

Case No. CV-HC-17-267

Dept. No. 1

FILED

2021 JUN 25 PM 3:38

Electronically Filed
Jul 12 2021 11:32 am
Elizabeth A. Brown
Clerk of Supreme Court

IN THE 4th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Elko

* * * * *

Devon Ray Hockemier,

Petitioner,

-vs-

NOTICE OF APPEAL

Renee Baker, Warden, Lovelock,
Correctional Center,
Respondent.

NOTICE IS GIVEN that Petitioner, Devon Ray Hockemier
in pro se, hereby appeals to the Nevada Supreme Court the
Findings of Fact, Conclusions of Law and Order denying /
dismissing Petition for Writ of Habeas Corpus, which was filed /
entered on the 24th day of May, 2021.

Dated this 18th day of June, 2021.

Devon Ray Hockemier
Devon Ray Hockemier # 1142743
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 18th day of June, 2021, by placing same in the U.S. Mail via prison law library staff:

Fourth Judicial District Court (Dept. 1)
(in care of clerk)
571 Idaho st.
Elko, NV, 89801

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court st. 2nd Floor
Elko, NV, 89801

Aaron D. Ford Esq.
Nevada Attorney General
100 N. Carson st.
Carson City, NV, 89701-4717

David D. Lomenow, Esq.
445 5th st. Suite 210
Elko, NV 89801

Tim Barnett, Warden
Lovelock Correctional Center
1200 Prison rd.
Lovelock, NV, 89419

Devon Ray Hackenwer #1140743
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. CV-HC-17-267 does not contain the social security number of any person.

Dated this 18th day of June, 2021.

Devon Ray Hackenwer #1140743
Devon Ray Hackenwer #1140743

Petitioner In Pro Se

CV-HC-17-267
DEPARTMENT 1

FILED

2021 JUL -7 PM 4:54

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *Am*

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

DEVON RAY HOCKEMIER,
APPELLANT,

vs.

RENEE BAKER, WARDEN LOVELOCK
CORRECTIONAL CENTER
RESPONDENT.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
DEVON RAY HOCKEMIER
2. Identify the judge issuing the decision, judgment or order
appealed from:
JUDGE KRISTON N. HILL
3. Identify each appellant and the name and address of counsel for each appellant:
DEVON RAY HOCKEMIER
4. Identify each respondent and the name and address of appellant counsel, if known
for each respondent (if the name of a respondent's appellate counsel is unknown,
indicate as much and provide the name and address of that respondent's trial
counsel):
RENEE BAKER, WARDEN,
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

ATTORNEY GENERAL
HEROES' MEMORIAL BUILDING
CAPITAL COMPLEX
CARSON CITY, NV 89710

TYLER J. INGRAM, ESQ.
ELKO COUNTY DISTRICT ATTORNEY
540 COURT STREET, 2ND FLOOR
ELKO, NV 89801

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): N/A
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: COURT APPOINTED
DAVID D. LOREMAN
445 FIFTH STREET, SUITE 210
ELKO, NV 89801
7. Indicate whether appellant is represented by appointed or retained counsel on appeal: NO
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: NO
9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): APRIL 12, 2017
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Appellant has filed an appeal regarding:
ORDER DENYING PETITIONS FOR WRIT OF HABEAS CORPUS FILED MAY 24, 2021.
11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: CROSS APPEAL 83147
12. Indicate whether this appeal involves child custody or visitation: NO
13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: DOES NOT APPLY

KRISTINE JAKEMAN, Elko County Clerk

By: 

ANNETTE MARSHALL Deputy Clerk

Case Summary

ECDC-CVHC-17-267 - HOCKEMIER, DEVON R VS. WARDEN BAKER

Court: ECDC-CVHC-17-267

Agency: Elko County Clerk's Office

Type: Civil

CaseID: 17-1121

Status: Closed

Received Date: 4/12/2017

Status Date: 5/24/2021

Age: 1547 days Active Age: 1547 days

Involvements

HILL, KRISTON Judge -

PORTER, NANCY Judge, Inactive -

HOCKEMIER, DEVON Petitioner -

LIKER, ANTHONY Attorney, Inactive -

WARDEN BAKER, Respondent -

LOREMAN, DAVID Defense Attorney -

SLADE, JEFFREY Respondent's Attorney -

Name Attributes

For: DEVON RAY HOCKEMIER

Name Record Source - Name Record Converted
from JALAN - Court

For: WARDEN BAKER

Name Record Source - Name Record Converted
from JALAN - Court

Case History

Date	Event Type Desc	Status
	Closed - Case Status	
	Case Status Date Change	
	Closed - Case Status	
	Case Status Change	
4/12/2017	Proceedings (Converted) - Event	
	Event Type Code: F17	
	Event Type Description: FILE OPENED - DC	
4/12/2017	Proceedings (Converted) - Event	
	Event Type Code: J25	
	Event Type Description: JUDGE ASSIGNED	
	Note: RELATED TO CRIMINAL CASE CR-FP-14-635	

Case Summary

4/12/2017 Proceedings (Converted) - Event
 Event Type Code: P33
 Event Type Description: PET - WRIT OF HC
 Note: COPY MAILED TO DEVON, COPY PLACED IN DA'S OFFICE BOX

4/12/2017 Proceedings (Converted) - Event
 Event Type Code: L01
 Event Type Description: LETTER FROM
 Note: "FORMAL LETTER" COPY MAILED TO DEVON

4/12/2017 Proceedings (Converted) - Event
 Event Type Code: E11
 Event Type Description: EXHIBIT(S)
 Note: PETITIONER'S APPENDIX OF EXHIBITS COPY OF COVER PAGE MAILED TO DEVON

4/12/2017 Proceedings (Converted) - Event
 Event Type Code: F15
 Event Type Description: FILE CHECKED OUT BY:
 Note: DC I for review/signature

4/21/2017 Proceedings (Converted) - Event
 Event Type Code: F05
 Event Type Description: FINANCIAL STATEMENT
 Note: CERTIFICATE OF INMATE'S ACCOUNT - FILE CHKD OUT PLEAD ING PLACED IN PICK UP BOX @9:50 A.M. ON 4/21/17

4/21/2017 Proceedings (Converted) - Event
 Event Type Code: F05
 Event Type Description: FINANCIAL STATEMENT
 Note: CERTIFICATE OF INMATE'S ACCOUNT - FILE CHKD OUT PLEAD ING PLACED IN PICK UP BOX @9:50 A.M. ON 4/21/17

6/2/2017 Proceedings (Converted) - Event
 Event Type Code: N49
 Event Type Description: NOTE ADDED TO FILE
 Note: RECEIVED HAND WRITTEN 'FORMAL LETTER REGARDING REPLY TO WRITTEN COMMUNICATION DATED MAY3, 2017' FROM DEFENDANT - PLACED DOCUMENT IN DC1 BOX @ 10:29 AM ASKING IF IT SHOULD BE FILED.

6/5/2017 Proceedings (Converted) - Event
 Event Type Code: L01
 Event Type Description: LETTER FROM
 Note: DEVON HOCKEMIER

7/17/2017 Proceedings (Converted) - Event

Case Summary

Event Type Code: Q24
Event Type Description: ORD APPOINTING ATTY

7/17/2017 Proceedings (Converted) - Event

Event Type Code: F16
Event Type Description: FILE CHECKED IN BY:

7/31/2017 Proceedings (Converted) - Event

Event Type Code: N49
Event Type Description: NOTE ADDED TO FILE
Note: RECEIVED COPY OF LETTER TO TONY LIKER FROM DEFENDANT - SENT THE LETTER TO DC1 ASKING IF IT SHOULD BE FILED.

7/31/2017 Proceedings (Converted) - Event

Event Type Code: F15
Event Type Description: FILE CHECKED OUT BY:
Note: DC I for review/signature

8/28/2017 Proceedings (Converted) - Event

Event Type Code: F16
Event Type Description: FILE CHECKED IN BY:

9/11/2017 Proceedings (Converted) - Event

Event Type Code: S38
Event Type Description: SUPPLEMENTAL
Note: TO PETITION FOR HABEAS CORPUS RELIEF

9/11/2017 Proceedings (Converted) - Event

Event Type Code: W06
Event Type Description: VOLUME CREATED
Note: VOLUME 02 CREATED

12/15/2017 Proceedings (Converted) - Event

Event Type Code: C55
Event Type Description: CERT OF MAILING

4/6/2018 Proceedings (Converted) - Event

Event Type Code: M37
Event Type Description: MOT TO
Note: PLACE ON CALENDAR WITH A NOTICE OF HEARING ON THE SECOND PAGE

4/6/2018 Proceedings (Converted) - Event

Event Type Code: F15
Event Type Description: FILE CHECKED OUT BY:
Note: DC I for review/signature

4/20/2018 Proceedings (Converted) - Event

Case Summary

Event Type Code: S65
Event Type Description: SUBMISSION
Note: SUBMISSION BY THE STATE OF THE MOTION TO PLACE ON CALENDER (FILE CHECKED OUT SENT PLEADING TO DC 1)

5/30/2018 Proceedings (Converted) - Event
Event Type Code: F16
Event Type Description: FILE CHECKED IN BY:
Note: VOLUME 1 ONLY

5/30/2018 Proceedings (Converted) - Event
Event Type Code: O12
Event Type Description: ORDER
Note: DIRECTING RESPONSE

6/6/2018 Proceedings (Converted) - Event
Event Type Code: E31
Event Type Description: E-MAIL
Note: PETITION TO AG'S OFFICE

6/27/2018 Proceedings (Converted) - Event
Event Type Code: R43
Event Type Description: RETURN ON WRIT

7/17/2018 Proceedings (Converted) - Event
Event Type Code: C81
Event Type Description: ANSWER
Note: TO PETITION AND PETITIONER'S SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS

7/19/2018 Proceedings (Converted) - Event
Event Type Code: N04
Event Type Description: NOTICE
Note: FOR REQUEST OF TRANSCRIPTS OF ARRAIGNMENT

5/29/2019 Proceedings (Converted) - Event
Event Type Code: F15
Event Type Description: FILE CHECKED OUT BY:
Note: DC I for review/signature VOL 1&2

7/26/2019 Proceedings (Converted) - Event
Event Type Code: M60
Event Type Description: MOT TO WITHDRAW
Note: AS COUNSEL PLACED IN DC1 BOX

7/26/2019 Proceedings (Converted) - Event

Case Summary

Event Type Code: S28
Event Type Description: SUBMISSION OF ORDER
Note: ORDER SENT TO JUDGE FOR SIGNATURE ORDER TO WITHDRAW AS COUNSEL OF RECORD
COPIES PROVIDED BY LIKER OFFICE PLACED IN DC1 BOX
Action Date: 02/04/2020
Action Code: R99
Action Description: RESPONSE/ORDER
Action Comment: ORDER ALLOWING WITHDRAW

9/25/2019 Proceedings (Converted) - Event
Event Type Code: R29
Event Type Description: REQUEST FOR REVIEW
Note: OF MOTION FILED 07/26/19 PLACED IN DC1 BOX
Action Date: 02/04/2020
Action Code: R99
Action Description: RESPONSE/ORDER
Action Comment: ORDER ALLOWING WITHDRAW

2/3/2020 Writ of Habeas Corpus Hearing - Event For: 7/1/2020 9:30 AM
Event Date: 07/01/2020 09:30
Event Type Code: HC
Event Type Description: WRIT HABEAS CORPUS

2/4/2020 Proceedings (Converted) - Event
Event Type Code: F16
Event Type Description: FILE CHECKED IN BY:
Note: 1 & 2

2/4/2020 Proceedings (Converted) - Event
Event Type Code: O12
Event Type Description: ORDER
Note: TO PRODUCE PRISONER

2/4/2020 Proceedings (Converted) - Event
Event Type Code: O20
Event Type Description: ORD ALLW WTDRL ATTY
Note: ORDER APPOINTING ATTORNEY AND ORDER SETTING HEARING

2/4/2020 Proceedings (Converted) - Event
Event Type Code: C35
Event Type Description: COPIES PREPARED FOR
Note: LOCKIE ESQ OF THE COMPLETE FILE AND PLACED IN HIS PICK UP BOX @3:44

2/4/2020 Proceedings (Converted) - Event
Event Type Code: N49
Event Type Description: NOTE ADDED TO FILE
Note: LIKER ESQ'S PROPOSED ORD (DATE STAMPED REC'D 7/26/19) RET TO HIM, NOT SIGNED
AND NOT FILE STAMPED, PLACED IN HIS PICK UP BOX @3:45 2/4/2020

Case Summary

2/4/2020 Proceedings (Converted) - Event
Event Type Code: F15
Event Type Description: FILE CHECKED OUT BY:
Note: DC I for review/signature VOL 1 AND 2

2/7/2020 Open - Case Status
Case status change.

5/22/2020 ORDER DENYING POST CONVICTION RELIEF
AS TO GROUNDS 1, 2, AND 3 - Document

6/23/2020 CORRESPONDENCE - Document

7/1/2020 7.1.20 DC1 Petition for Writ of Habeas
Corpus Minutes - Document

5/24/2021 ORDER DENYING PETITIONS FOR WRIT OF
HABEAS CORPUS - Document

5/25/2021 NOTICE OF ENTRY - Document
ORDER DENYING PETITIONS FOR WRIT OF HABEAS CORPUS

6/24/2021 NOTICE OF APPEAL - Document

6/24/2021 REQUEST FOR ROUGH DRAFT TRANSCRIPT
- Document

6/25/2021 NOTICE OF APPEAL 06.25.21 - Document
FILED AT DIRECTION OF DEPT 1
COPIES RETURNED TO DEVON HOCKEMIER, L.C.C. 1200 PRISON RD, LOVELOCK, NV 89419

6/25/2021 FORMAL LETTER FROM DEVON HOCKEMIER
- Document
FILED AT DIRECTION OF DEPT 1
COPIES RETURNED TO DEVON HOCKEMIER, L.C.C. 1200 PRISON RD, LOVELOCK, NV 89419

6/29/2021 CLERK'S CERTIFICATION - Document
FILED WITH THE SUPREME COURT

7/6/2021 MOTION TO PROCEED IN FORMA PAUPERIS
- Document

7/6/2021 REQUEST FOR TRANSCRIPT - Document

7/6/2021 SUBMISSION OF ORDER TO PROCEED IN
FORMA PAUPERIS - Document
4 COPIES PROVIDED BY LOREMAN'S OFFICE

Case Summary

7/7/2021 CASE APPEAL STATEMENT 7.7- Document

7/7/2021 CLERK'S CERTIFICATE 7.7 - Document

FILED

2021 MAY 24 PM 2:58
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY ll

Case No.: CV-HC-17-267

Dept. No.: 1

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

DEVON RAY HOCKEMIER,

Petitioner,

v.

RENEE BAKER, WARDEN
LOVELOCK CORRECTIONAL
CENTER (LLC),

Respondent.

**ORDER DENYING PETITIONS
FOR WRIT OF HABEAS
CORPUS**

Before the Court is the Petition for Writ of Habeas Corpus (Post-Conviction), Brought through NRS 34.720 et seq. and Supported under NRS 34.370(4) and Supported under NRS 34.760(2) ("the original petition") filed by Devon Ray Hockemier ("Petitioner") on April 12, 2017. Petitioner originally raised the following grounds for *habeas corpus* relief: 1. Prosecutorial misconduct; 2. Judicial bias; 3. Cruel and unusual punishment; 4. Ineffective assistance of trial counsel; and 5. Ineffective assistance of appellate counsel.

Petitioner then filed his Supplement to Petition for Habeas Corpus Relief ("the supplemental petition") on September 11, 2017, alleging three additional grounds for relief: 1. Oppressive plea-bargaining tactics by the State; 2. Ineffective assistance of trial counsel; and 3. Exculpatory Brady material suppressed by the State. Respondent filed an answer to both petitions on July 17, 2018. On May 22, 2020, the Court denied grounds 1, 2, and 3 of the original petition. On July 1, 2020, the

1 Court then held an evidentiary hearing as to all remaining grounds. For the reasons stated below, all
2 remaining grounds are DENIED.

3 A. Grounds Specific to Petitioner's Supplemental Petition

4 1. Oppressive Plea-Bargaining

5 Petitioner's first ground in his supplemental petition, that the State overcharged Petitioner as
6 an oppressive plea-bargaining technique, simply restates the first argument from the original
7 petition. This ground was addressed and denied in the Court's May 22, 2020, Order. The Court sees
8 no reason to revisit that argument again. For the reasons stated in the May 22, 2020, Order, ground
9 one in Petitioner's supplemental petition is DENIED.

10 2. Exculpatory Brady Material

11 Petitioner's third ground in his supplemental petition states that the State suppressed
12 exculpatory Brady material. Because Petitioner pled guilty to two of the charges against him, he is
13 limited to alleging ineffective assistance of counsel in his *habeas corpus* petitions. NRS
14 34.810(1)(a). Petitioner is therefore procedurally barred from raising the Brady allegations now.
15 Even were he not procedurally-barred, however, Petitioner is required to support his allegations with
16 specific factual bases. Petitioner has not done so here; he has therefore not met his burden to be
17 entitled to an evidentiary hearing in this matter. See Means v. State, 120 Nev 1001, 1016 (2004).
18 For both of those reasons, therefore, ground three in Petitioner's supplemental petition is DENIED.

19 B. Ineffective Assistance of Counsel Claims

20 The remainder of Petitioner's grounds for *habeas corpus* relief in both his original and
21 supplemental petition allege ineffective assistance of trial and appellate counsel. To show ineffective
22 assistance of counsel, Petitioner must show both that counsel's representation of him fell below an
23 objective standard of reasonableness, and that counsel's deficient performance prejudiced his
24 defense, meaning that there is a reasonable probability that, but for counsel's mistakes, the results
25 of the proceedings would have been different. Strickland v. Washington, 466 US 668, 688 (1984);
26 Warden v. Lyons, 100 Nev 430, 432 (1984). A court may address the Strickland prongs in any order.

1 Strickland at 697. To warrant an evidentiary hearing, Petitioner must make specific factual
2 allegations not belied by the record that, if true, would entitle him to relief. Means v. State, 120 Nev
3 1001, 1016 (2004).

4 1. O.M.'s Two Interviews

5 Petitioner first alleges that trial counsel was deficient for failing to advise the court at the
6 preliminary hearing that victim O.M., a minor, was interviewed by the detective in this case twice.
7 Petitioner implies that O.M. was encouraged by the detective and/or the State to lie in his second
8 interview about the number of sexual assaults that occurred.

9 Petitioner provides no specific facts to support his allegation that O.M. was lying and/or
10 encouraged to lie in his later interview. In his own interview with the detective in this case, Petitioner
11 admitted to more acts occurring than O.M. had. Petitioner has failed to show that trial counsel was
12 deficient, nor how, without O.M.'s second statement, the results of his case would have been
13 different. As to this ground, the petitions are DENIED.

14 2. Multiple Charges

15 Next, Petitioner argues that the State overcharged Petitioner with additional unfounded
16 counts and that trial counsel was deficient for not challenging these additional counts.

17 The record belies Petitioner's claim that trial counsel did not fight the bind-over of the
18 charges against him at the preliminary hearing. Indeed, trial counsel was successful in preventing
19 three counts from being bound over to the district court from justice court. Petitioner does not
20 provide any specifics about which other counts trial counsel should have attacked and on what
21 grounds, and how there is a reasonable probability that, had trial counsel fought the bind-over of
22 these counts, the results of his proceedings would have been different. As to this ground, the petitions
23 are DENIED.

24 3. Petitioner's Youth

25 Petitioner next alleges that trial counsel was deficient for failing to inform the Court at
26 sentencing that Petitioner was "16 turning 17" rather than "17 turning 18" at the time he committed

1 his crimes. The record shows that the Court was aware that Petitioner was a minor when he
2 committed some of these crimes; it had Petitioner's Pre-Sentence Investigation Report ("PSI") with
3 Petitioner's date of birth before it; and the State, defense counsel, and the Court all discussed
4 Petitioner's youth during the sentencing hearing. Petitioner himself stated that he was "17 turning
5 18" years old in his interview with the detective which was played during sentencing. There is thus
6 no reason to believe that the Court was unaware of Petitioner's age at the time he committed his
7 crimes; further, there is no reason to believe that trial counsel was deficient for failing to contradict
8 Petitioner's own statement as to how old he was. Yet further, Petitioner has not shown a reasonable
9 probability of a different outcome had trial counsel done so. There is no reason to believe that a
10 deviation in Petitioner's age up or down by a matter of months would have changed the Court's
11 understanding of Petitioner's crime and culpability, especially given that the Court was aware that
12 Petitioner had been a minor at the time some of the crimes occurred. As to this ground, the petitions
13 are DENIED.

14 4. Trial Counsel's Advice as to Concurrent and Consecutive Sentencing

15 Petitioner alleges that trial counsel was deficient in advising him that the Court would "more
16 than likely" run his sentences concurrently, and that this bad advice caused Petitioner to accept a
17 plea agreement.

18 First, trial counsel's advice was accurate, as Parole and Probation had recommended that
19 Petitioner be sentenced concurrently, and the Court generally places a great deal of stock in those
20 recommendations and frequently agrees with them. Trial counsel did not guarantee that the Court
21 would run Petitioner's sentences concurrently, however, and explained to him that the decision was
22 entirely within the Court's discretion. Trial counsel was therefore not deficient in advising Petitioner
23 as he did.

24 Second, both Petitioner's first and amended memoranda of plea agreement indicate that he
25 understood that the Court has discretion to sentence him within the bounds of the law; that the Court
26 is not bound by any plea agreement or recommendations from any party to this case; and that the

1 Court can order him to serve his sentences consecutively or concurrently. Further, at both
2 Petitioner's February 12, 2015, arraignment hearing and his March 16, 2015, second arraignment
3 hearing, the Court asked Petitioner on the record if he understood that his sentences could be run
4 consecutively or concurrently, and then explained to Petitioner the minimum length of time that
5 consecutive sentences would entail. At both hearings, Petitioner indicated that he understood this.
6 Petitioner has failed to show that there is a reasonable probability of a different outcome had trial
7 counsel not advised him that it was more than likely he would be sentenced concurrently, as he was
8 informed twice in writing and twice on the record that his sentence was up to the Court's discretion.
9 As to this ground, therefore, the petitions are DENIED.

10 5. Bind-Over of the Kidnapping Charges

11 Petitioner next alleges that trial counsel was deficient for failing to file a pretrial *habeas*
12 *corpus* petition regarding his First- and Second-Degree Kidnapping charges. Petitioner states that
13 those two charges were unfounded, a remark belied by the fact that the justice court found sufficient
14 probable cause to believe that these two charges were committed by Petitioner when it bound them
15 over to the district court. There is nothing to indicate that trial counsel was deficient for not filing a
16 pretrial *habeas corpus* petition regarding these kidnapping charges.

17 Even if Petitioner were correct, however, he does not explain how there is a reasonable
18 probability of a better sentencing outcome for him had these charges not been bound over to the
19 district court. Petitioner's original and amended memoranda of plea agreement disposed of both of
20 these kidnapping charges along with sixteen other charges. There is also no evidence in the record
21 to indicate that the Court considered the kidnapping charges at all in making its sentencing decision.
22 Petitioner has failed to meet his burden on this ground; his petitions as to this ground are therefore
23 DENIED.

24 6. Character Witnesses

25 Petitioner next claims that trial counsel was deficient for failing to present character
26 witnesses at his sentencing hearing. Petitioner has failed to show which witnesses should have been

1 presented, to what they would testify, how trial counsel was deficient for not providing this unknown
2 testimony, and how this testimony would have given Petitioner a reasonable probability of a different
3 sentencing outcome. The petitions are DENIED as to this ground.

4 7. Mitigating Evidence

5 Petitioner further states that trial counsel was deficient for not raising "the mitigating
6 evidence that is displayed in 'Ground Two'" in his sentencing argument. Petitioner's second ground
7 argues that the Court was biased against him at sentencing because it ignored the fact that Petitioner
8 had been sexually victimized as a child; that Petitioner committed his crimes when he was 16 turning
9 17, not 17 turning 18; that Petitioner had no prior felony convictions; that Petitioner gave a statement
10 of "clear remorse" at sentencing; and that Petitioner confessed to the detective "and omitted the
11 illegal acts committed upon O.M. and S.B."

12 Taking the mitigating factors in turn, the Court finds that both the PSI report and Petitioner's
13 statement to the Court at sentencing raised the issue of him having been sexually abused as a child.
14 As to Petitioner's allegation that the Court was wrong about Petitioner's age, this is belied by
15 Petitioner's own statement that he committed his crimes when he was 17 turning 18, as could be
16 heard on the audio recording which was played at sentencing. As to Petitioner's lack of a felony
17 record, the Court was aware that Petitioner had no felony record, as that information was present in
18 the PSI. As to Petitioner's statement of "clear remorse," the Court considered that statement and
19 found it lacking, as indicated when the Court stated on the record that it did not believe that Petitioner
20 understood the seriousness or impact of his acts on other people. Lastly, it is unclear to the Court
21 why Petitioner believes that his omitting certain illegal acts from his confession is a mitigating factor.
22 If Petitioner is again alleging that O.M. and S.B. were lying in their detective interviews, the Court
23 notes again that there is no evidence to support this allegation. If Petitioner is stating instead that the
24 Court did not consider his confession, that too is belied by the record, as seen when the Court noted
25 that it took into account the fact that Petitioner's confession spared both his family and the family
26 of his victims from the trauma of a trial. The Court had all of the information Petitioner is now

1 claiming trial counsel should have presented at sentencing, either from the PSI report or from
2 information actually presented at the sentencing; there is no reason to believe that trial counsel was
3 deficient for not repeating the same facts to the Court *ad nauseum*. As the Court already had this
4 information, Petitioner has thus failed to show a reasonable probability of a different outcome had
5 trial counsel presented the information again. The petitions are DENIED as to this ground.

6 8. Appeal

7 i. Judicial Bias as Evidenced by Failure to Follow the PSI Report's 8 Recommendations

9 Petitioner states that appellate counsel was deficient for not alleging judicial bias at
10 sentencing evidenced by the Court not following the PSI report's recommendations.

11 Although appellate counsel did not raise the issue of judicial bias, it did raise the issue of
12 whether not following the PSI recommendations was an abuse of judicial discretion. The Court of
13 Appeals addressed this issue, stating, "Notably, the district court is not required to follow the
14 sentencing recommendation of the Division of Parole and Probation." Hockemier v. State, No.
15 68333 (NV Court of Appeals, April 20, 2016). There is thus no reason to believe that appellate
16 counsel was deficient for not alleging judicial bias from failure to follow the PSI recommendations,
17 when the Court of Appeals has already indicated that the Court is not required to follow the PSI
18 recommendations. Petitioner has again failed to show that, had appellate counsel raised the issue of
19 judicial bias with the above factual allegations, the results of his appeal would have been different.
20 The petitions are therefore DENIED as to this ground.

21 ii. Prosecutorial Misconduct

22 Petitioner next states that appellate counsel was deficient for not alleging prosecutorial
23 misconduct in his appeal. Petitioner does not support this allegation with specific facts under this
24 ground; earlier in his petitions, he does allege that the State interviewing the victims in this case
25 multiple times caused the victims to make up additional sexual assaults, and that the State
26 intentionally misstated Petitioner's age in the criminal information.

1 Petitioner has not provided any factual bases for his allegations that the second interview was
2 inappropriate and/or that the State intended to cause the victims to lie and/or that the victims did lie
3 about the number of sexual assaults committed by Petitioner. There is therefore no reason to believe
4 that appellate counsel was deficient for failing to allege prosecutorial misconduct in Petitioner's
5 appeal. As there is no factual basis to support such an allegation, Petitioner has also failed to show
6 that, had this been included in his appeal, Petitioner would have had a reasonable probability of a
7 different appellate result. The petitions are therefore DENIED as to this count.

8 THEREFORE, As Petitioner has failed to meet his burden as to both his Petition for Writ of
9 Habeas Corpus (Post-Conviction), Brought through NRS 34.720 et seq. and Supported under NRS
10 34.370(4) and Supported under NRS 34.760(2) and his Supplement to Petition for Habeas Corpus
11 Relief, both Petitions are hereby DENIED.

12
13 SO ORDERED this 24th day of May, 2021.

14
15 
16 KRISTON N. HILL
17 DISTRICT JUDGE - DEPT. 1
18
19
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21
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23
24
25
26

1 **CERTIFICATE OF HAND DELIVERY**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
3 Court, Department 1, and that on this 24th day of May, 2021, I personally hand delivered a file-
4 stamped copy of the foregoing **ORDER DENYING PETITIONS FOR WRIT OF HABEAS**
5 **CORPUS** addressed to:

6 Tyler J. Ingram, Esq.
7 Elko County District Attorney
8 540 Court Street, 2nd Floor
9 Elko, NV 89801
[Box in Clerk's Office]

David D. Loreman, Esq.
445 5th Street, Suite 210
Elko, NV 89801
[Box in Clerk's Office]



10
11 **CERTIFICATE OF MAILING**

12 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial
13 District Court, Department 1, and that on this 24th day of May, 2021, I deposited for mailing in
14 the U.S. mail at Elko, Nevada, postage prepaid, a file stamped copy of the foregoing **ORDER**
15 **DENYING PETITIONS FOR WRIT OF HAB EAS CORPUS** to:

17 Devon Ray Hockemier - Inmate #1140743
18 C/O Lovelock Correctional Center
19 1200 Prison Road
20 Lovelock, NV 89419

Aaron D. Ford, Esq.
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701-4717

21 Tim Garrett, Warden
22 Lovelock Correctional Center
23 1200 Prison Road
24 Lovelock, NV 89419



**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA**

RECORD OF COURT PROCEEDINGS

Present - Honorable NANCY PORTER, District Judge,
and Officers of the Court.

DEVON RAY HOCKEMIER,

Plaintiff,

VS.

Date: 07-01-2020

Case No.: ECDC-CVHC-17-267

Dept.: 1

JAMES DZURENDA, DIRECTOR,
NEVADA DEPARTMENT OF CORRECTIONS

Defendant.

Plaintiff present and represented by
David D. Loreman, Esq.

Defendant not present and represented by
Jeffrey C. Slade, Esq.
Court Clerk, Lani Broxson, present.

HEARING ON PETITION FOR WRIT OF HABEAS CORPUS

Court Convened at 9:42 a.m.

The Court noted the presence of the parties.

The matter was before the Court for a hearing on a petition for writ of habeas corpus.

Mr. Loreman called his first Witness, Sherburne M. Macfarlan III.

The Witness, Mr. Macfarlan was sworn.

Mr. Loreman examined Witness, Mr. Macfarlan on direct.

Mr. Slade offered Exhibits #A- Detective's Declaration, #B- Criminal Complaint, #C- Amended Criminal Complaint, #D- Court Hearing History, #E- Arraignment Minutes, #F- Remittitur, #G- Application for Private Investigator, #H- Application for Payment of Private Investigator, #I- Motion to Transfer Case, #J- Opposition to Contingent Motion to Transfer Case to Juvenile Court, #K- Transcript, #L- Transcript Sentencing Hearing, #M- Amended Memorandum of Plea Agreement, there being no objection the Court **ORDERED** Exhibits #A-#M admitted.

Mr. Slade examined the Witness, Mr. Macfarlan on cross.

Court recessed at 10:39 a.m.

Court reconvened at 11:04 a.m.

Mr. Slade's examination of the Witness, Mr. Macfarlan continued.

Mr. Loreman examined the Witness, Mr. Macfarlan on re-direct.

Mr. Slade examined the Witness, Mr. Macfarlan on re-cross.

The Witness was excused.

Court recessed at 11:47 a.m.

Court reconvened at 1:37 p.m.

Mr. Loreman called his second Witness, Mr. Devon Hockemier.

The Witness, Mr. Devon Hockemier was sworn.

Mr. Loreman examined the Witness on direct.

Mr. Slade examined the Witness on cross.

Mr. Loreman examined the Witness on re-direct.

Mr. Slade examined the Witness on re-cross.

Mr. Loreman examined the Witness on re-direct.

The Witness was excused.

Mr. Slade gave a statement in regards to an issue that had been briefed on.

Court recessed at 2:01 p.m.

Court reconvened at 2:15 p.m.

Mr. Slade re-called the Witness Mr. Macfarlan.

The Court reminded Mr. Macfarlan he was still under oath.

Mr. Slade examined the Witness on re-cross.

The Court inquired of counsel if they wished to do written or oral arguments.

Mr. Loreman advised he wished to do a written argument.

Mr. Slade advised he wished to do oral argument.

The Court advised Mr. Loreman would be allowed to do written argument and Mr. Slade would be allowed to do oral argument.

Mr. Slade gave oral argument in opposition to the habeas corpus.

Mr. Loreman gave oral argument in support of the habeas corpus.

Mr. Slade gave follow up argument.

Mr. Loreman gave follow up argument.

The Court advised it would take the matter under advisement and would have a decision made as soon as possible.

Court adjourned at 3:00 p.m.

Number	Description	Location	Marked Dt	Admitted Dt
1	MEDICAL RECORD	Elko County Clerk's Office	7/1/2020	7/1/2020
A	Detective's Declaration	Elko County Clerk's Office	7/1/2020	7/1/2020
B	Criminal Complaint	Elko County Clerk's Office	7/1/2020	7/1/2020
C	Amended Criminal Complaint	Elko County Clerk's Office	7/1/2020	7/1/2020
D	Court Hearing History	Elko County Clerk's Office	7/1/2020	7/1/2020
E	Arraignment Minutes	Elko County Clerk's Office	7/1/2020	7/1/2020
F	Remittitur	Elko County Clerk's Office	7/1/2020	7/1/2020
G	Application to Employ Private Investigator	Elko County Clerk's Office	7/1/2020	7/1/2020
H	Application for Payment of Private Investigator Fees	Elko County Clerk's Office	7/1/2020	7/1/2020
I	Motion to Transfer Case	Elko County Clerk's Office	7/1/2020	7/1/2020
J	Opposition to Contingent Motion to Transfer Case to Juvenile Court	Elko County Clerk's Office	7/1/2020	7/1/2020
K	Transcript	Elko County Clerk's Office	7/1/2020	7/1/2020
L	Transcript Sentencing Hearing	Elko County Clerk's Office	7/1/2020	7/1/2020
M	Amended Memorandum of Plea Agreement	Elko County Clerk's Office	7/1/2020	7/1/2020

Case No. CV-HC-17-267

Dept. No. 1

FILED

2021 JUL -7 PM 4:54

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

ELKO CO DISTRICT COURT
CLERK _____ DEPUTY *am*

DEVON RAY HOCKEMIER,
Appellant,

vs.

CLERK'S CERTIFICATION

RENEE BAKER, WARDEN LOVELOCK
CORRECTIONAL CENTER,
Respondent,
_____ /

I, KRISTINE JAKEMAN, the duly elected, acting and qualified County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed are true, full and correct copies of certain documents in Case No. CV-HC-17-267 Dept. 1, DEVON RAY HOCKEMIER, Appellant, vs. RENEE BAKER, WARDEN LOVELOCK CORRECTIONAL CENTER, as appears on file and of record in my office.

WITNESS My Hand and Seal of said Court on July 7, 2021.

KRISTINE JAKEMAN, ELKO COUNTY CLERK

By

Annette Marshall

Annette Marshall, DEPUTY CLERK

CERTIFICATE OF SERVICE

I hereby certify that I caused to be sent electronically and/or mailed a certified copy of the annexed documents in Case No. CV-HC-17-267 Dept. 1, DEVON RAY HOCKEMIER, Appellant, vs. RENEE BAKER, WARDEN LOVELOCK CORRECTIONAL CENTER, Respondent, as appears on file and of record in this Court, to the following:

Devon Ray Hockemier #1140743
1200 Prison Road
Lovelock, Nevada 89419

Warden Renee Baker
1200 Prison Road
Lovelock, Nevada 89419

Attorney General
Heroes' Memorial Building
Capital Complex
Carson City, NV 89710

State of Nevada
Tyler Ingram, Esq.
Elko County District Attorney's Office
571 Court Street
Elko, Nevada 89801

DATED this 7th day of June, 2021.



Annette Marshall, Deputy Clerk