IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROBERT BONETTI, Petitioner, v. THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, THE HONORABLE KIMBERLY WANKER DISTRICT COURT JUDGE, Respondent, and THE STATE OF NEVADA Real Party in Interest	)	No. _____ (District Ct. No. C-0009595)

Electronically Filed
Oct 15 2021 03:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR WRIT OF MANDAMUS/PROHIBITION

RONNI N. BOSKOVICH
Boskovich Law Group, PLLC
3190 S. Highway 160, Suite H
Pahrump, Nevada 89048

Attorney for Petitioner

CHRIS ARABIA
Nye County District Attorney
PO Box 39
Pahrump, Nevada 89041

THE HONORABLE
KIMBERLY WANKER
1520 E. Basin Ave. #105
Pahrump, Nevada 89060

Docket 83634 Document 2021-29729

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROBERT BONETTI, Petitioner, v. THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, THE HONORABLE KIMBERLY WANKER DISTRICT COURT JUDGE, Respondent, and THE STATE OF NEVADA Real Party in Interest	)	No. _____ (District Ct. No. CR0009595)

PETITION FOR WRIT OF MANDAMUS/PROHIBITION

COMES NOW the Petitioner, JAMES ROBERT BONETTI, by and through his attorney, Public Defender RONNI N. BOSKOVICH, ESQ. of BOSKOVICH LAW GROUP, PLLC, and respectfully petitions this Honorable Court to direct the trial court to accept the Defendant's plea of guilty.

///

///

///

This Petition is based upon the Memorandum of Points and Authorities; the Amended Criminal Complaint; the Information; Transcripts from July 24, 2019, September 13, 2019, November 15, 2019, December 13, 2019, July 17, 2020, September 4, 2020, and September 18, 2020; the fully negotiated and agreed upon Guilty Plea Agreement and Superseding Guilty Plea Agreement; and any argument this Honorable Court may request or allow at a hearing for the Writ.

DATED this 14th day of October, 2021.

NYE COUNTY PUBLIC DEFENDER

By
RONNI N. BOSKOVICH, ESQ.
BOSKOVICH LAW GROUP, PLLC
Nevada Bar No. 14484

NOTICE OF PETITION FOR WRIT OF MANDAMUS/PROHIBITION

TO: The Honorable Judge Wanker; and

TO: Nye County District Attorney, its Attorneys;

RONNI N. BOSKOVICH, ESQ. of the law firm BOSKOVICH LAW GROUP, PLLC, Public Defender for Defendant/Petitioner, JAMES ROBERT BONETTI, hereby gives notice of intent to petition the Supreme Court of Nevada for a Writ of Mandamus/Prohibition regarding the District Court's improper rejection of a negotiated plea deal in the above-captioned matter.

DATED this 14th day of October, 2021.

NYE COUNTY PUBLIC DEFENDER

By

RONNI N. BOSKOVICH, ESQ.
BOSKOVICH LAW GROUP, PLLC
Nevada Bar No. 14484

NRAP 26.1 DISCLOSURE OF PETITIONER'S COUNSEL, RONNI N. BOSKOVICH, ESQ.

RONNI N. BOSKOVICH, ESQ., Attorney for Petitioner, JAMES ROBERT BONETTI, in compliance wither her obligations imposed by NRAP 26.1 hereby makes the following statements for consideration by the court:

1. BOSKOVICH LAW GROUP, PLLC is a professional limited liability company, wholly owned by the undersigned attorney, Ronni N. Boskovich, Esq.
2. There are no parent corporations or publicly traded corporations who own stock in the law firm Boskovich Law Group, PLLC, as the undersigned is the sole stockholder and owner of the subject corporation.
3. To the best of my knowledge, the undersigned, RONNI N. BOSKOVICH, ESQ. of BOSKOVICH LAW GROUP, PLLC is the only attorney and law firm or corporation that has appeared for Petitioner, JAMES ROBERT BONETTI, in this petition matter.
4. The only exception to the above would be Carl Joerger, Esq., Mr. Bonetti's original court appointed counsel in his capacity as a Nye County Public Defender.

///

///

5. These representations are made in order that the judges of this Court may evaluation possible disqualification or recusal.

NYE COUNTY PUBLIC DEFENDER

By
RONNI N. BOSKOVICH, ESQ.
BOSKOVICH LAW GROUP, PLLC
Nevada Bar No. 14484

AFFIDAVIT OF RONNI N. BOSKOVICH

STATE OF NEVADA)
) ss:
COUNTY OF NYE)

RONNI N. BOSKOVICH, being first duly sworn, deposes and says:

1. That affiant is an attorney duly licensed to practice law in the State of Nevada and is the Public Defender assigned to represent the Defendant/Petitioner, James Robert Bonetti, in this matter.

2. That the Petitioner, James Robert Bonetti, authorized affiant to file the instant Petition for Writ of Mandamus.

3. That the instant petition springs from the District Court's inappropriate and unlawful rejection of a negotiated Superseding Guilty Plea Agreement contrary to Nevada law under *Sandy v. State* and *Sparks v. State*.

4. That after extensive, careful, and thorough negotiations, Petitioner and the State entered into a Superseding Guilty Plea Agreement whereby Petitioner agreed to plead to two (2) counts of Possession of Child Pornography in exchange for (1) cooperation with the State in the prosecution of Co-Defendant William Butler, and (2) dismissal of the remaining counts in District Court Case No. CR0009595 and Pahrump Justice Court case number 18CR04800.

5. That on September 4, 2020, Nye County District Court Judge Kimberly Wanker indicated she was not inclined to accept the negotiation due to the dismissal of the Category A felonies.

6. That on September 18, 2020, the parties argued their reasoning for the negotiation, and stated to Judge Wanker the negotiation was due to: (1) Petitioner's promise to cooperate with the prosecution of Co-Defendant William Butler; (2) Petitioner's lack of criminal history; (3) the reluctance of the alleged victim to testify in Co-Defendant Butler's case; and (4) significantly less evidence against Petitioner compared to the Co-Defendant.

7. That despite the arguments of the parties on September 18, 2020, Judge Wanker rejected the plea agreement, citing an abuse of prosecutorial discretion, because of the negotiated dismissal of the Category A felonies, which is improper under the legal standard for rejecting a Guilty Plea Agreement set out by the Nevada Supreme Court in *Sandy v. State*, 113 Nev. 435, 935 P.2d 1148 (1997).

8. That as a result of the rejection of the plea agreement, Judge Wanker set a trial date for Petitioner, despite there being no preliminary hearing to establish probable cause on the Category A felonies, or any of the other charges in the Criminal Complaint.

9. The instant writ follows.

/ / /

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief. NRS 53.045.

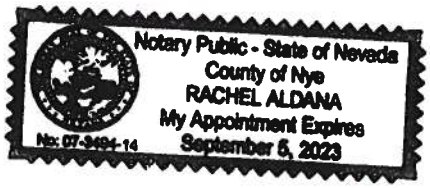
DATED this 14th day of October, 2021.

NYE COUNTY PUBLIC DEFENDER

By _____
RONNI BOSKOVICH, ESQ.
BOSKOVICH LAW GROUP, PLLC
Nevada Bar No. 14484

SUBSCRIBED and SWORN to before me
This 14th day of October, 2021.

_____
NOTARY PUBLIC in and for said
County and State NV
Nye



POINTS AND AUTHORITIES

ROUTING STATEMENT

Pursuant to NRAP 17, this matter does not fall in one of the categories of cases retained by the Supreme Court, nor does this matter fall into one of the categories of cases presumptively assigned to the Court of Appeals. This matter should stay with the Supreme Court because if this matter goes to trial and Petitioner is convicted, Petitioner will be convicted of Category A felonies. Appeals from judgment of convictions based on a jury verdict for Category A felonies are not presumptively assigned to the Court of Appeals; therefore, this matter should be retained by the Supreme Court. *See* NRAP 17(b)(2)(A).

RELIEF SOUGHT

Petitioner requests a Writ of Mandamus consistent with the Nevada Supreme Court's ruling in *Sandy v. State* and *Sparks v. State* requiring the District Court to accept the Superseding Guilty Plea Agreement.

STATEMENT OF THE ISSUES

After the State presents legitimate prosecutorial reasons for a plea negotiation, does the District Court have the ability to reject a defendant's negotiated plea of guilty based on the charges to be dismissed pursuant to the negotiation?

///

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Petitioner was originally charged by way of an Amended Criminal Complaint in the Pahrump Justice Court. 1 App. 1-7. The Amended Criminal Complaint, filed in the Pahrump Justice Court on July 15, 2019, alleges that the Petitioner committed the following offenses between May 30, 2018, and September 6, 2018:

COUNT 1: Possession of Child Pornography

COUNT 2: Promotion of Sexual Performance of a Minor (under the theory of aiding and abetting)

COUNT 3: Use of Minor in Producing Pornography or as Subject of Sexual Portrayal in Performance (under the theory of aiding and abetting)

COUNT 4: Preparing, Advertising, or Distributing Materials Depicting Pornography Involving Minor (under the theory of aiding and abetting)

COUNT 5: Sexual Assault with a Child Under Sixteen (under the theory of aiding and abetting)

COUNT 6: Sexual Assault with a Child Under Sixteen (under the theory of aiding and abetting)

COUNT 7: Lewdness with a Child Under Sixteen Years of Age

1 App. 1-5.

Additionally, that between January 1, 2017, and October 11, 2017, Petitioner is alleged to have committed the following offense:

COUNT 8: Lewdness with a Child Under Fourteen Years of Age (under the theory of aiding and abetting)

COUNT 11: Sexual Assault with a Child Under Fourteen (under the theory of aiding and abetting).

1 App. 5-6.

Additionally, that between January 1, 2017, and September 6, 2018, Petitioner is alleged to have committed the following offenses:

COUNT 9: Statutory Sexual Seduction (under the theory of aiding and abetting)

COUNT 10: Using Tech to Lure Child (under the theory of aiding and abetting)

1 App. 5-6.

Additionally, that between October 11, 2015, and October 10, 2017, Petitioner is alleged to have committed the following offenses:

COUNT 12: Sexual Assault with a Child Under Fourteen

1 App. 7.

On July 24, 2019, Mr. Bonetti appeared in the Pahrump Justice Court and unconditionally waived his right to a preliminary hearing and placed the agreed upon negotiations on the record. *See* 1 App. 132-139. Counsel for Mr. Bonetti and the District Attorney stated on the record as follows:

> Ms. Boskovich: Today Mr. Bonetti will be pleading guilty to two counts of possession of child pornography, a Category B one to six on each of those counts. At the time of sentencing both parties will have the right—will retain the right to argue. All other counts against Mr.

> Bonetti will be dismissed and no additional charges will be filed. 1 App. 133.
> Mr. Vieta-Kabell: That encompasses both cases. We have a pair of cases here, 18CR08400 as well as 4644. And the only thing I will add is that I will include language in the guilty plea about waiving factual defects, because *there are multiple issues coming both ways*. One, we are giving the benefit to the defendant by charging two separate counts, each as a first offense, and also we believe that we can allege it just fine factually because we have a theory of aiding and abetting and we have images on two different devices, both Mr. Bonetti's and Mr. Butler's...We want to make it clear for any future review that, you know, factually it's two different devices. We're going under aiding and abetting, but even if it were to come back and be misconstrued and misunderstood as two images on just Mr. Bonetti's device, that he is waiving the factual defect in order to secure the benefit of the reduced charge. 1 App. 133-34.

The Justice Court confirmed Mr. Bonetti would be pleading to the two counts as laid out by both parties, and the remaining counts would be dismissed. 1 App. 134-35. The Court then admonished Mr. Bonetti about the plea and bound the matter over to Department 1 of the Fifth Judicial District Court for arraignment. 1 App. 135-37.

An Information was filed with the District Court on August 5, 2019, charging Mr. Bonetti with two counts of Possession of Child Pornography, First Offense. 1 App. 24-27. Mr. Bonetti first appeared for Arraignment in District Court on September 13, 2019; however, there were a few issues with the proposed Guilty Plea Agreement that needed to be corrected, so Petitioner's counsel asked for a continuance. *See* 1 App. 43-50.

Mr. Bonetti again appeared for arraignment on November 15, 2019. *See* 1 App. 51-65. An executed Guilty Plea Agreement was filed at this hearing, as well. *See* 1 App. 10-23. At this time, Judge Kimberly Wanker indicates a clear distaste for the negotiation, specifically with regards to the charges pending dismissal. She acknowledges her position is based on nothing more than the preliminary hearing of the Co-Defendant:

> The Court: Okay. The next question I have is, I have the co-defendant in this case, and I read everything. And we're charging two Category B felonies. I'm just going to ask—the question I—originally there were multiple counts. There were—the criminal complaint, although—there were ten different counts. And we're pleading them down, including we're dropping a Category A felony down.
>
> So I just would like someone to explain to me—I mean, I read the facts of the case. There's a sexual assault with a child under 16, a Category A felony, and we're dropping him down to these probationable offenses. So I'd like to know why we're doing that. In fact, lewdness with a child under 14 years of age, which is also a Category A felony. I'm just trying to get some clarification on why we're doing this.
>
> Because basically—and I mean, if I understand the facts of the case correctly, and I understand that these are allegations, not saying that this occurred. But they're allegations that Mr. Bonetti and his partner engaged in a threesome with a minor on multiple occasions. That the minor had an affair, sexual relationship, with two adults.
>
> [Nye County Deputy District Attorney Don] Chairez: Are you asking me or Ms. Boskovich?
>
> The Court: No, I'm asking you. You're the DA. That's why I'm asking. And they were alleged—there's alleged sexual assaults because

> obviously they were having sex. And so—and the child is a minor. So I'm asking—the question I have is, why are we pleading them down to this child pornography? Because it really—from my understanding of the case and the facts, are that it was much more, like, the minor was participating in sexual activities with two adults. As a threesome. 1 App. 53-54.

Summarily, Mr. Chairez explains he was not the original attorney on the case, and he could not contact that attorney for explanation. 1 App. 54-56. The Court continues the matter to hear an explanation for the dismissal of the Category A charges. 1 App. 64

Mr. Bonetti's case was on the District Court calendar again on December 13, 2019. *See* 1 App. 66-70. At this hearing, Judge Wanker reraised a concern about the legality of Mr. Bonetti pleading to two counts of possession of child pornography, ultimately leading to another continuance in the arraignment hearing. Id.

On July 17, 2020, Mr. Bonetti's case came before the District Court again after a delay based on the filing of a Writ of Habeas Corpus in the Co-Defendant's case. *See* 1 App. 71-90. Judge Wanker again expresses her displeasure with the dismissal of the charges, but this time laid bare an intention to overstep the boundary between judicial and prosecutorial discretion. Id.

> The Court: [T]he question I have is, these are co-defendants, we've got co-defendants…I have a hard time with the State—I think all co-defendants should be treated the same. I don't think one should—a reduction should come from one on counts where the other one—I see a lot of inconsistency—what I call inconsistencies. 1 App. 73-74.

...

> The Court: My question is, these were Category A felonies. I mean, I've looked at—these were pretty—I'll be honest with you. I am shocked that both of them are out of custody on an own recognizance release for as serious as these charges are. I mean that was the first thing that was amazing to me.
>
> I tried to familiarize myself with the files. Obviously—and I have asked about that. Wow, what are we doing here? You know, to me, I—these are pretty serious allegations. Notice how I said allegations. You're innocent until one of two things, either you admit your guilt, or if and only if a jury of your peers and all 12 of them find you guilty. 1 App. 74.

A third District Attorney appeared on behalf of the State that day, Chief Criminal Deputy Kirk Vitto. Id. Mr. Vitto made no representations regarding the negotiation. Id. Again, the Court continued the matter for the State to put its reasoning for dismissing the Category A felonies on the record. 1 App. 89.

On September 4, 2020, the parties filed a Superseding Guilty Plea Agreement meant to satisfy Judge Wanker's concerns regarding reasoning for the negotiation. *See* 1 App 28-42. After wanting more time to review this Superseding Guilty Plea Agreement, Judge Wanker continued this case again. 1 App. 97-100.

Finally on September 18, 2020, the District Court heard the parties regarding the State's reasoning behind offering the negotiations. *See* 1 App. 102-131. Before hearing any statements from the District Attorney, Mr. Vitto, Judge Wanker again expresses displeasure in a prosecutorial decision under veil of trying to coax the

State to provide an acceptable reasoning for the negotiations and acceptance of the Superseding Guilty Plea Agreement.

> The Court: ...Now, we've got this—there were more requirements for Mr. Bonetti, he has to testify against Mr. Butler. But that wasn't part of the original deal. That wasn't the reason we dropped this case from Category A felonies down to Bs.
>
> And I go back to the fact that I just—I'll be honest with you, I don't see this case like everybody else does. I'm not trying to substitute my judgment for the judgment of the DA's office, trust me...It just seems to me that the deal was offered, and we haven't had a sufficient explanation as to why the deal was offered that was offered, to the drop down of these charges.
>
> And now we're trying to get me to take it by adding some more teeth to it, but we're modifying the deal. And I'm still back on—I'm still hung up with...Why are we dropping this—there's—dropping it down to child pornography? 1 App. 104-05.

Finally, Judge Wanker allows Mr. Vitto to explain the prosecution's basis for the dismissal of the Category A charges. He puts forth a lengthy, reasoned, thoughtful, informed argument regarding the nuances of the case, and a prosecutor's duty, struggles, reality, and thought process while trying to prove a sexual assault case.

> Mr. Vitto: It's a very difficult dynamic to navigate and maneuver. There are competing loyalties, emotions, there is—time goes by. There's fading memory, there's fact check memory. Little kids trying to come to grips and describe or explain concepts that are clearly and obviously beyond their canon.
>
> The victim in this case is not as young as [a prior case's] victims, but still, they lack so often the mental, physical, emotional tools

and sexual sophistication to be able to relate to situations they find themselves, oftentimes beyond their control within.

And unfortunately, that's the reality of why many of these cases are dealt in the fashion they are. Some cases we're able to reach reasonable resolutions. Some cases, the defendant says pound sand. You ain't got nothing. Prove it. And I've been told that many times. And then you just get quiet and get busy.

Sometimes as these cases are negotiated I have a cost benefit analysis approach. What can I live with? What can't I live with? Can I live with this? Can I live with an acquittal? I don't know what's going to happen with that victim on the stand.

Judge, I've never presided over a case in my life. And I appreciate the extremely important and difficult responsibility that you have. And I'm glad you care. As a prosecutor, I certainly would not want to be before a Court that didn't care or was a rubber stamp or just was thinking about the other things that they had to do that day or that weekend. I know that we don't have to worry about that with you. Because your focus is here and now. You're prepared and you care.

So from that perspective, the defendant, before the Court today, went from potentially dying in prison to a recommendation of probation. I get it. 1 App. 107-08.
[W]e've gone behind the scenes in this case. One of the things that I take into consideration with cases like this, because here we have a 29-year-old defendant and a 42-year-old co-defendant. One of the things that I think about, because a two-,a four-time convicted felon that breaks into a woman's home and rapes her in the middle of the night is facing 10 to life. A drunk college student who doesn't stop when the other drunk college student tells him or her to stop is facing the same 10 to life sentence.

Is there a difference? How should that case be prosecuted? Should the punishment be the same? Obviously, the answer is no.

Judge, you never see a criminal case without the prosecution. You never see a criminal case without us. Everything about a criminal case, from the most important moment in that criminal case's life, the charging decision, is driven by the prosecution.

Your job is important and it's not easy. But neither is ours. Decisions made by the prosecution can shatter lives for generations.

So the first thing that I do is I determine a person's criminal history. Who do I have? Who's in front of me? Is this a six-time convicted felon? Not as much as someone entering the criminal justice system for the first time. It's important.

We are both trusted to do the best we can in an adversarial system of justice as separate but coequal branches of the same government. I understand your concern. I share your concern. But that's not where we are.

The posture of this case, the prosecution is held to the most meticulous standard when abiding by an agreement that has been reached.

The defendant, Mr. Bonetti, has the right to expect that the prosecution will fulfill its obligation when the offer made was accepted. We made an offer, that offer was accepted. He should be able to expect that we will abide by that offer and that agreement and we are.
We also understand that you, in a tripartite setting, can say I'm not accepting this agreement. We stand by it. The prosecution was willing to take a chance with the 29-year-old male without a history of molesting children, to go after the 42-year-old male with the history of molesting children. With the aid of Mr. Bonetti's truthful testimony. And woe to him if it's not truthful.

You don't have to accept this deal. But there's a standard, there's an analysis and a set of criteria to consider and apply in order to establish your position and survive the scrutiny that is sure to follow. Because obviously, if you weren't to accept this

> obligation, then defense counsel is going to have to avail themselves to any and every remedy that they can.
>
> So what I'm asking is that you clearly articulate and set forth the Sandy standard as criteria, so that it will be well preserved for review should you decide to reject this agreement. 1 App. 108-12.

Finally the Court allowed Mr. Bonetti's counsel, the only consistent attorney on the matter since the negotiation originated in the Justice Court, to discuss the parties' reasoning for the negotiation.

> Ms. Boskovich: The first time Your Honor expressed concerns about the offer, I reached out to Mr. Vieta-Kabell myself, and asked for an explanation. I've shared that with the State. I don't know why they don't feel comfortable sharing that with you. But I do know that some of the reasons that Mr. Vieta-Kabell noted are the fact that my client had less contact with the alleged victim. He does not have a prior record and similar—similar allegations and convictions on his record. The simple fact that the evidence is weaker against my client than it is with the co-defendant. And the fact that my client would be willing to testify against the co-defendant.
>
> That was not in the initial guilty plea agreement that was before your Court. However, it was something that was addressed between myself, my client and Mr. Vieta-Kabell. It was definitely something that was contemplated. At the time Mr. Vieta-Kabell was unsure whether or not he wanted or needed that testimony. But again, we have re-extended that offer. Mr. Vitto has accepted that offer.
>
> And with all of those factors in mind, I would ask that Your Honor abide by the guilty plea agreement that is before Your Honor. It's been well thought out and well reasoned by both parties in this case. And it's—I believe it's worthy of being accepted. 1 App. 113-114.

Despite exhaustive reasoning, Judge Wanker still interjects that she is not willing to accept the dismissal of the Category A charges. 1 App. 119. She reviews the standards for rejecting a plea agreement before proceeding with making a record for rejecting Mr. Bonetti's Guilty Plea Agreement:

> The Court: So, I mean, you know, this is sort of a pretty tight area here. But the problem is that in many ways, that this does infringe upon the judge's sentencing in this case. These are extremely serious charges. And the conduct is extremely serious. And the interests involved here are extremely serious.
>
> The victim testified before. Whether—I have not seen anything that suggests that he is a reluctant witness in this case. In looking at the factors, what I know is basically this is pulling a sentencing, the sentencing off the judge's abilities here. Obviously, the sentencing on some of the charges that are set forth in the amended criminal complaint and on the bindover are life sentences. But they also involve different sentencing postures as it comes to the supervision of this individual. 1 App. 123-24
>
> ...
>
> So that is a huge concern of mine. Given the nature of the [original] charges, given the fact that I have looked at and read the preliminary hearing transcript of the co-defendant in this case as to the actions that have occurred in this case. And the testimony of the witnesses that have been presented.
>
> Look, I'm not trying to substitute my judgment for that of the DA's office. But—and I applaud what Mr. Vitto is trying to do by the superseding plea agreement. But the bottom line is this. Is that it takes the lifetime supervision, it takes the only—the sentence that the legislature has imposed on some of these offenses, and drops them down to a probationable offense. 1 App. 124-25.

> ...
>
> I haven't heard anything here that's been presented to this Court that one of the reasons that we're doing this plea negotiations is because—that we're concerned about the evidence that we have to move forward with the conviction.
>
> In fact what I do see is that, in fact, that the witness, while reluctant to testify, and I understand it, it's embarrassing. It would be embarrassing for a victim. And perhaps shameful to get up and say I engaged in oral sex with a defendant. But that isn't a reason not to move forward with the prosecution.
>
> And then finally, protection of the sentencing authority reserved to the judge. And as I've told you, it does invade the sentencing authority from the judge. Because it takes off that lifetime supervision. 1 App. 125-26.
>
> ...
>
> So at this time, I am rejecting the plea agreement. I have listened very—several times to try to—to actually try to find a reason...But I just can't, based upon the factors, agree to—to agree to this particular agreement. I just can't. For the reasons that I've listed.
>
> And so I'm going to move forward with the trial in this case. And, you know, if the Supreme Court reverses me, they do. But I—given the nature of these charges...at this time I do think it is an abuse of prosecutorial discretion not to move forward with these charges. 1 App. 126-27.

Trial is currently set for December 13, 2021. *See* 1 App. 8-9. Calendar call is November 12, 2021. Id. Mr. Bonetti requests a Writ of Mandamus consistent with the Nevada Supreme Court's ruling in *Sandy v. State* and *Sparks v. State* requiring the District Court to accept the Superseding Guilty Plea Agreement.

ARGUMENT

I. WRIT OF MANDAMUS IS THE APPROPRIATE REMEDY IN THIS CASE.

A writ of mandamus may issue to "...compel the performance of an act which the law requires as a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously." Redeker v. Eighth Judicial District Court, 122 Nev. 164, 167 (2006), Savage v. Third Judicial District Court, 200 P.3d 77, 81 (2009); NRS 34.160. Additionally, this Court may exercise its discretion to "...grant mandamus relief where an important issue of law requires clarification." Redeker at 167. Mandamus is an extraordinary remedy, and "...does not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law." Id., also see NRS 34.170. Furthermore, this Court has exercised its discretion to grant extraordinary relief where "...an important issue of law needs clarification and public policy is served by this Court's invocation of its original jurisdiction..." Business Computer Rentals v. State Treas., 114 Nev. 63, 67 (1998).

Here, Petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law because trial is fast approaching in December 2021, and a preliminary hearing has never even occurred. Petitioner's plea was properly negotiated by the parties and accepted by the Justice Court. The State made a record of proper prosecutorial reasons for the negotiation. The District Court improperly

substituted its judgment for prosecutorial discretion based on evidence in another defendant's case, and improperly cited an infringement of sentencing authority, and therefore, lacks a proper basis to reject a valid, reasonable, thoroughly negotiated guilty plea agreement under Nevada law.

Now, the District Court attempts to force Petitioner to go to trial and face twelve charges despite a legal and valid plea of guilty to two. Intervention by the Nevada Supreme Court is essential as the District Court's ruling was an abuse of discretion which prohibits Petitioner from proceeding in his chosen means of defense and mitigation.

II. THE DISTRICT COURT'S REJECTION OF THE PLEA DUE TO THE CHARGING DECISIONS OF THE PROSECUTION WAS AN ABUSE OF DISCRETION

A defendant is free to enter a plea of guilty without negotiations. U.S. v. Hare, 269 F.3d 859, 868 (2001). The Nevada Supreme Court ("NSC") has stated clearly that a trial court is obligated to consider a seriously proffered plea. NRS 174.035; Sandy v. District Court, 113 Nev. 435 (1997). Pursuant to NRS 174.035(1) a court may reject a plea, at the time of the plea, but must provide a reasoned explanation for the exercise of discretion. Sparks v. State, 104 Nev. 316, 322-323 (1988). The district court judge may reject a plea to assure protection of the public interest involving one or more of the following components: "(a) fairness to the defense…; (b) fairness to the prosecution interest, as in avoiding a disposition that

does not serve due and legitimate prosecutorial interests; (c) protection of the sentencing authority reserved to the judge. However, judges may not exercise this discretion to fulfill their own opinion of the public interest." Id.; Sandy, 113 Nev. at 440. Therefore, the district court can only reject plea arrangements when there has been an abuse of prosecutorial discretion. Sandy, 113 Nev. at 440.

Rejections...must be accompanied by findings of fact explaining with particularity the reasons for the rejection. Id. The judge's statement or opinion must identify the particular interest that leads him to require an unwilling defendant and prosecution to go to trial." Sparks, 104 Nev. at 323. The judge may not reject a guilty plea arising out of a plea bargain merely because the court disagrees with the prosecutor's view of the "public interest" as it pertains to the subject case. Sandy, 113 Nev. at 439; Sparks, 104 Nev. at 323.

In Sandy v. State, the petitioner filed a Writ of Mandamus after the district court refused to accept a plea bargain. Sandy v. State, 113 Nev. 435 (Nev. 1997). The petitioner was charged with first-degree murder and negotiated a plea to voluntary manslaughter while in justice court and waived her right to a preliminary hearing. Id. at 436. At arraignment, the defense informed the court of the plea agreement and submitted a signed guilty plea agreement. Id. The district court rejected the plea because of his opinion that the potential sentence and consequences

for [category B felony] voluntary manslaughter was insufficient compared to [category A felony] second degree murder. Id.

The Nevada Supreme Court granted the petition based on a lack of findings of fact and reasons with particularity from the district court identifying the specific abuse of prosecutorial discretion. Id. at 442-443. They found the district court improperly applied subdivision (c) of Sparks. Id. They stated that in order to reject a plea, the district court must state with particularity why the prosecutor had no valid prosecutorial purpose to not proceed with trial. Id. at 442.

Examples of valid prosecutorial considerations in negotiating plea bargains that result in a reduction of charges include but are not limited to: insufficiency of trial evidence, doubt as to the admissibility of certain evidence, the need to bring another felon to justice, avoiding a prosecution of uncertain success, conserving prosecutorial resources, or any other separate factor necessitating acceptance of the plea. Id. As such, a judge is free to condemn the prosecutor's agreement as a trespass on judicial authority only in a blatant and extreme case. Id.

As such, the question is not what the judge would do if she were the prosecuting attorney, but whether she can say that the action of the prosecuting attorney is such a departure from sound prosecutorial principle as to mark it an abuse of prosecutorial discretion. Id.

> A trial judge may not reject a plea bargain solely on the grounds that the plea prevents the judge from sentencing as harshly as he or she would like. Plea bargains generally result in a reduction of charges against the defendant, and consequently a diminishment of the judge's authority to sentence. Allowing trial judges to reject a plea bargain for infringing upon judicial sentencing authority because the original indictment charged the defendant with a more serious offense affords judges too much discretion to inhibit the role of the prosecutor. Sandy, 113. Nev. at 441.

Here, the district court improperly rejected the plea agreement based on the reduction of charges without a proper finding of abuse of prosecutorial discretion validating a reason for the rejection. Judge Wanker stated rejection of the plea was based on an infringement of the court's sentencing authority and an abuse of prosecutorial discretion, however, there is insufficient support in the record for her contentions.

First, the plea negotiation lowering the charges from category A felonies to category B felonies does not infringe on the court's sentencing authority pursuant to Sandy. Just like the reduction of charges in Sandy, the State offered Mr. Bonetti a plea dismissing the category A felonies in exchange for pleading guilty and no contest to two (2) category B felonies. Judge Wanker alleges the dismissal of the charges limits her sentencing authority because it removes the possibility for lifetime supervision of Mr. Bonetti.

However, this is exactly the type of inoffensive and consequential diminishment on sentencing authority acknowledged in Sandy. The Sandy court

expressly states that plea bargains "generally result in a reduction of the charges," and therefore, just like the district court in Sandy, this district court's interpretation of subsection (c) of Sparks is improper. Simply dismissing the category A felony charges against Mr. Bonetti does not infringe on Judge Wanker's sentencing authority.

Next, the State presented multiple, legitimate, prosecutorial purposes for Mr. Bonetti's Superseding Guilty Plea Agreement under Sandy, so Judge Wanker's rejection of the plea for prosecutorial abuse of discretion is improper. Specifically, the State expressed wanting to avoid a prosecution of uncertain success due to problems with the memory, presentability, and testimony of the victim. the State indicated a concern with being unable to meet the high burden of proof necessary because of the inconsistent and unreliable nature of witnesses and victims at trial. Finally, The State cited a need to bring another [four-time] felon, Mr. Bonetti's co-defendant, to justice with the assistance of Mr. Bonetti, who has no criminal history of this nature.

Even after a thorough record of legitimate prosecutorial considerations resulting in the Superseding Guilty Plea Agreement, Judge Wanker rejects the plea "given the nature of the [original] charges, given the fact that [the District Court] looked at and read the preliminary hearing transcript of the co-defendant in this case." The district court has no authority to reject a guilty plea based on a transcript

from another case, and Judge Wanker's rejection improperly infringes on prosecutorial discretion.

Further, the district court then incorrectly states the court has not "heard anything here that's been presented to this Court…that we're concerned about the evidence that we have to move forward with the conviction." This statement suggests Judge Wanker either (1) failed to listen to the State's reasoning; or (2) expressly rejected the State's reasoning in favor of her own prosecutorial judgement.

Either way, the court's reasoning is void of anything factual which supports a rejection of Mr. Bonetti's plea based on an abuse of prosecutorial discretion. The actions of the District Court are not harmonious with the Nevada Supreme Court's finding in Sandy. It further amounts to an abuse of discretion and therefore warrants this Court's intervention. As such, this Court should grant Mr. Bonetti's Writ of Mandamus and Order the District Court to accept Mr. Bonetti's Superseding Guilty Plea Agreement.

/ / /

/ / /

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court issue a Writ of Mandamus and/or Prohibition directing the District Court to accept Petitioner's valid plea of guilty.

DATED this 14th day of October, 2021.

NYE COUNTY PUBLIC DEFENDER

By

RONNI BOSKOVICH, ESQ.
BOSKOVICH LAW GROUP, PLLC

Nevada Bar No. 14484
3190 S. Highway 160, Suite H
Pahrump, Nevada 89048
(702) 583-4041
ronni@boskovichlaw.com
Attorney for Defendant/Petitioner

CERTIFICATE OF COMPLIANCE

1. I hereby certify this petition for writ of mandamus/prohibition does comply with the formatting requirements of NRAP 32(a)(4).
2. I hereby certify that this petition for writ of mandamus/prohibition does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.
3. I hereby certify that this petition for writ of mandamus/prohibition does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). This petition for writ of mandamus/prohibition contains a total of 6,793 words.

//

//

//

4. Finally, I hereby certify that I have read this petition for writ of mandamus, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of October, 2021.

NYE COUNTY PUBLIC DEFENDER

By

RONNI BOSKOVICH, ESQ.
BOSKOVICH LAW GROUP, PLLC

Nevada Bar No. 14484
3190 S. Highway 160, Suite H
Pahrump, Nevada 89048
(702) 583-4041
ronni@boskovichlaw.com
Attorney for Defendant/Petitioner

CERTIFICATE OF SERVICE

The undersigned does hereby certify that this Petition for Writ of Mandamus/Prohibition (and Appendix) was filed electronically with the Nevada Supreme Court on the 14th day of October, 2020.

The undersigned further certifies that a true and correct copy of this document (and Appendix) by hand delivering a true and correct copy thereof, to:

Honorable Kimberly Wanker
Fifth Judicial District Court
1520 E. Basin Ave. #105
Pahrump, Nevada 89060

Nye County District Attorney's Office
1520 E. Basin Ave., #107
Pahrump, Nevada 89060

NYE COUNTY PUBLIC DEFENDER

BY
RONNI BOSKOVICH, ESQ.
BOSKOVICH LAW GROUP, PLLC
3190 S. Highway 160, Suite H
Pahrump, Nevada 89048
(702) 583-4041
ronni@boskovichlaw.com
Attorney for Defendant/Petitioner