person, the court **shall** consider the differences between juvenile and adult offenders, including, without limitation, the diminished culpability of juveniles as compared to that of adults and the typical characteristics of youth." NRS 176.017(1) (emphasis added).

This Court, in rendering its sentence, failed to consider the differences between juvenile and adult offenders, instead only focusing on the victim impact statements and Mr. Zalyaul's present status as an adult which is at variance with NRS 176.017(1).

2. <u>Juvenile Court Remains the Proper Jurisdiction for the Instant Case</u>

The State argues that because Mr. Zalyaul falls outside of the limited jurisdiction of the juvenile court, the only proper venue is the District Court. It remains true that the juvenile court is a court of limited jurisdiction only as granted by statute;[2] however, the facts and circumstances of the instant case present a situation not specifically addressed within existing statutes. It would be absurd to assume that the absence of a juvenile statute wholly applicable to Mr. Zalyaul means that the legislature intended for someone in his unique situation to lose the protections and privileges of the juvenile statutes.[3] Indeed, the intention to protect juvenile offenders is clear both

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[2] *Kell v. State*, 96 Nev. 791, 792-93, 618 P.2d 350 (1980).

[3] "These rulings have not been made on the uncritical assumption that the constitution rights of children are indistinguishable from those of adults. Indeed, our acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults." *Bellotti v. Baird*, 443 U.S. 622, 635 (1979).

in the legislative history[4] and the courts[5] for a multitude of reasons. Juvenile offenders, as a general group, lack the mental capacity and fortitude possessed by adult defendants.[6] Most juvenile statutes, including those in Nevada, limit penalties imposed upon juvenile offenders[7] and afford more protections than those available to adult defendants.[8]

The legislature and the courts have given much consideration to the societal benefits of focusing juvenile justice programs on rehabilitation rather than punishment or retribution.[9]

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[4] *See*, S.B. 197 Committee Minutes, March 7, 2003, excerpt attached hereto as Exhibit A; A.B. 267 Committee Minutes, March 27, 2015, excerpt attached hereto as Exhibit B.

[5] "The theory of the District's Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy rather than in the corpus juris. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. The State is *parens patriae* rather than prosecuting attorney and judge." *Kent v. United States*, 383 U.S. 541, 554-55 (1966).

[6] "What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child -- an easy victim of the law - - is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces." *Haley v. Ohio*, 332 U.S. 596, 599 (1948).

[7] "The Juvenile Court is vested with "original and exclusive jurisdiction" of the child. This jurisdiction confers special rights and immunities. He is, as specified by the statute, shielded from publicity. He may be confined, but with rare exceptions he may not be jailed along with adults. He may be detained, but only until his is 21 years of age." *Kent,* 383 U.S. at 556 (1966).

[8] "A juvenile or "child" is placed in a more protected position than an adult, not by the Constitution but by an Act of Congress. In that category he is theoretically subject to rehabilitative treatment. Can he, on the whim or caprice of a prosecutor, be put in the class of the run-of-the-mill criminal defendants, without any hearing, without any chance to be heard, without an opportunity to rebut the evidence against him, without a chance of showing that he is being given an invidiously different treatment from others in his group? *Kent* and *Gault* suggest that those are very substantial constitutional questions." *Bland v. United States*, 412 U.S. 909, 910 (1973) (Douglas, J., dissenting).

[9] "The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he, how has he become what he is, and what had best be done

The purpose behind treating juvenile delinquents differently from adult defendants hinges on distinctions between the two groups; notably the "lack of maturity and an undeveloped sense of responsibility [] found in youth more often than adults"[10] and that "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed."[11] "These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'" *Roper v. Simmons,* 543 U.S. 551, 570, 125 S. Ct. 1183 (2005), quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 108 S. Ct. 2687 (1988) (plurality opinion). The goals and intentions behind the formation of juvenile courts clearly indicate that juvenile offenders, such as Mr. Zalyaul, are to be adjudicated in the juvenile civil system, not through adult criminal proceedings and the instant case in the District Court must be dismissed.

3. <u>The Court Must Dismiss the Instant Case for Violation of Mr. Zalyaul's Speedy Trial Right</u>

a. The Length of Delay Creates a Presumption of Prejudice

The State mistakenly uses the date the criminal complaint was filed and the date Mr. Zalyaul was arrested in its speedy trial analysis, claiming there is no violation because the delay from the filing of a criminal complaint and his arrest was only 87 days. This completely ignores the 6 years which passed between law enforcement originating its investigation and the eventual

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in his interest and in the interest of the state to save him from a downward career." The child -- essentially good, as they saw it -- was to be made "to feel that he is the object of [the state's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive." *In re Gault,* 387 U.S. 1, 15-16 (1967).

[10] *Roper v. Simmons,* 543 U.S. 551, 569, 125 S. Ct. 1183 (2005).

[11] *Id*. at 570.

filing of a criminal complaint. While *Barker*,[12] *Doggett*,[13] and *Inzunza*[14] specifically involve a delay between warrant and arrest, the right is not so limited in its protection. The speedy trial right is "triggered by arrest, indictment or *other official accusations*" *Doggett*, 505 U.S. at 655 (emphasis added). Certainly, when considering the length of time between LVMPD received the initial report (September 2013) and Mr. Zalyaul's arrest (January 7, 2020), a more than six-year delay is presumptively prejudicial and triggers a speedy trial analysis.[15]

b. There Exists No Sufficient Reason for the State's Delay

"Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun." *Doggett*, 505 U.S. at 657. When LVMPD received S.D.'s report, it also received information regarding Mr. Zalyaul's whereabouts. Though it was believed that Mr. Zalyaul was no longer located within the United States, LVMPD neglected to take any further steps to locate or apprehend him. *Doggett* presents an apt comparison, where "for six years, the Government's investigators made no serious effort to test their progressively more questionable assumption that Doggett was living abroad, and, had they done so, they could have easily found him within minutes." *Id.* at 653-54. Similar here, had the State pursued Mr. Zalyaul with reasonable diligence, his speedy trial claim would fail,[16] yet no action was taken on the case for over six years the fault of which is attributed to the State.

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[12] *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972).
[13] *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686 (1992).
[14] *State v. Inzunza*, 454 P.3d 727 (Nev. 2019).
[15] "A 26-month delay from charge to arrest is well over a year and, therefore, is long enough for the district court to classify as presumptively prejudicial so as to trigger the speedy-trial analysis." *Inzunza*, 454 P.3d at 731.
[16] *Doggett*, 505 U.S. at 656 (1992).

c. Mr. Zalyaul Never Waived His Right to a Speedy Trial Under *Doggett v. United States*

A "defendant has some responsibility to assert a speedy trial right claim" *Barker*, 407 U.S. at 529, though the "ultimate responsibility" rests with the government. *Id.* at 531. The United States Supreme Court has declined to hold that "a defendant who fails to demand a speedy trial forever waives his right." *Id.* at 528. In the instant case, though Mr. Zalyaul did not file a Motion a Dismiss previously, he never waived his right to a speedy trial under the Sixth Amendment or Doggett. In fact, it was this precise issue that influenced the ultimate negotiations of the parties while in the Justice Court. Because Mr. Zalyaul did not waive this right, this factor should not be held against him, particularly in light of the State's negligent delay.

d. The State's Delay Clearly Prejudiced Mr. Zalyaul

The State's negligence in prosecuting Mr. Zalyaul is not "automatically tolerable simply because [he] cannot demonstrate exactly how it has prejudiced him." *Doggett*, 505 U.S. at 657. That being said, the prejudice caused by the State's delay is clearly evidence here: he is no longer afforded the same opportunities offered by the juvenile court had he been adjudicated a delinquent minor. Had Mr. Zalyaul been adjudicated delinquent in the juvenile system, he would face shorter-term commitment in a state facility, rehabilitative treatment for juvenile sex offenders, and the opportunity to seal his record. Instead, he is incarcerated in the Nevada Department of Corrections for no less than four years. This immense discrepancy is no minor issue. The formation of the juvenile courts aimed to avoid these adult penalties for juvenile offenders, but the State's unjustifiable delay in prosecuting Mr. Zalyaul forced him to face adult punishment. The only appropriate remedy is dismissal of the instant case.

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4. Conclusion

Mr. Zalyaul respectfully request this Honorable Court grant his Motion to Dismiss.

NEVADA DEFENSE GROUP

BY /s/ Damian Sheets
DAMIAN R. SHEETS, ESQ
Nevada Bar No. 10755

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July, 2021 I served a true and correct copy of the foregoing Defendant's Motion to Address Custody Status, upon each of the parties by electronic service through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed envelope in the United States mail, Postage Pre-Paid, addressed as follows:

Clark County District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
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/s / Baylie Hellman
An Attorney at Nevada Defense Group

EXHIBIT A

major changes in the law, not even significant changes. While I do understand Professor Kruse's concern about an unintended consequence and appreciate Senator Wiener and Judge Steel's willingness to work that out, as an overall product, this is wonderful. I hope it will provide a precedent for the Legislature to consider in other chapters and areas of law. This is a real service to the citizenry. I would like to join, from a pure citizen prospective, in expressing appreciation for S.B. 197.

RICHARD L. SIEGEL, PH.D., LOBBYIST, AMERICAN CIVIL LIBERTIES UNION OF NEVADA:
I also want to commend Senator Wiener and all the people who worked on S.B. 197. The American Civil Liberties Union (ACLU) is completely in support of the work done to recodify this area of law. There is an area, however, presented in an article from *The Associated Press*, we would like you to consider for modification of this bill. Originally I planned to request rescission of section 53 of the bill. I realize we have to be realistic, and we would like to ask you to consider an amendment to section 53 that we will present to you by Wednesday for the work session. The amendment has to do with a point made in a study undertaken by the MacArthur Foundation. I have circulated a summary of the study (Exhibit H) and will provide a copy of the full study Wednesday.

The MacArthur Foundation is a reputable organization, best known for awarding genius grants. They have done an enormous amount of good. The foundation has sanctioned a study of certifying juveniles for adults. It is a brand new study not yet reviewed by Senator Wiener or any of the drafters of S.B. 197. They found one-fifth of juveniles, aged 14 or 15 years, could not understand the proceedings or help lawyers defend them. That is a serious concern. We would not be asserting this one-fifth were mentally retarded or mentally ill. I believe the study essentially shows there is a developmental incapacity, and among younger children, between 11 and 13 years of age, one-third cannot understand the proceedings or help lawyers defend them. I looked at section 53 of the bill, and it seemed to me this is not adequately covered.

At the least, we would like you to amend section 53 so while we are reviewing the certification of juveniles, we do not have automatic certification and processing as adults. We recognize section 53 contains language about emotional disturbance and several other things mentioned by Judge Steel. However, we are not relating currently to normal developmental incompetency. It is wrong to put a 15-year-old on trial, with grave consequences of decades of

imprisonment, when he cannot provide what a normal adult can in terms of assistance to his counsel and demonstrate an ability to understand what is going on at trial. We will provide, by Wednesday, language to the effect we will at least tighten up the matter of dealing with this population.

SENATOR NOLAN:
Dr. Siegel, can you tell me factually what percentage of adults do not fully comprehend the system in their defense?

DR. SIEGEL:
I do not know, but I do know it is a fundamental principle of law that people should be able to do what it says here, understand the proceedings and help lawyers defend them. That is a core element of adjudicating. We actually adjudicate that in the context of the rather acute level of incapacity, while in the juvenile area we have a full spectrum of it. We may have a 15-year-old of slightly subnormal intelligence who cannot do this. I frankly think we have a real dilemma here. On the one hand, we are taking them out of the quasi protection of the juvenile court. We are giving them greater due process in the adult court, and the ACLU has supported that greater due process. The problem is the potential of punishment is so great for somebody who may not be able to understand the proceeding or help his attorneys.

CHAIRMAN AMODEI:
Dr. Siegel, this study indicates a sample was taken of 1400 people in Los Angeles, Virginia, and Florida? Surely young people in Nevada are more intelligent than in those locations.

DR. SIEGEL:
I think you are being lighthearted about it, which is fine, but the fact is, according to national tests, the young people of Nevada are pretty close to the national norms in their testing and intelligence levels.

SENATOR WASHINGTON:
For my own understanding, based on Judge Steel's testimony, there are only two offenses that cannot be certified: murder in the first degree and some sex offenses. The court has the distinction of whether or not to certify up or down. If I understand your testimony, you are saying no matter what the offense, the minor should remain in the jurisdiction of juvenile court, and that is what you are basing your amendment on. Is that correct?

DR. SIEGEL:
I believe we are stuck in a dilemma for a certain population of juveniles, and I know we take practical steps and ignore that dilemma sometimes. I understand there is no easy solution to the question of somebody who has committed an extremely serious crime, but really cannot assist his attorney and understand the proceedings. That is a problem we face when dealing with adults also. I believe we should be explicit in asking the juvenile courts to make a finding as to whether the juvenile was capable of assisting his attorney given the stakes involved.

SENATOR WASHINGTON:
In my tenure on this committee, we have taken a great deal of time to construct certification, whether it should go up or down, based on the offenses and egregiousness of the crime perpetrated by juveniles. We did not arbitrarily state certain crimes would be certified up or down. To see our efforts become undone would be a disservice to the State of Nevada. I am eager to see your amendments, but will be hesitant to change S.B. 197.

DR. SIEGEL:
I would like to present this issue to Professor Kruse, who may contact me at the Political Science Department at the University of Nevada, Reno. To Senator Wiener and the judges involved, we want you to think very hard about this issue. I believe the research of the MacArthur Foundation deserves a thoughtful response from the committee.

CHAIRMAN AMODEI:
That is not an unreasonable request; we will do that.

EXHIBIT B

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 27, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Friday, March 27, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Hambrick, Assembly District No. 2

Chairman Hansen:
[Roll was called and Committee rules and protocol were reviewed.] We will begin with Assembly Bill 267.

Assembly Bill 267: Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)

Assemblyman John Hambrick, Assembly District No. 2:
This bill deals with human lives—those individuals who made a mistake when they were younger, paid a price, and were incarcerated. We are trying to address an issue where a juvenile may have been 14 or 15 years old and was sentenced for an extremely long time, in some states, life without parole. When we are 14 or 15 years old, we make mistakes. We are trying to correct some of that in this state. Nevada is very forward-looking on some of these bills. We need to codify some of these issues. I brought with me James Dold, who is associated with the Campaign for the Fair Sentencing of Youth. He will walk you through the bill.

James Dold, Advocacy Director, Campaign for the Fair Sentencing of Youth:
Thank you for the opportunity to testify before your Committee. I am with the Campaign for the Fair Sentencing of Youth, which is a national coalition and clearinghouse that works with formerly incarcerated youth, family members of those who are currently serving extreme sentences, as well as family members who have lost loved ones to violence, to create more appropriate and fair sentencing standards for children when they commit serious crimes. I grew up in Las Vegas and went to the University of Nevada, Las Vegas (UNLV). I left for law school and ended up in Washington, D.C. I thought I would start by walking everyone through the bill, then go into a little explanation as to why the provisions in the bill are so important, and share some of the history of how we got here, both as a state and nationally.

The first section of the bill would require judges, at the time of sentencing, to consider certain mitigating factors relating to age and responsibility of children regarding their culpability. These factors are derived from the *Miller v. Alabama*, 132 S.Ct. 2455 (2012) decision. Essentially, the broad notion is that children are fundamentally different from adults. There are certain mitigating factors that have to be considered, such as age, his level of participation in the offense, whether an adult codefendant was present, any history of abuse or trauma, and what his role was in the particular offense. This is aimed at creating fairer sentencing standards by having a judge consider all of these factors at the time of sentencing to ensure that he is imposing a sentence that is both age

appropriate and fair considering all the factors of the youth who has committed a serious crime.

Section 2 of the bill would eliminate the ability to impose a life without parole sentence, in other words, sentencing a child to die in prison. That is a death sentence for a child because he will never become eligible for parole, and that is where he will stay. This would eliminate life without parole. It would still preserve life sentences. Judges will still have the ability to impose a life sentence. If the individual remains a danger to society, it is very possible and likely that he will remain in prison until he dies. It is just a matter of looking at an individual after he has had time to grow up and mature. If the parole board feels, after looking at certain factors of whether he has rehabilitated, has changed, and is remorseful, that he is fit for a second chance, then the board would have the ability to grant that parole. Aside from that, the sentence that would still be imposed in these cases would be a life sentence.

Section 3 deals with the parole eligibility provisions. Specifically, we wanted to ensure that the parole board is looking at certain factors relating to the fundamental differences between juvenile and adult defendants: the age of the prisoner at the time of the commission of the offense, the difference between both cognitive and the role of the juvenile, how those differences compare with adult defendants, and the maturity of the prisoner and the level of participation. All of these factors determine whether an individual has been rehabilitated and is deserving of a second chance. This also includes whether the person has engaged in any rehabilitative programming, availed himself of educational opportunities that have been made available to him, has shown evidence of remorse, and what he has done with his life since he has been incarcerated to turn his life around. That, in a nutshell, is the bulk of the bill.

I would now like to talk about why these provisions are so important. Starting in the late 1980s criminologists theorized that there was a new class of superpredator children who were coming of age. They were basing this theory on a juvenile crime wave that happened in the 1980s. Essentially they projected the juvenile crime wave was going to continue to increase. That did not happen, and by the time this theory came about, the juvenile crime wave had begun to decline. As a result of that hysteria around the superpredator theory, many states began passing transfer laws that made it easier to try children in the adult system. This opened up to children a number of different penalties that were primarily reserved for the worst of the worst adult defendants: the death penalty, life without parole sentences, and other de facto life sentences where kids were getting 100- to 200-year sentences. This ran counter to everything as a society that we know about children.

Nationwide we have laws that prohibit kids from buying tobacco and alcohol, entering into contracts, getting married, serving in the military, and voting. The only area that we were not looking at these kids being different was in the adult criminal justice system where kids as young as 12 years old were eligible for these very extreme penalties. Finally, in 2005, the U.S. Supreme Court began to step in and say, We have gone too far with these extreme sentencing penalties and we need to rein it in a little bit. Justice Anthony Kennedy, a President Reagan appointee, was the author of several of these opinions. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy highlighted a couple of things when striking down the juvenile death penalty and saying that kids cannot be sentenced to death and it is a violation of the Eighth Amendment. He first focused on this new emerging juvenile brain and behavioral development science that shows that the fundamental part of the brain that is responsible for emotional control, long-term planning, and decision making was not fully developed in juveniles. That is the prefrontal cortex. Instead, children relied on a more primitive part of their brain, the amygdala, to actually make decisions, which made the child more impetuous, more prone to risk-taking behavior, and more susceptible to peer pressure. For anyone with a teenager, I am sure you can relate to this. In fact, Justice Kennedy noted that these are things that any parent knows about children, but for the first time we had the scientific evidence to show that these were in fact fundamental differences between juvenile and adult brains.

The second thing that Justice Kennedy noted was the international consensus against both the death penalty and life without parole sentences for children. He specifically cites the United Nations Convention on the Rights of the Child, which categorically bars life without parole and the death penalty for kids. He also cites the fact that since 1990 there were only a handful of countries, including Saudi Arabia, Iran, Iraq, Yemen, and the United States, that had actually ever executed a youth—not exactly great company to be in. That was worth noting for the courts, that there was an international consensus against this type of practice.

The third thing that Justice Kennedy noted in the *Roper* decision is that there is great difficulty distinguishing between a juvenile offender who might be irretrievably depraved and is beyond rehabilitation and one who is not. Justice Kennedy highlights this great difficulty that the psychological community has in distinguishing between the two, because the child's brain is not fully developed and because of that he has a heightened capacity to grow, change, and become rehabilitated. Based on all of these reasons, the court strikes down the penalty for kids in *Roper*.

Five years later, in a case called *Graham v. Florida*, 560 U.S. 48 (2010), the court examines life without parole sentences for non-homicide offenses, again relying on everything the court said in *Roper*. The court, again in an opinion written by Justice Kennedy, highlights the fact that life without parole sentences are akin to the death penalty because the child will never leave prison alive, he will leave prison in a box; so it is, in fact, a death in prison sentence. He goes on to talk about the fact that most kids have a great potential for rehabilitation. There is a 50 percent decline in criminal behavior by the time juvenile delinquents who have engaged in criminal behavior reach the age of 22. By the time they reach the age of 28, there is a decline of 85 percent. There is no more recidivism for the vast majority of kids who engage in these types of serious crimes. That was very informative for the court, and they again struck down life without parole sentences for non-homicide offenses and held that states must provide individuals convicted of non-homicide offenses with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Two years later in *Miller*, the court took up the issue of life without parole sentences for homicide offenses. Here the court ends up invalidating 28 sentencing schemes across the country and requires that sentencing judges consider the mitigating factors of youth any time a kid faces a potential life sentence. These provisions actually apply to states that had both mandatory life without parole sentences as well as discretionary life without parole sentences. Again, *Miller*, going back to everything that was said in *Roper* and *Graham*, comes up with this opinion and strikes down these sentencing schemes based on the Eighth Amendment.

Since that time, several state supreme courts have ruled on the issue of retroactivity of the *Miller* decision and whether the individuals who received life without parole sentences should in fact be resentenced under the *Miller* decision. State supreme courts in Texas, Mississippi, South Carolina, Florida, New Hampshire, Wyoming, and Massachusetts have all ruled that this decision should be applied retroactively and that the individuals who were previously sentenced to life without parole should get new resentencing hearings and the mitigating factors of youth that were articulated in the *Miller* decision should be considered at that time, looking at what sort of progress the individual has made since his incarceration.

Part of these decisions also highlight what we know about these juvenile lifers as well. Nationwide, there are about 2500 individuals, 16 in Nevada, who are serving life without parole sentences. Eighty percent of them witnessed violence in their homes and neighborhoods on a regular basis, 50 percent were physically abused, 20 percent were sexually abused, and 80 percent of the girls who are serving life without parole sentences were sexually abused. Over a third were homeless at the time of the offense, 25 percent are serving

sentences for felony murder, meaning they might not have been the individual who committed the homicide. Sixty percent committed the offense with an adult codefendant.

Given everything that we know about the juvenile brain and behavioral development science and how kids are susceptible to peer pressure and adult influence in particular, these characteristics helped inform the court as well that these kids are fundamentally different. That does not excuse the behavior; we are still talking about very serious offenses that kids need to be punished for, but it does help us to understand how kids could end up in these situations and why they might be more deserving of mercy than other individuals who are adults and commit similar offenses.

In response to these U.S. Supreme Court cases and the emerging juvenile brain and behavioral development science, several states across the country have begun to eliminate life without parole sentences for kids and create more age-appropriate and fair sentencing standards that are in line with A.B. 267. Let me highlight a couple of those states. In 2013, the state of Texas, in a special session called by Governor Rick Perry, eliminated life without parole sentences for children—Texas was actually one of the first states to begin paving the way for this in the wake of the *Miller* decision. Wyoming, Montana, Kansas, Kentucky, West Virginia, Massachusetts, Hawaii, Alaska, and Delaware have all enacted legislation to eliminate life without parole sentences for juveniles. The reason I highlight those states is because there is a broad geographic and political diversity amongst them. This is very much a bipartisan issue that we have seen across the country.

I would also like to point out that last month the American Bar Association in Resolution 107C called on all states and the federal government to eliminate life without parole sentences both prospectively and retroactively. We have several folks who have been supportive of these types of measures. We have been working with the National District Attorneys Association on a couple of amendments. One of the amendments that we discussed in the bill is to actually make sure that we distinguish between the homicides and the nonhomicides and increase the term of years that would be required as a mandatory minimum to serve for homicide offenses before the individual will become eligible for parole. That would only apply to a single homicide offense.

In closing, I think there are a couple of different ways to look at this issue. There is the one through a legal lens of everything I have highlighted from the Supreme Court cases, the emerging brain and behavioral development science, and also the moral aspect of this. Former Speaker of the House, Newt Gingrich, in an opinion of a bill from another state, wrote that Jesus calls on us to do

unto others as we would have done unto ourselves. If this were my child, how would I want him treated if he ended up in these unfortunate circumstances? I would want him to have a second chance. With that, Mr. Gingrich called on Governor Brown to pass similar legislation in California.

I happen to be Catholic and am a man of faith, and one of the reasons I am doing this kind of work is because of my faith. One of the things I am reminded of is Jesus on the cross. Jesus, when he was being executed by the Romans, calls out in one of his last moments, "Forgive them Father, they know not what they do." Because of that act of mercy, we as sinners were all saved. For me, looking at this issue, if our children are not deserving of our mercy, who amongst us really is? Part of this is about faith, part of it is about finding the moral center of the state of Nevada, the moral center of the United States, and with everything we know from a scientific standpoint, this really is great policy that has been enacted around the country. [Also provided written testimony (Exhibit C) and a United Nations report on life sentences for youths (Exhibit D).]

Assemblyman Nelson:
As I read section 3, subsection 1 and also the very last sentence of the bill, it appears that this will apply retroactively so that anyone who has already been sentenced to life without parole will now be eligible for parole, is that correct?

James Dold:
Yes, sir, that is correct.

Assemblyman Nelson:
Is that in line with the other cases you mentioned that were construing the *Miller* case?

James Dold:
Yes, the states' supreme courts that have weighed in on the issue are Texas, South Carolina, Mississippi—there have been 14 states' supreme courts that have taken the issue up and ten of them have ruled in favor of retroactivity of the *Miller* decision. The U.S. Supreme Court just granted certiorari in a case called *Montgomery v. Louisiana*, 141 So.3d 264 (La. 2014), and they will be deciding the issue nationwide probably within the next term.

Assemblyman Nelson:
Did *Miller* say anything about retroactivity?

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. HAMZA ZALYAUL, Defendant.	CASE NO. C-21-354047-1 DEPT. XXI

BEFORE THE HONORABLE TARA CLARK NEWBERRY,

DISTRICT COURT JUDGE

TUESDAY, AUGUST 3, 2021

RECORDER'S TRANSCRIPT OF HEARING RE: DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO RECONSIDER SENTENCE

APPEARANCES BY VIDEOCONFERENCE:

For the State: LINDSEY D. MOORS, ESQ.
Chief Deputy District Attorney

For the Defendant: BAYLIE HELLMAN, ESQ.

RECORDED BY: ROBIN PAGE, COURT RECORDER

Las Vegas, Nevada; Wednesday, February 24, 2021

* * * * * *

[Proceeding commenced at 1:59 p.m.]

THE CLERK: Calling Page 7, Hamza Zalyaul, C354047.

THE COURT: Thank you, Officer.

All right. Counsel for the State.

MS. MOORS: Yes, Your Honor, Lindsey Moors on behalf of the State.

THE COURT: All right. Good afternoon, Ms. Moors.

And for Mr. Zalyaul.

MS. HELLMAN: Good afternoon, Your Honor, Baylie Hellman, Bar Number 14541 for Damian Sheet's office.

THE COURT: All right, Ms. Hellman, thank you.

Counsel, I believe at the last setting on this, the Defendant's presence is waived as he's in the Nevada Department of Corrections; is that correct?

MS. HELLMAN: Your Honor, it's my understanding that this was partly set over was to get his waiver. Based on some of the restrictions of NDOC, we did not expressly get a waiver for his appearance today. However, it is our position that this is a non-critical stage of the proceeding and his appearance is not required for us to go forward on the motion.

THE COURT: Ms. Moors.

MS. MOORS: Your Honor, I know we were on last week. Defense also wanted time to respond -- to file a reply, which obviously

the State had no objection to. If the Defense counsel is comfortable making those representations, then the State is fine with that as well if Your Honor's comfortable with that.

THE COURT: All right. I think based on my review of the pleadings and what I expect today to entail, I think it is more legal arguments and certainly can address that in the Defendant's absence with the agreement of counsel. All right.

It's your motion, Ms. Hellman, so I'll let you go ahead and make an argument. But I will tell you that I've already reviewed all of the briefing, I even went back and looked at the JAVS recording from the entry of plea as well as sentencing, so highlight the -- I'm really more interested in the legal issues. And I do at this time concur with the State as to the jurisdictional contemplation. But I think we need to make a complete record.

So go ahead, Ms. Hellman.

MS. HELLMAN: Thank you, Your Honor. So I will just, kind of, hit the main salient points, which our argument is divided into two issues. One is the jurisdictional issue, with regards to subject matter jurisdiction for the adult court to hear what should have been a juvenile court proceeding, and then the speedy trial violation in *Doggett*.

So with regards to the juvenile court issue, obviously, the juvenile courts are predated by statute. They do not have general jurisdiction over proceedings, but they do have certain jurisdiction over any cases that fit into that criteria. And so if you look, for example, at NRS 62B.330(3), that talks about what would not be a delinquent act

committed by a juvenile. So they already set forth what type of offenses, if committed by a juvenile, are not going to be heard by the Court and then they go on to set forth the charges that they will hear.

And generally, that's going to involve anyone who is under the age of 21 -- excuse me, under the age of 18 -- committing an offense and generally they must under the age of 21 for the Court to continue jurisdiction over their proceeding. Now there is a statute NRS 62B.335 that sets forth the juvenile court's jurisdiction over someone who is already an adult, meaning someone who is already over the age of 18. That statute is a little bit more limited than what would apply to Mr. Zalyaul because it talks about juveniles who commit offenses when they're between the ages of 16 and 18. And here we have Mr. Zalyaul committing an offense at the age of 15.

So he does not fit under that statute, but what is important to note is that that statute sets forth the criteria for addressing the proceeding when the juvenile court has lost its jurisdiction. That statute acknowledges that the juvenile court is the originating court for that offense because of the type of conduct alleged to have been committed by the juvenile and also the age of the juvenile at the time. That statute does not have the adult court automatically take jurisdiction over the case. It's still originates in the juvenile court and goes through the certification proceeding which requires certain factors to be considered by the juvenile court in order to even get it to the adult court in the first place.

Again, it does not just go forward to the adult court simply

because someone is now an adult. Court's indulgence.

THE COURT: And, Counsel --

MS. HELLMAN: Yes.

THE COURT: -- let me ask you then, why were these issues not raised when the complaint was filed?

MS. HELLMAN: And, Your Honor, these were issues that were addressed not in the court, we did not file a motion to dismiss or to send it back to the juvenile court in the justice court, partly because of the negotiations that were reached. So there was a lot of talk back and forth. And as the Court is aware, the pleadings -- the guilty plea agreement and the negotiations therein were very unique in this case. It included an agreement to seal his record after honorable discharge from probation. And that's not a very common condition in a guilty plea agreement.

So as far as the terms that we reached, they addressed some of the issues that we were seeing with regards to the juvenile cases and how these cases are handled in the juvenile court. So while they were not formally raised in the form of a motion or pleading filed with the juvenile court, they were considered by the parties.

THE COURT: Okay, anything else to add, Ms. Hellman?

MS. HELLMAN: Your Honor, just in regards to the *Doggett* issue. Even if the juvenile court was not the proper jurisdiction for this case which, again, we believe that it always was, there is still speedy trial violation based on *Doggett* and *Barker v. Wingo,* and *Inzunza* for the Nevada Supreme Court.

The length of delay here clearly creates a presumption of prejudice. We're talking about events that happened in the summer of 2013, a report that was made in September of 2013, a warrant was ultimately issued October of 2019, and an arrest occurred January 2020. That's a six year delay between the -- between law enforcement knowing about the case and beginning its investigation and the actual warrant being issued. So we do have the first prong, which is a prejudicial effect.

The second factor for the reason for the delay, while Mr. Zalyaul did leave the country, law enforcement was aware of that. Once they received the report, they knew who he was. He was identified by name, he was identified by where he, you know, places within Las Vegas that he frequented, where he may have been at the time which was another country. But if you look at the federal cases, some of which are cited in the motion, that still does not alleviate a burden on the government to apprehend the Defendant, particularly when they know who they are and where they are. LVMPD could have issued a warrant, even though he was out of the country, and as soon as he returned he would have been picked up on the warrant, but they didn't do that either.

THE COURT: And, again, these issues were never raised. And that's the issue, is that there's a guilty plea agreement that was entered, the Defendant was canvased; he was made aware that while there had been this negotiation that sentencing is ultimately up to the Court. He understood that and agreed to it. So these motions -- and I'm

getting to the point of the State's opposition. I agree that sentencing occurred on July 1st and the judgement of conviction was signed and filed on July 7th and he began serving his sentence on that date.

And at that point, Counsel, it was two days later that a motion to dismiss and all these other jurisdictional issues and what you're addressing here today were raised. So could you address that point, as that is where this Court's interpretation is all of these issues that you're raising? It doesn't appear that they were preserved at this point as this Court is dispossessed of jurisdiction, other than as you had pointed out to correct an illegal sentence, which I do not find that the sentence was illegal. It certainly was well within the statute.

So can you focus on that issue, Counsel?

MS. HELLMAN: Yes, Your Honor. So as to the illegal sentence based on the statute, the sentencing statute, which references the factors that must considered and the language is shallow, it is not discretionary. But the Court must consider the factors regarding a adult defendant who is being sentenced as an adult while at the time the offense was committed was a juvenile. Those to my understanding, my recollection, were not addressed and I do believe that would be grounds to correct the sentence.

But as far as the jurisdictional issues, based on now there being a sentence that's being served, subject matter jurisdiction can be raised at any point in time. And that's where the juvenile court jurisdiction issue comes into play is that it's our position, that based on subject matter jurisdiction; the adult court has never had that jurisdiction

over this case. I know that there's issues with the guilty plea agreement that had been addressed. However, the waiver in the guilty plea agreement specifies a waiver of the right to a speedy trial, but I don't believe that that waiver applies to a right that exists prior to the Defendant being arrested.

Because when we're talking about the *Doggett* speedy trial issue, we're talking about what happens from an accusation or an incident that occurs and the apprehension of the Defendant. That's where the violation focuses and I believe that the guilty plea agreement waives a speedy trial right post-charge and post-not-guilty plea effectively.

THE COURT: So, Counsel, you're saying that you still, after entering a guilty plea agreement and not liking the sentence, a Defendant can then come back and claim a violation of speedy trial rights pre-arrest?

MS. HELLMAN: I believe that even with the guilty plea agreement, a defendant has that speedy trial right under *Doggett*, which addresses a pre-apprehension right to a speedy trial. And I believe that can be raised even in light of a guilty plea agreement.

THE COURT: All right. Well, I'm going to let Ms. Moors respond to that. That's not my understanding of the case law.

But go ahead, Ms. Moors.

MS. MOORS: Okay, so couple of things. With regards to the jurisdictional, I understand that it might be somewhat perplexing, but the way the statutes read, based on the age the offense was committed and

the age he's apprehended, there is no juvenile jurisdiction.

THE COURT: Right.

MS. MOORS: So maybe Defense dislikes that or they want to, you know, call our legislatures and change that. Totally fine, do your thing. As the law stands and as the State pointed out in our case of *Barren v. State*, there has to be some sort of jurisdiction. It's not delineated in the very narrowly tailored legislatively created, you know, idea of juvenile court. So it's -- so Your Honor has jurisdiction.

Okay, so that is -- it -- like, they can dislike it, but that's just the law. Not to mention the fact that I would submit Your Honor doesn't even have jurisdiction because the judgement of conviction has already been filed and it's not an illegal sentence. Like, I understand that it's not what the parties contemplated and I understand that, but the Defendant was canvased on that in his guilty plea agreement that sentencing is up to the judge. Defense is unhappy with that, and I understand that as well, but he was canvased on this that it was up to the judge. So that's sort of the jurisdictional argument.

In terms of the speedy trial argument that Defense counsel is trying to raise, please show me the case law that says you have a speedy trial right after you've entered into a contract with the State of Nevada, which is what a guilty plea agreement is. That you somehow now still have a speedy trial right when you have said I have waived my right to trial, one of the waivers in there. I am waiving my right to trial, but yet I still have a right to a speedy trial. Like, I don't even really know how to combat that argument because it makes no sense.

Very specifically in his guilty plea agreement, he waived his right to a trial. He waived all of the rights he would be afforded if he were to go to trial and said I'm going to enter into this agreement. At the end of the day, this is what the State's recommending, this is what Defense is recommending, but at the end of the day, here's the punishment range. That's why that punishment range is included in a guilty plea agreement because judges are the ultimate decider. They're the ones that can choose how they're going sentence an individual.

And then just one further comment on what Defense said about that Your Honor didn't take into consideration the fact that he was a juvenile, I was there for the sentencing and Mr. Sheets laid out a plethora of reasons as to why we ended up at this negotiation. A lot of which, I would say all of which, centered on the fact that he was a juvenile. Your Honor was there, Your Honor listened to that, Your Honor also listened to the victim speakers and listened to everything that occurred, so certainly that was taken into consideration.

To say that it's an illegal sentence because Your Honor didn't take it into consideration belies the record that was made at the sentencing, so I still maintain that there is no jurisdiction. The JOC has been filed, there was no juvenile jurisdiction; it's properly in adult court. There is certainly no speedy trial right violation after an individual has pled guilty, been sentenced. Not to mention the fact that their misconstruing speedy trial rights to begin with because there was an only an 87 delay in arraigning him once he was charged.

And the fact that we couldn't find him before that is because

he fled to Morocco, so that's not when it happens. It attaches when we have charged him and 87 days later, he was in court and moving forward with his case. There is not a *Doggett* issue, there is not a *Wingo* issue; there is not an *Inzunza* issue.

Beyond that, Your Honor, I would submit it on the pleadings.

THE COURT: All right. Thank you, Counsel.

All right. First off, I'm going to address the issue with regards to what was contemplated during the sentence so it's clarified for the record. I agree with Ms. Moors. All of the arguments relative to the age of the Defendant at the time of the offense was considered. Also, in this case, the Defendant's initial charges were six counts of sexual assault. And so part of the contemplation of the State in its plea agreement, and which would certainly affect sentencing, was amending those charges to an attempt sexual assault, which reduced the potential prison sentence that would be available to the Court.

And certainly the totality of the circumstances was considered by the Court at the time of sentencing. In addition to that, I believe in one of the arguments that was raised in the briefing is that the Court focused on the victim impact statement. And I want to make sure it's clear for the purposes of an appeal that the Court's determination as to the appropriate sentence was almost solely focused on the presentence investigation. And, therefore, I think there's a misapprehension as to what I was contemplating when I afforded the sentence.

Certainly, the victim impact is important, but it was not the majority of my decision, nor was it substantially persuasive as to what

the appropriate sentence was in this case. The presentence investigation report is what the Court was mainly focused upon in rendering an appropriate and just sentence.

That being said, NRS 176.017(1), the difference between adult and a child was contemplated. Certainly as an adult, the State may have amended the charges differently and the Court would have sentenced differently perhaps based on those initial charges. And in this case, the Defendant received the benefit of a sole attempt sexual assault charge, which substantially reduced the amount of time that he was facing.

And I will just acknowledge and I know I did at the time of sentencing, but again for purposes of a clear record, this Defendant sexually assaulted based on his admission of guilt and the documents that were provided in this case for a four month period on too many instances to even count. This is not an instance of children that were experimenting or something along those lines. This was victimization, repeated victimization, threats to the victim, and certainly time for cool off and reflection and determination as to whether or not he was going to continue with that behavior and he certainly did.

And so that is where the Court came to the determination as a fair and just sentence was the totality of the circumstances and what was raised in the presentence investigation, the lack of culpability or acknowledgment of the harm that the Defendant caused was more compelling to this Court and certainly the unwillingness to engage in sex offender rehabilitation.

And that is the factors in NRS 176.017(1), which is not just that he is a juvenile, but how rehabilitation would be effective. And in this case, I did not see that probation or any rehabilitation was going to be effective on this Defendant and that's why the Court rendered its decision. And I offer that today for clarification as clearly based on the motion itself how this Court reached its decision was misinterpreted by Defense counsel.

That being said, I agree with Ms. Moors, once the JOC is filed, the Court no longer has jurisdiction to preside over any of the defects that are -- have been alleged. And so I agree with Ms. Moors, I do not have jurisdiction to rule on any of those issues and so the motions are denied in that regard.

With regards to reconsideration of the sentence, I'm not going to grant that, but I will set forth for the purposes of appeal that even if I found there was a basis to reconsider, the same argument that's been laid out for why it should be reconsidered is what was presented at the time of sentencing. And so there's no new information, there's no intervening case law, there's nothing that's been presented to this Court at this time to show that the sentence is illegal, nor was the Court in error in rendering the decision as such. I feel that 4 to 10 years given the facts and circumstances of this case is quite lenient and so that's my determination.

I'll ask the State to prepare an order denying the motion on the jurisdictional grounds and I adopt the legal reasoning set forth by the State in its opposition.

MS. MOORS: Thank you, Your Honor.

MS. HELLMAN: Thank you, Your Honor.

THE COURT: Anything else on Zalyaul?

MS. HELLMAN: Nothing from the Defense

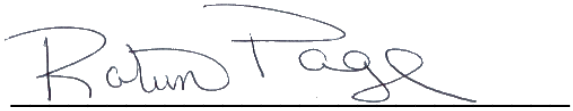
MS. MOORS: Not from the State, Your Honor.

THE COURT: All right. Thank you, counsel.

[Proceeding concluded at 2:18 p.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Robin Page
Court Recorder/Transcriber

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAMZA YALYAUL, #7091105

Defendant.

CASE NO: **C-21-354047-1**

DEPT NO: **XX1**

ORDER DENYING DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION TO RECONSIDER SENTENCE

It having come before this honorable court on August 3, 2021, the Defendant's Motion to Dismiss, or in the Alternative, Motion to Reconsider Sentence is denied. The Court finds that this Court has no jurisdiction over the instant case as the Defendant was sentenced on July 1, 2021, and a judgement of conviction was filed on July 7, 2021. The law clearly states that "only after a judgment of conviction is 'signed by the judge and entered by the clerk,' as provided by NRS 176.105, does it become final and does the defendant begin to serve a sentence of imprisonment." Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979); NRS 176A.100.

The Court further finds that the sentence imposed by the Court is a legal sentence as it falls within the penalty range for the crime that Defendant plead guilty to. Therefore, the Court would not be permitted to correct an illegal sentence in this matter as this sentence was legal. Furthermore, the Court finds that it considered all the factors as enumerated in NRS 176.017(1) with regards to the differences between juveniles and adults when Defendant was sentenced by this Court on July 1, 2021.

The Court also finds that this Court was acting within its proper authority when it sentenced Defendant. According to NRS 62B.330, and NRS 62B.335, Defendant was under

the age of 16 when he committed the instant offense and was over the age of 21 when he was apprehended by law enforcement, therefore Juvenile Court does not have jurisdiction as jurisdiction properly lays with the District Court.

The Court also finds that there is no speedy trial violation analysis as the Defendant waived his right to a trial and to a speedy trial as enumerated in his guilty plea agreement on page 5. Finally, this Court has heard nothing by way of argument from either party that would cause this Court to change the sentence that was imposed on July 1, 2021. Accordingly, the Defendant's Motion to Dismiss, or in the Alternative, Motion to Reconsider sentence is denied it its entirety in conformity with this order.

DATED this 4th day of August, 2021.

Dated this 4th day of August, 2021

788 D5C 3343 3C0A
Tara Clark Newberry
District Court Judge

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
LINDSEY MOORS
Chief Deputy District Attorney
Nevada Bar #012232

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DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-21-354047-1
vs	DEPT. NO. Department 21
Hamza Zalyaul	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada Plaintiff, vs. Hamza Zalyaul, Defendant.	Case No. C-21-354047-1 Dept. No. XXI **NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Defendant/Appellant, HAMZA ZALYAUL, hereby appeals to the Supreme Court of Nevada from the Judgment of Conviction in the above-referenced case entered on or about July 7, 2021.

DATED this 4th day of August, 2021.

/s/ Damian Sheets
Damian Sheets, Esq.
714 S. 4th Street,
Las Vegas, Nevada 89101
Telephone: (702) 988-2600
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of August, 2021 I served a true and correct copy of the foregoing **NOTICE OF APPEAL**, upon each of the parties by electronic service through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed envelope in the United States mail, Postage Pre-Paid, addressed as follows:

Clark County District Attorney's Office
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pdmotions@clarkcountyda.com

/s/ Alexis E. Minichini
An Employee of Nevada Defense Group