



IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROBERT BONETTI,

Petitioner,

vs.

Supreme Court Electronically Filed  
District Court Case No. 2022-0138 p.m.  
May 02, 2022  
Elizabeth A. Brown  
Clerk of Supreme Court

THE FIFTH JUDICIAL COURT  
OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF NYE;  
AND THE HONORABLE KIMBERLY  
A. WANKER, DISTRICT JUDGE.

Respondents,

And THE STATE OF NEVADA

Real Party in Interest.

**THE DISTRICT COURT'S ANSWER TO PETITION FOR WRIT OF MANDAMUS**

Fifth Judicial District Court Judge Kimberly A. Wanker, having been invited by the Nevada Supreme Court to respond to the Petitioner's *Writ of Mandamus or Alternatively, the Writ of Prohibition* ("Writ" or "Petition") filed after the district court rejected a proposed written guilty plea agreement, states as follows:

**Background of Case**

Petitioner James Bonetti (Bonetti) and his co-defendant William Butler (Butler) were charged in a criminal complaint filed in Pahrump Justice Court on September 17, 2018 with the following offenses: Count 1: *Possession of Child Pornography*, a Category "B" felony; Count II: *Promotion of Sexual Performance Of A Minor*, a Category "A" felony; Count III: *Use Of Minor In Producing Pornography Or As Subject Of Sexual Portrayal In Performance*, a Category "A" felony; Count IV: *Preparing, Advertising Or Distributing Materials Depicting Pornography Involving Minor*, a Category "B" felony; Count V: *Sexual Assault With A Child Under 16*, a Category "A" felony; Count VI: *Sexual Assault With A*



1 *Child Under 16*, a Category "A" felony; Count VII: *Lewdness With A Child Under 16 Years*  
2 *of Age*, a Category "B" felony; Count VIII: *Lewdness With A Child Under 14 Years of Age*,  
3 a Category "B" felony; Count IX: *Statutory Sexual Seduction*, a Category "B" felony; and,  
4 Count X: *Use Tech To Lure Child*, a Category "B" felony.

5 An amended criminal complaint was filed on July 15, 2019 charging Bonetti and  
6 Butler with Count I: *Possession of Child Pornography*, a Category "B" felony; Count II:  
7 *Promotion of Sexual Performance Of A Minor*, a Category "A" felony; Count III: *Use Of*  
8 *Minor In Producing Pornography Or As Subject Of Sexual Portrayal In Performance*, a  
9 Category "A" felony; Count IV: *Preparing, Advertising Or Distributing Materials Depicting*  
10 *Pornography Involving Minor*, a Category "B" felony; Count V: *Sexual Assault With A Child*  
11 *Under 16*, a Category "A" felony; Count VI: *Sexual Assault With A Child Under 16*, a  
12 Category "A" felony; Count VII: *Lewdness With A Child Under 14 Years of Age*, a  
13 Category "B" felony; Count VIII: *Lewdness With A Child Under 14 Years of Age*, a  
14 Category "A" felony; Count IX: *Statutory Sexual Seduction*, a Category "B" felony; Count  
15 X: *Use Tech To Lure Child*, a Category "B" felony; Count XI: *Sexual Assault With A Child*  
16 *Under 14 Years Of Age*, a Category "A" felony; and, Count XII: *Sexual Assault With A*  
17 *Child Under 14 Years Of Age*, a Category "A" felony.

18 As background, Bonetti and Butler, the two co-defendants, were in a dating  
19 relationship and lived together. While they referred to themselves by terms indicative of a  
20 married couple, they were not legally married and did not file a domestic partnership with  
21 the Nevada Secretary of State. The alleged victim is the same alleged victim in both  
22 cases – the Bonetti case and the Butler case. Although Bonetti unconditionally waived his  
23 right to a preliminary hearing, Butler did not. The alleged victim testified at Butler's  
24 preliminary hearing regarding the alleged sexual conduct and acts committed against him  
25 by both Bonetti and Butler. Both cases were bound up to District Judge Kimberly Wanker,  
26 and both were set for arraignment before Judge Wanker on the same date - September  
27 13, 2019. Because Judge Wanker read both case files in preparation for her September  
28



1 13, 2019 law and motion calendar, she knew the testimony of the alleged victim  
2 concerning the alleged sexual conduct perpetrated against the victim by both Bonetti and  
3 Butler, as the justice court preliminary hearing transcript is contained in the Butler file.  
4 Bonetti's District Court case is Case No.: CR 9595 and Butler's District Court case is Case  
5 No. CR 9598A.

6 According to the alleged victim's preliminary hearing testimony in the Butler case,  
7 the alleged victim was introduced to Bonetti and Butler by his older sister. At that time, the  
8 alleged victim was 13-14 years of age. The alleged victim would "hang out" at the Bonetti-  
9 Butler home. With respect to defendant Bonetti, at the preliminary hearing in justice court,  
10 the alleged victim testified that Bonetti would give the victim alcohol, cigarettes, and  
11 Bonetti occasionally used drugs with the victim in the Bonetti-Butler home. The alleged  
12 victim testified to Bonetti performing oral sex on the victim in the car when he and Bonetti  
13 drove to the store to purchase cigarettes. At the time of the Bonetti oral sex incident, the  
14 alleged victim was 13. The alleged victim also testified to making out and french kissing  
15 Bonetti at the Bonetti-Butler home. The alleged victim claimed that Bonetti had a way of  
16 talking him into doing sexual things. The alleged victim testified concerning sending  
17 photos and communicating with Bonetti and Butler via Facebook. There were at least  
18 three oral sex encounters between Butler and the alleged victim. In essence, Bonetti and  
19 Butler are alleged to have solicited the alleged victim in person and over social media to  
20 engage in various sexual activities including activities where the victim and the co-  
21 defendants were to participate as a "threesome."

22 The records from the Pahrump Justice Court indicate that on September 12, 2018  
23 contract public defender Nathan Gent was appointed to represent Bonetti. On October 3,  
24 2018, the justice court minutes indicate that Attorney Gent tried to convey an offer from  
25 the State to Bonetti, but that Bonetti "cut him off." The justice court then set the  
26 preliminary hearing for October 24, 2018. On October 17, 2018, a substitution of counsel  
27 occurred after public defender Nathan Gent discovered a conflict of interest. Bonetti was  
28



1 transferred to contract public defender Carl Joerger. Contract public defender Daniel  
2 Martinez represented the co-defendant Butler. After several continuances for discovery,  
3 Attorney Joerger and Attorney Martinez advised the Justice of the Peace that the cases  
4 were ready for preliminary hearing. A preliminary hearing in both cases was scheduled for  
5 July 24, 2019.

6 Nye County's public defender contracts were changed on July 1, 2019. Attorney  
7 Joerger's contract was not renewed. Attorney Ronni Boskovich replaced Joerger as one  
8 of Nye County's new contract public defenders. Boskovich received all of Joerger's cases,  
9 including the Bonetti file.

10 On July 24, 2019, at 9 am, before the start of the preliminary hearing, Boskovich  
11 and her client Bonetti were present in justice court, along with Deputy District Attorney  
12 Michael Vieta-Kabell. Boskovich advised Justice of the Peace Lisa Chamlee that a  
13 negotiation had been reached in the Bonetti case. The negotiation, which was placed on  
14 the record, was that Bonetti would unconditionally waive his right to a preliminary hearing.  
15 In District Court, Bonetti would plead guilty to two counts of possession of child  
16 pornography, first offense, each a Category "B" felony. Each count carried a possible  
17 sentence of 1-6 years in prison. At the time of sentencing, both sides retained the right to  
18 argue. In return, the State agreed to dismiss/not pursue any additional charges arising  
19 from this case, and further agreed to dismiss case 18CR04800 in its entirety after entry of  
20 plea in the district court. The State represented that language would be added in the guilty  
21 plea agreement to waive any factual defects.

22 Based upon the foregoing, the Justice of the Peace found that Bonetti had  
23 knowingly and voluntarily waived his right to a preliminary hearing and bound him over to  
24 Department 1 of the Fifth Judicial District Court for arraignment on September 13, 2019.

25 Bonetti and his attorney signed the written unconditional waiver of preliminary  
26 hearing document which was filed with the Pahrump Justice Court on July 24, 2019.  
27 Thereafter, Pahrump Justice of the Peace Lisa Chamlee issued a written *Bindover Order*  
28



1 for Bonetti on the charges of Count I: *Possession of Child Pornography*, a Category "B"  
2 felony; Count VII: *Lewdness With A Child Under 14 Years of Age*, a Category "B" felony;  
3 and Count XII: *Sexual Assault With A Child Under 14 Years Of Age*, a Category "A"  
4 felony.

5 On August 5, 2019, the State filed an Information with the Fifth Judicial District  
6 Court, charging Bonetti with Count I: *Possession Of Child Pornography, First Offense*, a  
7 Category "B" felony; and, Count II: *Possession Of Child Pornography, First Offense*, a  
8 Category "B" felony.

9 At the time of the September 13, 2019 arraignment, Attorney Boskovich asked for a  
10 continuance. She advised that Bonetti would be pleading guilty to Count I of the  
11 Information and no contest to Count II. She also advised the parties needed time to  
12 prepare a written plea agreement. The court continued the matter to November 15, 2019.

13 On November 15, 2019, the parties filed a *Written Guilty Plea Agreement*.  
14 According to the terms of the *Written Guilty Plea Agreement*, Bonetti would be pleading  
15 guilty to Count I of the Information and no contest to Count II. In exchange, the State  
16 would forgo prosecution of any additional charges arising from the instant case as well as  
17 another Pahrump Justice Court case. (Note: the District Court Guilty Plea Agreement  
18 differed from the terms of the negotiation placed on the record at the Pahrump Justice  
19 Court)

20 District Court Judge Kimberly Wanker questioned the parties. First the court  
21 inquired about two counts of child pornography in light of the Nevada Supreme Court's  
22 decision in *Castaneda v. State*, 132 Nev. 434, 373 P.3d. 108 (2016). The alleged  
23 pornography in this case arose out of simultaneous possession. Judge Wanker's biggest  
24 concern, however, was the reason for the negotiation from the original charges Bonetti  
25 was bound up on to the district court.

26 As previously mentioned, a preliminary hearing for Bonetti's codefendant, Butler,  
27 was held in the Pahrump Justice Court on July 24, 2019, beginning at 11 am. Nye County  
28



1 Deputy District Attorney Michael Vieta-Kabell extended the identical offer made to Bonetti  
2 to co-defendant Butler, but Butler rejected the offer and proceeded with the preliminary  
3 hearing. At the conclusion of the preliminary hearing, Butler was bound up to the Fifth  
4 Judicial District Court, Department 1 for arraignment. As previously mentioned, Bonetti  
5 and Butler were both scheduled for arraignment before the Fifth Judicial District Court  
6 Department 1 on September 13, 2019.

7 The two Nye County Deputy District Attorneys who negotiated the Bonetti and  
8 Butler cases at the justice court level were Gerard Gosioco, and later, Michael Vieta-  
9 Kabell. After the July 2019 preliminary hearing, Vieta-Kabell's employment was  
10 terminated by District Attorney Chris Arabia.

11 On November 15, 2019, Judge Wanker asked the State why it was pleading the  
12 Bonetti case down to two counts of child pornography. The response from Deputy District  
13 Attorney Don Chairez was as follows:

14 **MR. CHAIREZ:**

15 Well, to answer the question, Your Honor, I don't know. On  
16 Wednesday or Thursday when I was preparing for this  
17 calendar I had the same concerns. I sent a text message to  
18 Mike Vieta-Kabell, who was the DA on this case who did the  
19 prelim. And he negotiated it with Ms. Boskovich. So I said I  
20 need to talk to you. I didn't hear from him.

21 I contacted him again yesterday to say I need to talk to you  
22 specifically about the Bonetti case. It's on for a plea on  
23 Friday. You know, I need to know what happened. He's yet to  
24 respond to me. So I don't know if he's sick, I don't know if  
25 he's busy, I don't know if he doesn't want to talk with me.

26 But at any rate, I sat down with Mr. Arabia this morning to  
27 also explain, we're going to have problems in front of Judge  
28 Wanker this morning because Mike went from a Category A  
felony to –

**THE COURT:**

Multiple Category A –



1                   **MR. CHAIREZ:**

2                   1 to 6, 1 to 6 probation. So I don't know what his reasons  
3                   were.

4                   *See: Transcript of Proceeding dated November 15, 2019, p. 4 ll. 16-25, p. 5, ll. 1-13.*

5                   The same offer was extended by Deputy District Attorney Michael Vieta-Kabell to  
6                   both Bonetti and Butler. *See: Transcript of Proceeding dated November 15, 2019, p. 8 ll.*  
7                   6-11. No one could provide a reasonable explanation for the offer.

8                   **MS. BOSKOVICH:**

9                   As far as the reason for Mr. Vieta-Kabell's offer, he didn't  
10                  explain to me what was going through his head. The day  
11                  before the prelim, I do have an e-mail from him to myself and  
12                  Mr. Martinez extending a new offer, the same offer for both of  
13                  our clients.

14                  *See: Transcript of Proceeding dated November 15, 2019, p. 8, ll. 6-11.*

15                  The Court then continued the arraignment to find out why the offer was extended to  
16                  reduce the sentence posture which included non-probation-able life in prison and lifetime  
17                  sexual registration and supervision requirements to a probation-able offense without  
18                  lifetime sexual registration and supervision requirements.

19                  The Bonetti case was continued several times. The Bonetti case again came  
20                  before the district court on July 17, 2020 and was continued to September 4, 2020. That  
21                  morning, in court, the State and defense filed a superseding written guilty plea agreement  
22                  whereby Bonetti would plead to two counts of *Possession Of Child Pornography, First*  
23                  *Offense*, a Category "B" felony. On Count I, Bonetti would plead guilty and on Count II,  
24                  Bonetti would plead no contest. The agreement was the same as the previous guilty plea  
25                  agreement presented to the district court with two notable exceptions: Bonetti would now  
26                  testify against his co-defendant Butler at Butler's trial, and Bonetti would acknowledge that  
27                  although the multiple photographs at issue in this case arose out of a simultaneous  
28                  possession, Bonetti was agreeing to the two separate counts. At the hearing, the State



1 realized the superseding written guilty plea agreement signed by the parties and filed with  
2 the court was missing critical language concerning sex offender registration and  
3 supervision. At the request of counsel, the court continued the matter to September 18,  
4 2020.

5 At the September 18, 2020 hearing, the State was represented by two Deputy  
6 District Attorneys – Chief Criminal Deputy District Attorney Kirk Vitto and Deputy District  
7 Attorney Don Chairez. Once again, the State could not provide any specifics in this case  
8 as to the reason the reduced charges were offered to Bonetti. In fact, Deputy District  
9 Attorney Chairez stated the following:

10 **MR. CHAIREZ:**

11 May I enlighten the Court, Your Honor?

12 **THE COURT:**

13 Please.

14 **MR. CHAIREZ:**

15 Okay.

16 To begin with, yes, I happen to be on the bad metaphor, but  
17 the beach of Normandy when you first raised a question  
18 about whether or not to accept this guilty plea agreement.  
19 And yes, I did reach out to Mr. Vieta more than once. He  
20 never returned any of my calls. So I also reached out to the  
21 victim. And I'm not – well, I reached out to the victim. I  
22 reached out to Mr. Martinez, who was present at the  
23 preliminary hearing.

24 **THE COURT:**

25 Who's counsel for the record so the record is clear. Counsel  
26 for the co-defendant.

27 **MR. CHAIREZ:**

28 Yes. Counsel for the co-defendant. And I don't know if he  
wants to say – I believe Mr. Martinez said the victim did not  
testify that well and did not look like he wanted to be there.  
And he said something to that effect. I really don't like being





1 here.

2 But with respect to the acts that were done. The first act of  
3 sexual assault was done by Mr. Bonetti. And I believe it was  
4 giving oral sex to the victim and – when he took him to get  
5 some ice cream. I think at Seymour's, but I'm not sure.

6 So I also - I spoke to the victim two or three times. I spoke to  
7 the victim's therapist on two occasions. And at any rate, I did  
8 not detect any reluctance on the part of the victim to not want  
9 to participate. So he frankly was upset with Mr. Viata for  
10 making the offer that he did to Ms. Boskovich. And we got into  
11 this legal quagmire with respect to Sandy.

12 And my job was just preparing it. I am, I think, the prosecutor  
13 assigned to handle the case against Mr. Butler. And I wasn't  
14 even quite sure what was going to happen that day and that  
15 kind of thing.

16 Yes, Mr. Bonetti was involved with, I believe, more than one  
17 act of sexual assault against this minor. And yes, the minor is  
18 older now. The minor never called the police. He only got into  
19 it when Detective Marshall was doing some other  
20 investigation with stuff going on at the Pahrump Valley High  
21 School.

22 But we are where we are. And I just wanted to make sure the  
23 Court understood that particular posture.

24 *See: Transcript of Proceeding, September 18, 2020, p. 16, ll.9-25, pp.17, ll. 1-25; p. 18, ll.*  
25 *1-5. At that same hearing, Ms. Boskovich, attorney for Bonetti, said:*

26 **MS. BOSKOVICH:**

27 I do know when this offer was extended, it was a well thought  
28 out and well reasoned offer by the prosecutor.

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 it 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. My  
client 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-



1 defendant. And the fact that my client would be willing to  
2 testify against the co-defendant.

3 That was not in the initial guilty plea agreement that was  
4 before your Court. However, it was something that was  
5 addressed between myself, my client and Mr. Vieta-Kabell. It  
6 was definitely something that was contemplated. At the time  
7 Mr. Vieta-Kabell was unsure whether or not he wanted or  
8 needed that testimony. But again, we have re-extended that  
9 offer. Mr. Vitto has accepted that offer.

10 And with all of those factors in mind, I would ask that Your  
11 Honor abide by the guilty plea agreement that is before Your  
12 Honor. It's been well thought out and well reasoned by both  
13 parties in this case. And it's – I believe it's worthy of being  
14 accepted.

15 *See: Transcript of Proceeding, September 18, 2020, p. 12, ll.5-25, pp.13, ll. 1-11.*

16 Boskovich also stated at the September 18, 2020 hearing:

17 **MS. BOSKOVICH:**

18 If I can just for the record reiterate that I do have a statement  
19 from Mr. Vieta-Kabell saying there is a lack of evidence, or  
20 less evidence against my client than there is against the co-  
21 defendant.

22 *See: Transcript of Proceeding, September 18, 2020, p. 26, ll. 9-13.*

23 Unfortunately, that statement has never been presented to the court as part of this  
24 case. As the judge noted in moving forward with the case and in rejecting the plea  
25 agreement:

26 **THE COURT:**

27 But you know, I don't have the statement from Mr. Vieta-  
28 Kabell. It's never been presented. He's never been here to  
testify.

And quite frankly, at this point I'm moving forward.

*See: Transcript of Proceeding, September 18, 2020, p. 27, ll. 8-12. The judge, however,*  
did not foreclose reconsidering her position in light of additional or new evidence being  
presented to the court.



1                   **THE COURT:**

2                   So in the meantime, obviously if there's an appeal that will  
3                   stay things. If there's evidence that comes to light, we can put  
4                   the matter back on my calendar. But at this point I'm moving  
5                   forward.

6                   *See: Transcript of Proceeding, September 18, 2020, p. 27, ll. 8-12.* The judge also said:  
7                   "And then if there's something that needs to be presented to the Court, I'm – I'll be happy  
8                   to entertain it. And that may get me to change my mind in this case." *See: Transcript of*  
9                   *Proceeding, September 18, 2020, p. 27, ll. 15-18.* The judge later reiterated: "If there's  
10                  new evidence that comes to light, we can put the matter back on my calendar." *See:*  
11                  *Transcript of Proceeding, September 18, 2020, p. 28, ll. 13-15.* No additional information,  
12                  and no statement from Mr. Vieta-Kabell was ever brought before the district court.

13                  The judge finally rejected the guilty plea agreement on September 18, 2020 after  
14                  giving the state and the defense several opportunities to provide a satisfactory reason for  
15                  the proposed guilty plea agreement. In fact, the district judge had this matter on her  
16                  calendar on September 13, 2019; November 15, 2019; December 13, 2019; July 20,  
17                  2020; September 4, 2020; and September 18, 2020 before deciding she would not accept  
18                  the plea negotiations. The judge then set the case for trial for March 30 through April 1,  
19                  2021. The trial has been set and continued several times at the request of one or both  
20                  parties.

21                  On October 15, 2021, over thirteen (13) months after the judge declined to accept  
22                  the guilty plea agreement, and less than sixty (60) days before the latest jury trial setting  
23                  in this case, Petitioner filed his Writ of Mandamus. No explanation has been provided by  
24                  Petitioner as to the reason for the thirteen-month delay. As a result of the delay, the Court  
25                  has again been forced to continue the trial in this case.

26                  ///

27                  ///

28                  ///



## The Legal Standards

### 1. The Writ of Mandamus Is Barred By The Doctrine Of Laches

Writs of mandamus are governed by NRAP 21 which specifies no particular time limit within which a petition for a writ must be filed. Nevertheless, as extraordinary remedies, such writs are subject to the doctrine of laches. See Arant v. Lane, 249 U.S. 367, 39 S.Ct. 293, 63 L.Ed. 650 (1919). In determining whether the doctrine of laches should be applied by the Nevada Supreme Court in this case, the Court must determine whether (1) there was an inexcusable delay in seeking the petition; (2) an implied waiver arose from petitioners' knowing acquiescence in existing conditions; and, (3) there were circumstances causing prejudice to respondent. See: Buckholt v. Second Jud. Dist. Ct., In & For Washoe Cty., 94 Nev. 631, 633, 584 P.2d 672, 673–74 (1978), overruled on other grounds by Pan v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 120 Nev. 222, 88 P.3d 840 (2004). See also: State v. Eighth Jud. Dist. Ct., 116 Nev. 127 135, 994 P.2d 692, 697 (2000).

Petitioner offers no reason why he waited thirteen (13) months before filing his writ. In fact, on September 21, 2020, just two days after rejecting the guilty plea agreement, the Court set this case for trial. The September 21, 2020 trial order had the trial commencing March 30 through April 1, 2021. On February 11, 2021, counsel for the defense and the state stipulated to continue the trial until after September 30, 2021. On February 17, 2021, the Court scheduled the trial for December 13, 2021 through December 15, 2021. On October 15, 2021, the same date Petitioner filed his writ with the Nevada Supreme Court, he also filed a Motion For Stay of the District Court Proceedings. At no time, until the filing of this writ, has Petitioner requested the district court remand this case back to the justice court.



1 This case has been continued so many times that the alleged victim, who was a  
2 thirteen (13) year old child when some of the acts took place, is now a eighteen (18) year  
3 old adult. No explanation has been provided to the Supreme Court as to why Petitioner  
4 waited from September 18, 2020 until October 15, 2021 to file the instant writ.  
5

6 In fact, Petitioner has not explained why the written statement from former Deputy  
7 District Attorney Michael Vieta-Kabell was not submitted to the district court. Petitioner's  
8 counsel has had that statement in her possession since before the September 18, 2020  
9 hearing. The district court judge made a point to advise the parties that upon the filing of  
10 new or additional information she would reconsider her position. The Supreme Court  
11 should consider Petitioner's actions regarding this writ as an implied waiver, and deny the  
12 same on procedural grounds.  
13

14 Finally, the prejudicial effect of Petitioner's actions is seen in the repeated  
15 disruption of the district court's calendar. The judge has rescheduled the trial in this case  
16 multiple times. In rural areas such as the Fifth Judicial District, this constant rescheduling  
17 has a major impact on the judge's calendar, and other court personnel. The district court  
18 clerks also serve as Deputy Nye County Clerks performing all of the functions of a deputy  
19 county clerk. The constant rescheduling of trials wreaks havoc for the district court, as the  
20 court, unable to hire a court reporter, uses contract court reporters. The constant  
21 changing of trial dates makes it extremely difficult to obtain a court reporter to report trials,  
22 and to otherwise properly staff trials.  
23

24 The Nevada Supreme Court has previously held that an eleven (11) month delay in  
25 filing a Petition For Writ of Mandamus justified the application of the doctrine of laches.  
26 See: State v. Eighth Jud. Dist. Ct. (Ragsdale), 116 Nev. 127, 135, 994 P.2d 692,  
27  
28



697(2000). The doctrine of laches should be applied to the writ filed in this case, and this case should be permitted to proceed to trial.

**2. The District Court Properly Rejected The Guilty Plea Agreement**

In Sandy v. Fifth Judicial Dist. Court In & For the Cty. of Nye, 113 Nev. 435, 935 P.2d 1148 (1997), the Nevada Supreme Court considered a Writ of Mandamus filed by a defendant after Fifth Judicial District Court Judge John P. Davis refused to accept a guilty plea agreement. At that time the Nevada Supreme Court discussed whether a district court judge could reject a plea bargain. The Nevada Supreme Court said:

A district judge may, in his or her discretion, refuse to accept guilty pleas, including those arising out of plea bargains. NRS 174.035. However, the judge is obligated to consider seriously the proffered plea. *Sturrock v. State*, 95 Nev. 938, 941, 604 P.2d 341, 343 (1979). 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. *Sparks v. State*, 104 Nev. 316, 323, 759 P.2d 180, 184-85 (1988); accord *United States v. Ammidown*, 497 F.2d 615, 622 (D.C.Cir.1973). If the judge rejects a plea bargain, he or she "must provide a reasoned exercise of discretion" and must state reasons for the disapproval. *Sparks*, 104 Nev. at 323, 759 P.2d at 184.

As explained in *Sparks*:

"The authority has been granted to the judge to assure protection of the public interest, and this in turn involves one or more of the following components: (a) fairness to the defense, such as protection against harassment; (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. 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.

The judge may withhold approval if he finds that the prosecutor has failed to give consideration to factors that must be given consideration in the public interest, factors



1 such as the deterrent aspects of the criminal law. However,  
2 trial judges are not free to withhold approval of guilty pleas on  
3 this basis merely because their conception of the public  
4 interest differs from that of the prosecuting attorney. The  
5 question is not what the judge would do if he were the  
6 prosecuting attorney, but whether he can say that the  
7 action of the prosecuting attorney is such a departure from  
8 sound prosecutorial principle as to mark it an abuse of  
9 prosecutorial discretion."

10 *Id.*, 104 Nev. at 323, 759 P.2d at 184–85  
11 (quoting *Ammidown*, 497 F.2d at 622). Thus, *Sparks* holds  
12 that a trial judge considering a plea bargain must determine,  
13 in light of the three components listed above, whether the  
14 prosecution's action of offering the plea amounts to an abuse  
15 of prosecutorial discretion. The judge must then elect to  
16 accept the plea or reject it. Rejections may not be made  
17 without explanation, but must be accompanied by findings of  
18 fact explaining with particularity the reasons for the rejection.

19 Sandy v. Fifth Jud. Dist. Ct. In & For the Cty. of Nye, 113 Nev. 435, 439–40, 935 P.2d  
20 1148, 1150 (1997)

21 Here, the district court, at the hearings held on September 13, 2019; November 15,  
22 2019; December 13, 2019; July 20, 2020; September 4, 2020; and September 18, 2020  
23 was seeking an answer from the state to a very simple question: What is the reason for  
24 dropping the charges down from non-probation-able sex offenses with lifetime (Tier III)  
25 registration and supervision requirements to probation-able sex offenses with lesser  
26 registration and supervision requirements? The district court finally rejected the guilty plea  
27 agreement on September 18, 2020 after giving the state and the defense several  
28 opportunities to provide a satisfactory reason for the plea agreement.

The judge clearly set forth her thinking in rejecting the plea agreement in the  
transcript of September 20, 2020. The judge explained her rationale on September 20,  
2020 as memorialized in the September 20, 2020 Transcript of Proceedings beginning on  
Page 14, line 3 through Page 16, line 5, and continuing again on Page 18, line 6 through



Page 27, line 25 of said transcript. The district court incorporates by reference and refers the reader to the pages in the Transcript of Proceedings from September 20, 2020 set forth in the documents of Petitioner's Appendix rather than re-typing the fourteen page discussion in this pleading.

The judge addressed the factors outlined in Sandy v. Fifth Judicial District Court, 113 Nev. 435, 935 P.2d 1148 (1997), as part of that discussion

#### THE COURT:

But the problem is that in many ways, 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 he is a reluctant witness in this case. In looking at the factors, what I know is basically this is pulling 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.

So there's a lifetime supervision for some offenses, as the District Attorney has noted in the superseding plea agreement. Those are off the table when it comes to pleading to the child pornography charges. Because it takes – it would take Mr. Bonetti off as a Tier III offender if he were convicted and place him as a two – Tier II offender, which after a period of time would allow that to disappear from the record.

So that is a huge concern of mine. Given the nature of the 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 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  
2 And when you look at the factors that the Nevada Supreme  
3 Court needs – says that we need to look at. Fairness to the  
4 defense, such as protection against harassment. I don't see  
5 any harassment of the defense at all in this case. The  
6 fairness to the prosecution interest, as in avoiding a  
7 disposition that does not serve due and legitimate  
8 prosecutorial interests.

9 I haven't heard anything here that's been presented to the  
10 Court that one of the reasons that we're doing this plea  
11 negotiation is because we're concerned about the evidence  
12 that we have to move forward with the conviction.

13 In fact, what I do see is that, in fact, that the witness, while  
14 reluctant to testify, and I understand it, it's embarrassing. It  
15 would be embarrassing for a victim. And perhaps shameful to  
16 get up and say I engaged in oral sex with a defendant. But  
17 that isn't a reason not to move forward with the prosecution.

18 And then finally, protection of the sentencing authority  
19 reserved to the judge. And as I've told you, it does invade the  
20 sentencing authority from the judge. Because it takes off that  
21 lifetime supervision. And it takes off a sentence, actually the  
22 legislator [sic] says, Judge, you must – these are such  
23 serious crimes you must impose this type of sentence.

24 So, at this time, I am rejecting the plea agreement. I have  
25 listened very – several times to try to – to actually try to find a  
26 reason. I think the burden is reversed and the burden is on  
27 the judge not – to prove why they won't accept the guilty plea  
28 agreement. But I just can't, based upon the factors, agree to –  
to agree to this particular plea agreement. I just can't.

See: *Transcript of Proceeding, September 18, 2020*, p. 22, ll. 25, pp.23-24, ll. 1-25..

At the September 18, 2020 hearing, defense counsel Boskovich represented she  
had a written statement from former Deputy District Attorney Michael Vieta-Kabell  
allegedly outlining his reasons for the negotiation. Yet, the same has never been provided  
to the district court or filed in this case.

Deputy District Attorney Michael Vieta-Kabell's reasoning for the guilty plea



1 agreement, as verbally relayed by Attorney Boskovich in court on September 18, 2020,  
2 does not make sense. Attorney Boskovich claims that the guilty plea was reached  
3 because Bonetti had less contact with the victim than his co-defendant Butler; and, Bonetti  
4 did not have any similar allegations or convictions on his record of sexual conduct [as  
5 compared to his co-defendant, Butler]. The conclusion was that the evidence was weaker  
6 against Butler. The problem with this position is that an identical offer was made by  
7 Deputy District Attorney Michael Vieta-Kabell to both Butler and Bonetti. See: *Transcript*  
8 *of Proceeding dated November 15, 2019*, p. 8, ll. 6-11. The State made an identical offer  
9 to a co-defendant who engaged in more sexual encounters with the alleged victim, and  
10 who has a criminal history of similar sexual behaviors. Rather than to assist the district  
11 court, the statements from Vieta-Kabell further confuse the issue.

12  
13  
14 The district judge is not trying to substitute her judgment for that of the prosecution  
15 in this case. The prosecution and the defense were provided ample opportunity to explain  
16 to the court the reasoning for the negotiation. The district court held hearings on  
17 September 13, 2019; November 15, 2019; December 13, 2019; July 20, 2020; September  
18 4, 2020; and September 18, 2020 before deciding it would not accept the plea  
19 negotiations. Under the circumstances of this case, the district court respectfully requests  
20 that the Supreme Court find that the doctrine of laches bars Petitioner's writ or, in the  
21 alternative, that the writ be denied.

22  
23 DATED this 2<sup>nd</sup> day of May, 2022.

24  
25 

26 KIMBERLY A. WANKER,  
27 DISTRICT COURT JUDGE  
28

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 2nd day of May 2022, she mailed (hand delivered) copies of the foregoing **ANSWER TO WRIT OF MANDAMUS** and **DISTRICT COURT APPENDIX OF ADDITIONAL DOCUMENTS, Volume 1 & 2** to the following:

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Melissa Stepp  
MELISSA J. STEPP, Secretary to  
District Court Judge

