

ORIGINAL

No. 83621/84276

IN THE NEVADA SUPREME COURT

B. Joshua W-A, a Minor,

Appellant,

v.

State of Nevada,

Respondent.

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

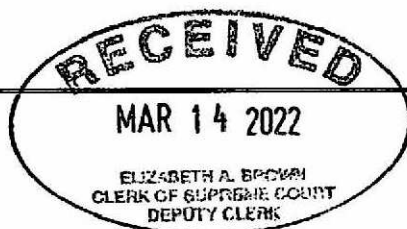
Emergency Motion Under NRAP 27(e)
(NRS 62D.310 mandates this juvenile matter should have had a final
disposition no later than 60 days after September 1, 2021)

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FILED

MAR 14 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK



22-07982

NRAP 27(e) Certificate

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 (Joshua) on his appeal from the Order certifying him as an adult from juvenile court case number J-21-353445-D1.

2. This appeal, for which emergency consideration is requested, is from a certification of a juvenile for adult criminal proceedings pursuant to NRS 62B.390.

2.1. This matter was first certified for adult proceedings on September 21, 2021. A timely notice of appeal was filed October 16, 2021 and assigned case number 83621 with an Opening Brief due on February 10, 2022. A motion for an extension of time to file the Opening Brief was filed on February 9, which also alerted the Court that it was the appellant's intent to ask that this appeal be decided in an expedited manner pursuant to NRAP 27(e). The motion was granted, and the Opening Brief due date was set back to March 14, 2022.

2.2. A second certification for adult proceedings order was filed on February 9, 2022. A timely notice of appeal was filed and the appeal of the second certification was assigned Supreme Court case number 84276.

2.3. This Court granted Joshua's motion to consolidate the two cases on March 3, 2022, maintaining the Opening Brief due date of March 14, 2022.

3. Expedited consideration of the instant motion is requested for the following reasons:

3.1. Joshua was taken into custody by law enforcement on August 26, 2021. The State initiated delinquency proceedings against Joshua on September 1, 2021. 1 ROA 1-3. 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. 1 ROA 100-02. 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.

3.3. 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. 1 ROA 120-125. 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. Id.; 2 ROA 249-53.

3.4. 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. 1 ROA 108-27. The juvenile court denied Joshua's petition under NRS 62B.390(6)(c) and subsequently certified him for adult proceedings yet again.

3.5. In so doing, the district court found 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(5) which states that “(a) person who is under the age of 18 years and who commits lewdness with a child under the age of 14 years commits a delinquent act” was a redundancy in the law. He held that 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. 1 ROA 206. The court otherwise stated that its authority is such that “I believe to be in my discretionary powers under certification to have any—any delinquent act that I deem needing to be heard by a criminal court—by a—by—cri—in a criminal context by an adult court. I—I think it applies to anything that can be charged in my dependency court; and if I’m wrong, I’m happy to be told I’m wrong.” 2 ROA 267.

3.6. 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. 2 ROA 275-81.

3.7. 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. Joshua is currently being housed in the adult facility of the Clark County Detention Center facing multiple life-sentences and as of March 10, 2022, has spent 196 days in custody.

3.8. The next court date schedule for Joshua is a status check in Justice Court 14 on March 30, 2022. The date itself is not of consequence. What compels action is that this matter should have remained in juvenile court and by law should have had a final disposition no later than October 31, 2021.

4. On February 4, 2022, counsel informed Alex Chen, of the Appellate Division of the Clark County District Attorney as well as Tanner Sharp, counsel handling the case in the Juvenile Division of the District Attorney's office, of the intent to file the opening brief on an emergency basis pursuant to NRAP 27(e).

4.1. On February 9, 2022, counsel was informed that Jonathan VanBoskerck will be handling this appellate matter for the State. He

was informed of Joshua's intent to file under NRAP 27(e) at that time. The State will be served with copies of all pleadings by mail and will also be provided courtesy copies of this motion, as well as the Opening Brief, electronically at the time these same materials are mailed to the Court.

4.2. Mr. VanBoskerck's phone number is: (702) 671-2794; Mr. Chen's number is (702) 671-2755. The mailing address for both gentlemen is: Clark County District Attorney's Office, Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada 89155.

5. All grounds advanced in support of this motion were submitted to the district court.

CONCLUSION

Based on the NRAP 27(e) Certification attached hereto and the Opening Brief, Appellant B. Joshua W-A, a Minor, requests the Court

...

...

grant his request to have his appeal reviewed on an emergency basis pursuant to NRAP 27(e).

DATED this 11th day of March, 2022.

Respectfully submitted,

JoNell Thomas
Special Public Defender



W. Jeremy Storms
Chief Deputy Special Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2022, a copy of the

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was served by U.S. mail, first class, postage affixed, mailed to the following:

Alexander Chen, Esq.
Jonathan VanBoskerck, Esq.
District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155



An Employee of the
Special Public Defender