

IN THE SUPREME COURT OF THE STATE OF NEVADA

HANZA ZALYAUL,
Appellant,

v.

THE STATE OF NEVADA
Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 83334

PETITION FOR REHEARING

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JOHN AFSHAR, and submits this Petition for Rehearing pursuant to Rule 40 of the Nevada Rules of Appellate Procedure (NRAP). This pleading is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 27th day of December, 2022.

Respectfully submitted,

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

BY */s/ John T. Afshar*

JOHN T. AFSHAR
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Jurisdiction and Standard for Rehearing

Nevada Rule of Appellate Procedure 40(c)(2) permits this panel to rehear a decision:

- (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or
- (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

The State submits that the panel has overlooked, misapplied, or failed to consider controlling statutes, case law, and facts in its decision as outlined below. The panel's decision leads to devastating consequences based on a misapplication of NRS 62B, and needlessly divests any court of jurisdiction to hear claims for a subset of offenders. Moreover, the panel's holdings regarding NRS 62B.335 are unnecessary because the statute does not apply to this case and are based on a misapprehension of the statute.

A Petition for Rehearing is timely if filed within 18 days of the filing of the Court's decision unless the time is enlarged by order. NRAP 40(a)(1). This Petition for Rehearing is timely filed within the time granted by this Court's order issued December 13, 2022 (requiring the Petition to be filed by December 27, 2022.)

II. Legal Argument

A. The Panel Erred When It Held That The District Court Lacked Jurisdiction To Sentence Zalyaul

The panel held that both the juvenile court and the district court lacked jurisdiction over this matter. This holding is correct as to juvenile courts, but incorrect as to district courts.

District Courts of Nevada have original jurisdiction in all cases not otherwise provided for by law. Nev. Const. art 6, § 1; Moore v. Orr, 30 Nev. 458, 98 P. 398 (1908); State v. Barren, 128 Nev. 337, 341, 279 P.3d 182, 184 (2012). Juvenile courts *are* district courts, albeit with limited authority:

The district courts:

1. *To the extent specified in this title*, shall have and exercise jurisdiction in all proceedings conducted *pursuant to this title*; and
2. *When exercising jurisdiction pursuant to the provisions of this title*, shall be termed juvenile courts.

NRS 62B.300. Put differently, juvenile courts are district courts and have jurisdiction if, and only if, proceedings are conducted pursuant to “this title,” i.e. NRS Title 5, Juvenile Justice.¹ Indeed, a juvenile court has *exclusive* jurisdiction

¹ To avoid confusion, the remainder of this Petition will use the term “Juvenile Court” to mean exactly what the statute indicates – a district court operating pursuant to Title 5 of the NRS. “District Court” will, hereafter, be used to refer to a

“over a child” when the proceedings are conducted under Title 5. NRS 62B.310; NRS 62B.330.

The panel recognized, however, that the proceedings in the instant matter were not conducted under NRS 62B, nor presumably any other provision of Title 5. Jurisdiction is determined at the time a person is charged, not when the offenses were committed. Barren, 128 Nev. at 344–45. All critical jurisdictional questions, therefore, focus on the charging date, not the offense date or any status of the defendant on any prior date. The juvenile court lacked jurisdiction because Zalyaul was not charged until he was older than 21 years and was, therefore, not a “child” pursuant to NRS 62B.030 and, in turn, NRS 62A.030(1)(b). Zalyaul v. State, 138 Nev. Adv. Op. 74 (2022) at 2. Juvenile courts only have jurisdiction over “a child”, as defined by the statute. NRS 62B.310(1). (“If the juvenile court exercises jurisdiction *over a child*...”)(emphasis added.) The juvenile court also lacked jurisdiction for a second, related reason - jurisdiction in the juvenile court generally terminates whenever a delinquent child becomes 21. NRS 62B.410. Accordingly, if the juvenile court ever would have had jurisdiction over Zalyaul, it would have lost that jurisdiction prior to Zalyaul being charged. Because the juvenile court never had jurisdiction over Zalyaul, and would have lost it by the time he was charged even if it ever had, the proceedings against Zalyaul were not conducted

district court of Nevada operating under its constitutional grant of authority and *not* under NRS Title 5.

“pursuant to” NRS 62B or Title 5 generally and were, therefore, not conducted by Juvenile Courts. NRS 62B.300. Accordingly, NRS 62B.310’s grant of exclusive jurisdiction was never invoked.

NRS 62B carves out an exception to the district court’s authority, but only when the requirements of the statute are met. When the requirements of NRS 62B are not met, the district court retains “original jurisdiction in all cases,” including the instant case. Nev. Const. art 6, § 1. Accordingly, the panel correctly held that the juvenile court did not have jurisdiction, but erred in holding that the district court did not have jurisdiction.

B. The Panel’s Focus On Whether Zalyaul Committed A “Delinquent Act” Was Unnecessary and Erroneous

The panel held that “[n]otwithstanding the juvenile courts’ exclusive jurisdiction over delinquent acts, the State contends that if a juvenile has not been charged with delinquent acts by the time he or she turns 21, then those acts automatically transform into criminal offenses that may be prosecuted in the district court.” Zalyaul, 138 Nev. Adv. Op. at 3. Respectfully, the panel misapprehended the State’s argument.

“Delinquent acts” are, like the juvenile courts themselves, a creation of statute and simply describe charges that occur in juvenile courts. “Delinquent acts” are not found outside of NRS 62B, which, for the reasons explained in Section A,

supra, is inapplicable to this case. Zalyaul was not charged via a delinquency petition, or with delinquent acts, but rather was charged via criminal complaint (and later, by Information) with *crimes*. 1 AA 8-9; 1 RA 1-2. The Panel seems to suggest that Zalyaul's age when he committed those crimes transformed his actions from crimes into "delinquent acts," but this is contrary to statute. No provision of NRS 62B is relevant if the statutory power of NRS 62B (and, accordingly, the juvenile court's jurisdiction) is not obtained initially. And if NRS 62B is not implicated, there can be no "delinquent acts" that were committed. Rather, statute explicitly states that Zalyaul was capable of committing "crimes" even when he was somewhat older than 14:

NRS 194.010 Persons capable of committing crimes. All persons are liable to punishment except those belonging to the following classes:

1. Children under the age of 8 years.
2. Children between the ages of 8 years and 10 years, unless the child is charged with murder or a sexual offense as defined in NRS 62F.100.
3. Children between the ages of 8 years and 14 years, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness.
4. Persons who committed the act charged or made the omission charged in a state of insanity.
5. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent, where a specific intent is required to constitute the offense.
6. Persons who committed the act charged without being conscious thereof.
7. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence.

8. Persons, unless the crime is punishable with death, who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to believe, and did believe, their lives would be endangered if they refused, or that they would suffer great bodily harm.

Zalyaul does not fall into any of the categories exempted from those capable of committing crimes. He was not under the age of 8 years, nor even “between the ages of 8 years and 14 years” such that any greater proof of knowledge was required. He is, rather one of “all persons” who are liable to punishment. NRS 194.020 further emphasizes that he is liable for punishment as “[a] person who commits in the State any crime, in whole or in part.” NRS 194.020(1). Zalyaul was capable of committing crimes as a 14-year-old, was charged with committing crimes, admitted to committing crimes, was liable for punishment for committing those crimes, and was sentenced pursuant to the NRS for committing those crimes. No portion of that was in error.

C. The Panel’s Concern Regarding NRS 62B.335 Is Misplaced

For the reasons just explained, the provisions of NRS 62B do not apply to this case, and the State did not argue that delinquent acts “turn into” crimes when a person subject to NRS 62B turns 21. However, no portion of this case implicates NRS 62B.335 or, as the panel suggested, “eviscerates it.” Zalyaul, 138 Nev. Adv. Op. at 3. NRS 62B.335 extends a juvenile court’s jurisdiction under limited

circumstances, for specific purposes, but does not implicate the arguments made in the Answering Brief or in this Petition.

NRS 62B.335 is conjunctive and requires a very specific set of circumstances to be invoked. First, a person must be “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.” NRS 62B.335(1)(a). The delinquent act charged must “have been a category A or B felony if committed by an adult.” NRS 62B.335(1)(b). Law enforcement must identify the person as having committed the delinquent act “before the person reaches 21 years of age,” but the person must not be apprehended by law enforcement until “after the person reaches 21 years of age.” NRS 62B.335(1)(c)-(d).

These requirements further assume that the juvenile court has jurisdiction in the first place – namely that a “child” is charged with the commission of a delinquent act before they are 21. If, and only if, all of these requirements are met, the juvenile court’s jurisdiction is extended for a limited purpose. The juvenile court is permitted (and required) to “conduct a hearing to determine whether there is probable cause to believe that the person committed a delinquent act.” NRS 62B.335(2). If probable cause does not exist, then the juvenile court must “dismiss the charges and discharge the person.” NRS 62B.335(3). If, however, the juvenile court determines that probable cause *does* exist, then it may choose to (subject to

certain criteria) dismiss the charges anyway *or* “[t]ransfer 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.” NRS 62B.335(4)(a)-(b). In essence, the juvenile court may bind over the delinquent acts to the district court to be prosecuted as crimes – an instance where delinquent acts are “transform[ed] into criminal offenses that may be prosecuted in the district court” in some sense, or a recognition that offenses committed by a minor are “delinquent acts” if, and only if, prosecuted in juvenile court but are crimes if prosecuted in district court. Zalyaul, 138 Nev. Adv. Op. at 3.²

NRS 62B.335 allows the juvenile court to determine whether probable cause exists if a child within a certain age range is identified by law enforcement and charged with delinquent acts before he or she turns 21, but who is not apprehended until after they are 21. If probable cause exists, the juvenile court may send the

² The concept that “delinquent acts” in juvenile court “turn into crimes” in district court is supported elsewhere in Title 5 as well. For instance, NRS 62A.030(2)(b) & (c) state, respectively, that a “Child” is neither “A person who is transferred to the district court for criminal proceedings as an adult pursuant to NRS 62B.335,” nor “[a] person who is certified for criminal proceedings as an adult pursuant to NRS 62B.390 or 62B.400.” In both instances a juvenile court would have initially obtained jurisdiction over a “child” (in both the common and statutory senses) who committed what would have been delinquent acts if prosecuted in juvenile court. When the person is either “transferred to” or “certified for” the district court, however, what would have been delinquent acts are prosecuted in district court “for criminal proceedings.” Not only can delinquent acts transform into criminal proceedings, but a defendant so transferred or certified is transformed into something other than a “child.”

person to district court for adjudication or, if circumstances permit, dismiss the case. It permits the juvenile court to resolve pending delinquency petitions where the child was identified and charged while the juvenile court had exclusive jurisdiction over the child, but not apprehended until after the juvenile court would ordinarily lose jurisdiction. It allows a juvenile court to clear its docket by resolving the case through dismissal or transfer to the district court. But NRS 62B.335 has nothing to say about what happens when a person is *not* charged with a delinquent act, or who is otherwise not within the juvenile court's exclusive jurisdiction and control. The instant matter does not "eviscerate" NRS 62B.335 because it does not even implicate the statute, and finding that the district court had jurisdiction to hear, adjudicate, and sentence a person charged with crimes *after they turned 21* will have no effect whatsoever on NRS 62B.335. Accordingly, the panel erred when it held that the statutory and legislative history demonstrated that the Legislature intended the district court to lack jurisdiction over delinquent acts. NRS 62B.335, instead, grants juvenile courts additional jurisdiction in certain circumstances, but only to either dismiss the case or transfer the case *to a district court* for further proceedings.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Panel withdraw its prior Opinion and issue a new opinion or order affirming Zalyual's

Judgment of Conviction.

Dated this 27th day of December, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this petition complies with the type-volume limitations of NRAP 40 or 40A because it is proportionately spaced, has a typeface of 14 points and contains 2,256 words and 201 lines of text.

Dated this 27th day of December, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 27, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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