

1 He's had a warped perception of his offense,
2 that he actually believed the victims liked what he was
3 doing to them. We heard that -- here he said the older
4 child seemed to have gotten into it a little bit. The
5 evaluator believes that based on his ~~perception~~ ^{Electronic Filed}
6 will -- it will set him up for future victimization if ^{Nov 15 2021 07:11 p.m.}
7 nothing has happened -- no help, he doesn't get any ^{Elizabeth A. Brown}
8 additional help. ^{Clerk of Supreme Court}

9 The evaluator doesn't believe he's being
10 truthful about his likes and dislikes when it comes to
11 his behavior. He obviously -- he's going to present
12 himself very positively to everybody, and he does come
13 off as an intelligent individual. That's scary -- a
14 scary thing.

15 The evaluator came up with certain reasons
16 why he believes he's a moderate offender -- or is to
17 re-offend. I would think he would be actually a higher
18 risk based on what he's saying. He's saying he's not
19 convinced that he's been -- that there's no other
20 victims. The evaluator was also not -- also believes
21 that since the Defendant did not seek any additional
22 help, and he had many years of doing so, he may still
23 re-offend.

24 And finally, he actually coerced one of his
25 victims asking the child, "Do you want to do something

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1 fun?" Anybody who's been around kids knows if you ask a
2 child do you want to do something fun, the answer you're
3 always going to get is yes, and that's exactly what
4 happened.

5 He also believes his victims liked this
6 behavior -- what he was doing to them, which is
7 obviously not true in this case. You've got one who's
8 now acting out, and the other one has some serious
9 problems as well. We've got two victims. They should
10 be treated equally. Each count should run
11 consecutively.

12 Thank you.

13 THE COURT: Mr. MacFarlan.

14 MR. MACFARLAN: Judge, these cases are
15 incredibly difficult, and what I would suggest is
16 they're difficult to prosecute, they're difficult to
17 defend, and I presume, although I've never been a Judge,
18 I presume they're very difficult to preside over as the
19 person who has to decide an individual's fate.

20 And what we're really talking about here,
21 Judge, is what is justice in this particular case. And
22 I'm not just talking about justice for my client, the
23 young man who is sitting to my right, but we're also
24 talking about what is justice for the victims, and what
25 is justice for society as a whole.

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1 And in looking at this case, what we'd
2 suggest for this Court is that justice would be having
3 these two life sentences run concurrent, and there is a
4 couple reasons why I initially say that, Judge. You
5 have to remember that at the point in time in
6 Mr. Hockemier's life when he committed these offenses,
7 he was a child himself. He was under the age of
8 majority. He was 17.

9 And I would suggest to the Court that anyone
10 who has been involved in this business, namely, criminal
11 defense, whether it's prosecuting, defending, or
12 presiding over the case, these types of cases, I think
13 we all recognize that people, when they're under the age
14 of 18, oftentimes make decisions that they would not
15 make if they were over the age of 18. That's just the
16 reality. As you get older, you mature and you make
17 better decisions.

18 So that's the first thing I'd like to point
19 out, Judge. It's not an excuse, but the fact that
20 Mr. Hockemier was 17 at the time that these offenses
21 were committed, certainly is a factor to be considered
22 by this Court in determining whether these two sentences
23 should be concurrent or consecutive.

24 The other thing I'd like to point out, Judge,
25 is the actual interview that was played for this Court

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1 just a few minutes ago. We recognize that during that
2 interview, there was some initial hesitation on
3 Mr. Hockemier's part in terms of disclosing what he had
4 done approximately four or so years previously. And I
5 think that we can all understand that that is
6 understandable; namely, suddenly, you are looking into
7 the mah (phonetic) of some pretty serious allegations.
8 I think you're initial reaction, for most people, would
9 be to deny them.

10 But ultimately, Mr. Hockemier came clean, and
11 he not only came clean, Judge, he ultimately provided
12 information to Detective Hessing that the two victims in
13 this case had not even provided for the officer. So
14 ultimately stepped up to the plate, said yes, I did
15 this. Not only did what these boys said I did, but I
16 actually did more, and he provided that information to
17 the detective.

18 If you run these two sentences concurrent,
19 Mr. Hockemier is still looking at a life sentence. The
20 only difference and the only question is is when would
21 he be parole eligible. And if the two sentences are run
22 concurrent, parole eligibility, and that's all it is is
23 eligibility, begins after serving ten years.

24 And at this point in time, Mr. Hockemier has
25 a little bit less than one year in in terms of credit

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1 for time served. So before he's even parole eligible,
2 he's looking at an additional nine years. And that's
3 all it is eligibility, Judge. Just because you're
4 parole eligible does not mean that you are paroled. And
5 it's been my experience in these types of cases over the
6 last 24 years that it is very rare, very rare for a
7 person in Mr. Hockemier's position to be paroled on the
8 first go-around. It just doesn't happen, Judge.

9 So we know that Mr. Hockemier is going to be
10 looking at a minimum of ten years, and it could be a
11 great deal longer than that. But ultimately, whether
12 Mr. Hockemier paroles, whether it's after 10 years, 15
13 years, 20 years, he's not off the hook at that point in
14 time, Judge, because he is subject to lifetime
15 supervision.

16 And lifetime supervision is pretty draconian.
17 At a minimum, you have to be on lifetime supervision for
18 ten years before you can even apply to try and get off
19 of lifetime supervision. And as I indicated, lifetime
20 supervision, in terms of the conditions, can be
21 extremely onerous. You are subject to being told where
22 you're allowed to go, where you're allowed to live, no
23 access to the Internet, no access to social media,
24 subject to polygraph examinations, a laundry list of
25 conditions that Mr. Hockemier is going to be subject to

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1 for an extended period of time.

2 Now, I understand where the State is coming
3 from. I mean, it just sort of makes sense, I guess, if
4 you wish to use that term, two victims, run the
5 sentences consecutive. But what we're talking about
6 here is justice, and justice does not always mandate the
7 maximum sentence.

8 I've got a young man who, as a client, who is
9 going to prison for a long period of time one way or
10 another, and I have no idea what ultimately the Parole
11 Board will do with Mr. Hockemier. I just do not know,
12 but I suspect that they are going to be very leery about
13 allowing Mr. Hockemier back out into society, and
14 understandable. That's understandable.

15 But what I would really like to have, and
16 this is for Mr. Hockemier, is I would like Mr. Hockemier
17 to have some light at the end of the tunnel. I'm hoping
18 that he will be provided programs in prison where he can
19 deal with his issues so, ultimately, if he is released,
20 he does not find himself back in this situation again.

21 And so what I'm suggesting to this Court,
22 Judge, is when you look at all the factors, particularly
23 Mr. Hockemier's age at the time these offenses occurred,
24 justice is that the two sentences be run concurrent.
25 And I'm not suggesting that because I'm trying to make

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1 light of what Mr. Hockemier did to these young boys, but
2 justice suggests that these two sentences should be run
3 concurrently. And that is our recommendation, Your
4 Honor.

5 THE COURT: Thank you.

6 Mr. Hockemier, you have the opportunity at
7 this time to make a statement on your own behalf.
8 You're not required to but you're entitled to. Is there
9 anything further you'd like to state?

10 THE DEFENDANT: Yes, Your Honor. First off,
11 I would like to apologize to the family and the kids
12 because after hearing what they told me, it was already
13 very heavy on my heart. It was a heavy burden I
14 carried, and I just buried it deep within me instead of
15 seeking out some help I needed. So I really want to get
16 my apologies out there to this family.

17 Let's see, I do -- this has been a positive
18 experience for me so far, and I will make the best of it
19 I can. I will do any and all programs at all possible
20 to get me some help, counseling, help me further my
21 education and just basically keep myself busy within the
22 Department of Corrections. And I'm just willing to do
23 whatever I have to do to get back to my family and get
24 back to work and get a sense of normalcy in my life.

25 But I really feel terrible for what I did

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1 back then. It has been years, and I just want to be
2 able to move on from that, you know, get some help
3 because I feel like I was the victim of a similar crime,
4 and not just be an example, but somehow be a solution to
5 this problem that we have going on in this country.
6 It's pretty bad because it's just a constant cycle
7 repeating itself.

8 And I do hope these boys get the help that
9 they need, that O'Ryan can get counseling and so can
10 Scotty so that they can move on with their lives as well
11 and so they don't end up victimizing anybody or they
12 don't have any further issues, and they can live with a
13 sense of normalcy as well. And I think that about
14 covers it, Your Honor.

15 THE COURT: Mr. MacFarlan was exactly right
16 when he said these cases are very difficult. They're
17 difficult for everyone. I can see all the sadness on
18 everybody's faces when I look out into the courtroom.
19 It's sad for these children who are victims, it's sad
20 for their parents, it's sad for your family,
21 Mr. Hockemier. I can see the pain on their face as
22 well.

23 And I'm looking at a 22-year-old young man
24 who's facing life in prison. I've thought about this
25 situation a lot since this case was assigned to this

1 court, and particularly a lot over the last several
2 days. The only discretion this Court has is whether to
3 sentence you concurrently or consecutively, and I have
4 struggled with that for the reasons stated by both
5 attorneys.

6 We have two victims here. You were
7 originally charged in the Justice Court with 23 counts.
8 You could have been convicted of up to eight counts.
9 You did save these children and their families and your
10 family a trial by entering a guilty plea and by
11 admitting to what you had done. And I realize that you
12 may have been 17 at the time some of these acts
13 occurred, the charged timespan crosses over when you
14 turned 18. Science says that people's brains aren't
15 fully formed until age 25, but what you did here was
16 very, very wrong. I see the fear in your face looking
17 at you because you know that I hold your fate in my
18 hands.

19 This Court is charged with the protection of
20 the public. That's what I have to keep in mind at all
21 times, and I'm very concerned that you don't understand
22 the seriousness of what you did or the impact that it
23 has had on other people. I think maybe you're beginning
24 to, but I don't think you've fully taken that in. The
25 evaluator for the sexual -- psychosexual evaluation is

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1 concerned that you will re-offend, and I am concerned as
2 well.

3 The Court will order that a Judgment of
4 Conviction be entered against the Defendant finding him
5 guilty of Count 2, lewdness with a child under 14 years
6 of age, a category A felony, and Count 14, lewdness with
7 a child under 14 years of age, a category A felony.

8 The Defendant shall pay the \$25
9 administrative assessment fee, the \$150 genetic testing
10 fee, and \$855 for the psychosexual fee. The Defendant
11 shall submit to testing of his blood and/or saliva for
12 purposes of genetic markers.

13 For Count 2, the Defendant is sentenced to a
14 maximum term of life with the possibility of parole
15 after 10 years in the Nevada Department of Corrections
16 with credit for 339 days previously served. For
17 Count 14, the Defendant is sentenced to a maximum term
18 of life with the possibility of parole after 10 years in
19 the Nevada Department of Corrections. That sentence
20 shall run consecutively with the sentence for Count 2.

21 (Celebration in the gallery)

22 THE COURT: All right, all right, no, no, no.
23 One more word, and you're out of here.

24 Pursuant to NRS 176.0931, the Defendant is
25 sentenced to lifetime supervision commencing after any

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1 period of probation or any term of imprisonment and any
2 period of release on parole.

3 Mr. Hockemier, you also will be required to
4 register. You have a duty to register initially with
5 the local law enforcement agency of the jurisdiction in
6 which you are convicted. You have a duty to register in
7 this State during any period in which you are a resident
8 of this State or a non-resident who is a student or
9 worker within the State and the time within which you
10 are required to register, pursuant to NRS 179D.460.

11 You have a duty to register in any other
12 jurisdiction during any period in which you are a
13 resident of the other jurisdiction or a non-resident who
14 is a student or worker within the other jurisdiction.
15 If you move from this State to another jurisdiction, you
16 have a duty to register with the appropriate law
17 enforcement agency in the other jurisdiction.

18 You have a duty to notify the local law
19 enforcement agency in whose jurisdiction you formerly
20 resided in person or in writing if you change the
21 address at which you reside, including if you move from
22 this State to another jurisdiction or change the primary
23 address at which you were a student or worker.

24 You have a duty to notify immediately the
25 appropriate local law enforcement agency if you are or

1 expect to be or become enrolled as a student at an
2 institution of higher education or change the date of
3 commencement or termination of enrollment at an
4 institution of higher education or if you are or expect
5 to be or become a worker at an institution of higher
6 education or change the date of commencement or
7 termination of your work at an institution of higher
8 education.

9 Let the record reflect that the Court Clerk
10 has handed the Defendant a copy of the requirements for
11 registration. Mr. Hockemier, I need you to read those
12 fully and carefully and sign the form indicating you
13 have read the requirements. So I need you to do that
14 now.

15 THE DEFENDANT: Okay.

16 THE COURT: The record will reflect that the
17 Defendant has read and signed the registration
18 requirements.

19 Mr. Hockemier, the aggregate minimum term you
20 will serve is 20 years with a maximum term of life with
21 the possibility of parole. I am very mindful of the
22 fact that I've just told a 22-year-old he's going to be
23 in prison until he's at least 41 years old. I wish it
24 didn't have to be that way, but it's my judgment that it
25 does.

1 I hope that you will get all the help that
2 you need in prison like you said that you want to. I
3 hope that you will, and I hope that you will find some
4 way to make a positive life for yourself while you're
5 there.

6 Is there anything further?

7 MR. SCHULMAN: No, Your Honor.

8 MR. MACFARLAN: No, Your Honor.

9 (Whereupon, proceeding concluded)

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(Exh. #55A)
29 of 29

STATE OF NEVADA)
) ss.
COUNTY OF CARSON)

I, Julie Rowan, Transcriptionist for the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, have transcribed the proceedings held in Department 1 of the above-entitled Court on May 21, 2015.

The foregoing transcript is an UNCERTIFIED ROUGH DRAFT TRANSCRIPT of the electronic tape recording of said proceedings. THIS TRANSCRIPT HAS NOT BEEN EDITED, PROOFREAD, FINALIZED, INDEXED OR CERTIFIED.

DATED: This 20th day of July, 2015.


Julie Rowan

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10392

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RESPONDENT EXHIBIT NO: L
CASE NO.: CV-HC-17-267
DISTRICT COURT: JUDGE NANCY PORTER
DATE MARKED: 7/1/20
DATE ADMITTED: 7/1/20
CLERK: LB

Respondent's

Exhibit 13

**Hockmier v Director of Nevada
Department of Corrections**

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F-14-941099 K

1 CASE NO. CR-FP-14-0635

2 DEPT. NO. 1

2015 FEB 18 PM 2:46

RECEIVED
ELKO COUNTY DISTRICT ATTORNEY

2015 FEB 18 PM 2:31

NO CO DISTRICT CO.

DEPUTY

6 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 DEVON R. HOCKEMIER,

13 Defendant,
14

AMENDED
MEMORANDUM OF PLEA
AGREEMENT

15 I hereby agree to enter pleas of guilty to Counts 2 and 14 of
16 the Criminal Information filed on August 28, 2014 wherein I am
17 charged in each count with: LEWDNESS WITH A CHILD UNDER 14 YEARS OF
18 AGE, A CATEGORY A FELONY AS DEFINED BY NRS 201.230.

19 My decision to plead guilty is based upon the plea agreement
20 in this case in which the State has agreed to file a Criminal
21 Information charging me with the above mentioned felonies. The
22 District Attorney's Office agrees that it will file no further
23 charges arising out of facts related to this incident, now known by
24 the District Attorney's Office, and will dismiss the remaining
25 Counts contained within the Criminal Information at the time of
26 sentencing. At the time of sentencing, the parties will be free to
27 argue for any sentence they deem appropriate, including whether the
28 sentences should be run consecutively or concurrently.

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CONSEQUENCES OF THE PLEA

I understand that as a consequence of my pleas of guilty, I will be imprisoned for a period of life with the possibility of parole after ten (10) years on each count, and I may be fined up to \$10,000 on each count. I understand that the law requires me to pay an administrative assessment fee, and that in some instances I may be required to pay other costs incurred by the State in this prosecution, such as drug analysis fees or costs of extradition.

I understand that I may be ordered to make restitution to any victim of the offenses to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted as a result of this agreement, and that even though charges have been dismissed or not brought as a result of this agreement, they may still be considered by the judge in determining the appropriate sentence to be imposed in my case.

I understand that I AM NOT eligible for probation for the offenses to which I am pleading guilty. I also understand that pursuant to NRS 179D.097, I will be required to register as a sex offender. Further, pursuant to NRS 176.0931, I will subject to lifetime supervision. I understand that in order to be released from lifetime supervision, I must:

1. Comply with the provisions of NRS 179D.010 to NRS 179D.550 (registration as a sex offender), inclusive;
2. Not be convicted of any offense that poses a threat to the safety or well-being of others for an interval of at least 10 consecutive years after my last conviction or release from incarceration, which ever occurs later; and
3. To be deemed not likely to pose a threat to the safety of

1 others, as determined by a person professionally
2 qualified to conduct psychosexual evaluations, if
3 released from lifetime supervision.

- 4 4. A person who is released from lifetime supervision
5 remains subject to the provisions for registration as a
6 sex offender and to the provisions for community
7 notification unless the person is otherwise relieved from
8 the operation of those provisions.

9 I understand that if I plead guilty to two or more charges,
10 the sentences may be served concurrently or consecutively, at the
11 discretion of the judge who sentences me.

12 I have not been promised or guaranteed any particular sentence
13 by anyone. I know that my sentence is to be determined by the
14 Court within the limits prescribed by law. I understand that if my
15 attorney, or the State, or both, recommends any particular
16 sentence, the Court is not obligated to follow those
17 recommendations.

18 I understand that the Division of Parole and Probation will
19 conduct an investigation into, and prepare a report on, my
20 background and other matters relevant to determining the
21 appropriate sentence to be imposed. My attorney and I, as well as
22 the District Attorney, unless he has otherwise agreed in this
23 document to remain silent, will all have the opportunity to comment
24 on the information contained in the report at the time of
25 sentencing.

26 COLLATERAL CONSEQUENCE OF DEPORTATION

27 If you are not a citizen of the United States of America, you
28 are hereby advised that conviction of the offense for which you

1 have been charged may have the consequences of deportation,
2 exclusion from admission to the United States of America, or denial
3 of naturalization pursuant to the laws of the United States of
4 America.

5 WAIVER OF RIGHTS

6 By entering my pleas of guilty, I understand that I am waiving
7 and forever giving up the following rights and privileges:

8 1. The constitutional right against self-incrimination,
9 including the right to choose whether to testify at trial, and the
10 right to prohibit the prosecutor from commenting on my silence if
11 I choose not to testify.

12 2. The constitutional right to a speedy, fair and public
13 trial by an impartial jury; the constitutional right to be assisted
14 at trial by an attorney, either retained by me, or appointed for me
15 if I am indigent and cannot afford an attorney; the right to
16 require the State to prove each element of the offense with which
17 I am charged beyond a reasonable doubt; the constitutional right to
18 confront and cross-examine my accusers, and the constitutional
19 right to subpoena witnesses in my behalf.

20 3. The right to appeal, with the assistance of retained or
21 appointed counsel, the conviction as well as any legal issues
22 arising prior to entry of this guilty plea. By pleading guilty, I
23 specifically waive my right to appeal any and all such issues.

24 VOLUNTARINESS OF PLEA

25 I have discussed the elements of all of the original charges
26 against me with my attorney and I understand the nature of those
27 charges.

28 I understand that the State would have to prove each element

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1 of the charges against me at trial beyond a reasonable doubt.

2 I have discussed with my attorney any possible defenses,
3 defense strategies, and circumstances which might be favorable to
4 me.

5 All of the foregoing elements, consequences, rights and waiver
6 of rights, have been thoroughly explained to me by my attorney. My
7 attorney has answered all of my questions regarding this plea
8 agreement and its consequences to my satisfaction.

9 I believe that pleading guilty and accepting this plea bargain
10 is in my best interest, and that a trial would be contrary to my
11 best interest.

12 I am satisfied that my attorney is skilled in criminal defense
13 and that I have been fully and fairly served by my attorney.

14 I am not now under the influence of any intoxicating liquor,
15 controlled substance or other substance which would in any manner
16 impair my ability to comprehend or understand this agreement or the
17 proceedings surrounding my entry of this plea. I am signing this
18 agreement freely and voluntarily, after consultation with my
19 attorney, and I am not acting under duress, coercion, or promises
20 of leniency except as expressly set forth in this agreement.

21 DATED this 17th day of February, 2015.

22
23 Devon Hockemier
24 DEVON R. HOCKEMIER
25 Defendant
26
27
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1 DATED this 17th day of February, 2015.

2
3
4 JONATHAN L. SCHULMAN
5 Nevada Bar No. 9180
6 Deputy District Attorney

7 CERTIFICATE OF COUNSEL

8 I, the undersigned, as the attorney for the Defendant named
9 herein and as an officer of the court, hereby certify that:

10 1. I have fully explained to the Defendant the allegations
11 contained in the charges to which guilty pleas are being entered.

12 2. I have advised the Defendant of the penalties for each
13 charge and the restitution that the Defendant may be ordered to
14 pay.

15 3. All pleas of guilty offered by the Defendant pursuant to
16 this Agreement are consistent with the facts known to me and are
17 made with my advice to the Defendant and are in the best interest
18 of the Defendant.

19 4. To the best of my knowledge and belief, the Defendant:

20 a. Is competent and understands the charges and the
21 consequences of pleading guilty as provided in this
22 Agreement.

23 b. Executed this Agreement and will enter all guilty
24 pleas pursuant hereto voluntarily.

25 c. Was not under the influence of intoxicating liquor,
26 a controlled substance or other substance at the
27 time of the execution of this Agreement.
28

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DATED this 17 day of February, 2015.

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SHERBURNE M. MACFARLAN, III
Nevada Bar No. 3999
Attorney for Defendant

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RESPONDENT EXHIBIT NO: m
CASE NO.: CV-HC-17-267
DISTRICT COURT: JUDGE NANCY PORTER
DATE MARKED: 7/1/20
DATE ADMITTED: 7/1/20

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

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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.

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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

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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

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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

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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.

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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.

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

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16 KRISTON N. HILL
DISTRICT JUDGE - DEPT. 1
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David D. Loreman, Esq.
445 5th Street, Suite 210
Elko, NV 89801
[Box in Clerk's Office]

Committee

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

Norman

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Case No. CV-HC-17-267

Dept. No. 1

FILED

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ELKO CO DISTRICT COURT

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

* * * * *

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 # 1140743
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. Loneran, Esq.
445 5th St. Suite 210
Elko, NV 89801

Tim Barnett, Warden
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV, 89419

Devon Ray Hackmeier
Devon Ray Hackmeier #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 Hackmeier
Devon Ray Hackmeier #1140743

Petitioner In Pro Se

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Gaumont

FILED

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY ll

Case No. CV-HC-17-267

Dept. No. 1

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

DEVON RAY HOCKEMIER,

Petitioner,

V.

RENEE BACKER, WARDEN
LOVELOCK CORRECTIONAL
CENTER (LLC),

Respondent.

**ORDER GRANTING MOTION
TO WITHDRAW AND ORDER
APPOINTING COUNSEL**

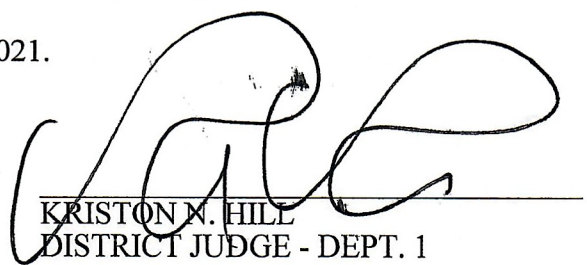
Before the Court is the Motion to Withdraw as Counsel filed on July 13, 2021.

Good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion to Withdraw as Counsel is granted.

IT IS FURTHER ORDERED that Ben Gaumont is hereby appointed to represent the
Petitioner in his appeal to the Supreme Court of the State of Nevada.

SO ORDERED this 30th day of July, 2021.


KRISTON N. HILL
DISTRICT JUDGE - DEPT. 1

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CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 30th day of July, 2021, I personally hand delivered a file-stamped copy of the foregoing **ORDER GRANTING MOTION TO WITHDRAW AND ORDER APPOINTING COUNSEL** addressed to:

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

Tyler Ingram, Esq.
Elko County District Attorney
540 Court Street
Elko, NV 89801
[Box in Clerk's Office]

Ben Gaumond
495 5th Street, Suite 209
Elko, NV 89801
[Box in Clerk's Office]

Loreman

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 30th day of July, 2021, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a copy of the foregoing **ORDER GRANTING MOTION TO WITHDRAW AND ORDER APPOINTING COUNSEL** addressed to:

Devon Ray Hockemier #1140743
1200 Prison Road
Locelock, NV 89419

Warden Renee Baker
1200 Prison Road
Locelock, NV 89419

Hockemier

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