

No. 83621

IN THE NEVADA SUPREME COURT

B. Joshua W-A, a Minor,

Appellant,

v.

State of Nevada,

Respondent.

Electronically Filed
Feb 9 2022 12:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Direct Appeal from an Order of the District Court
Juvenile Division for Certification of Adult Status
Eighth Judicial District Court
Honorable David Gibson Jr., District Court Judge
District Court Case No. J-21-353445-D1

**Appellant's Motion for Extension of Time to File Opening
Brief and Appendix (First Request)**

JoNell Thomas
State Bar #4771
Special Public Defender
W. Jeremy Storms
State Bar #10772
Chief Deputy Special Public Defender
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(702) 455-6265
Attorneys for Appellant Byron W-A

POINTS AND AUTHORITIES

This is an appeal from a certification of a juvenile for adult criminal proceedings pursuant to NRS 62B.390.

The Certification Order was filed September 21, 2021. The Notice of Appeal was filed October 16, 2021.

The Opening Brief is due February 10, 2022. Based on the reasons set forth in the declaration attached hereto, counsel for Appellant is requesting an extension of time to file the Opening Brief. This is Appellant's first request for an extension of time.

It is respectfully requested that this Court grant this initial request for a continuance of 30 days for Appellant to file the Opening Brief and Appendix, up to and including March 12, 2022.

The State initiated delinquency proceedings against Joshua on September 3rd, 2021. On or about that day, he was appointed Edward Miley as his attorney. Joshua was certified for adult criminal proceedings on September 21, 2021, based upon five counts of LEWDNESS WITH A CHILD UNDER THE AGE OF 14. The glaring issue in the State's prosecution of Joshua as an adult is that they sought and obtained approval to certify him for adult proceedings on charges for

which a person under the age of 18 may only be adjudicated delinquent and may not be certified as an adult.

A plain reading of the underlying statute, NRS 201.230, readily demonstrates that juveniles are not subject to the felony penalties ascribed to adult violations of the law and therefore they may not be certified for adult proceedings as delinquency proceedings are the exclusive forum available for juvenile violators. Moreover, the rules of statutory construction and legislative history confirm that it was the legislatures' intent that the behavior of juveniles who commit lewdness with a child under the age of 14 should be sanctioned as acts of delinquency. The District Court held, however, that its power to certify juveniles for adult criminal proceedings under NRS 62B.390 are not limited by the language contained in NRS 201.230. Honorable David Gibson Jr. found that language of NRS 201.230 merely "stated the obvious" procedural truism that an allegation against a juvenile is considered an act of delinquency until the court certifies the child for adult proceedings and that arguments to the contrary are "absurd."

This serious legal error was not raised in Joshua's original certification proceedings by Mr. Miley. Subsequently, pursuant to NRS

62B.390(5)(c), Honorable David Gibson, Jr. was petitioned to reaccept jurisdiction of the matter because of the exceptional circumstance of the court certifying Joshua for charges that may not be lawfully certified. The juvenile court denied Joshua's petition under NRS 62B.390(6)(c) and subsequently certified him for adult proceedings based upon the reasoning stated above. Through delay in a subsequent investigation, Joshua was eventually re-certified for adult proceedings at the conclusion of a hearing on February 3rd, 2022, with the addition of further charges. An order memorializing this second certification was filed on February 9, 2022.

NRS 62D.310 mandates juvenile courts to make final dispositions no later than 60 days after the date on which the petition is filed in a case. The district court's illegal order in this matter has delayed proceedings far past the mandatory time-period. Accordingly, Joshua requests this court extend the time for the filing of the initial brief in this case for 30 days so that he may perfect a notice of appeal for the further proceedings that have occurred in juvenile court under the same case number and move to consolidate that appeal of the subsequent hearing and certification with the instant appeal. Counsel seeks to consolidate

the appeal of the certification order issued on February 9th with this matter as the substantive issues in the case were developed after the original filing of appeal. It's Joshua's intent to file a motion pursuant to NRAP 27(e) seeking relief in less than 14 days with the notice of appeal from the second certification as this juvenile matter should have resulted in a disposition months ago.

NRAP 31(b)(3)(B) sets forth in pertinent part:

A motion for extension of time for filing a brief may be made no later than the due date for the brief.....

(B) ...The court will grant an initial motion for extension of time for filing a brief only upon a clear showing of good cause. The court shall not grant additional extensions of time except upon a showing of extraordinary circumstances and extreme need.

CONCLUSION

Based on the Declaration attached hereto, Appellant B. Joshua W-A, a Minor, requests the Court grant his motion for an extension of time

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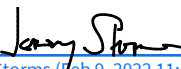
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to file the Opening Brief and Appendix, up to and including March 12, 2022.

DATED this 9th day of February, 2022.

Respectfully submitted,

JoNell Thomas
Special Public Defender


Jeremy Storms (Feb 9, 2022 11:59 PST)

W. Jeremy Storms
Chief Deputy Special Public Defender

DECLARATION OF W. JEREMY STORMS

W. JEREMY STORMS, hereby declares as follows:

1. That I am an attorney duly licensed to practice law in the State of Nevada, and the deputy with the Clark County Special Public Defender's office assigned to represent B. Joshua W-A, a Minor on his appeal from the Order certifying him as an adult from juvenile court case number J-21-353445-D1.

2. I also represent B. Joshua W-A in the criminal case as a result of certification proceedings, Case No. 21CR043382.

3. On August 26, 2021, B. Joshua W-A was arrested and held in a juvenile detention facility for allegations that he committed five counts of LEWDNESS WITH A CHILD UNDER THE AGE OF 14 upon two children, C.W. and Z.W.

4. A delinquency petition was filed on September 2nd, 2021, and a Certification Petition was filed on September 3rd, 2021. Attorney Ed Miley was appointed to represent B. Joshua W-A. After a hearing held on September 16, 2021, Joshua was certified for adult criminal proceedings.

5. On September 21st, 2021, Joshua was arraigned in Justice Court and appointed an attorney from the Public Defender. On October 6th, the Public Defender filed a timely notice of appeal from the “Certification to Adult Status Order” entered on September 21, 2021.

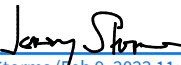
6. On October 21st, 2021, the Public Defender filed a Motion to Withdraw from the representation of Joshua in this appeal. Previously, that office had successfully withdrawn from representing Joshua in the underlying criminal proceedings and counsel, Jeremy Storms, had been appointed. Counsel also filed a notice of appearance as counsel of record with the Court.

7. On November 5th, 2021, the Court allowed the Public Defender to withdraw and appointed counsel as the attorney of record.

8. That the Opening Brief and appendix are due February 10, 2022.

I declare that I make this request in good faith and not for purposes of delay.

Dated: 2/9/2022


Jeremy Storms (Feb 9, 2022 11:59 PST)

W. Jeremy Storms
Chief Deputy Special Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, a copy of the Appellant's Motion for Extension of Time to File Opening Brief and Appendix (First Request) (Expedited Consideration Requested) was served as follows:

By Electronic Filing to

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701

/s/ Kathleen Fitzgerald

An Employee of the
Special Public Defender