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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed
4 Jan 18 2022 11:48 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 DEVON RAY HOCKEMIER,
Appellant,

6 vs.

CASE NO. 83147

7 THE STATE OF NEVADA,
Respondent.

8 APPENDIX TO RESPONDENT'S BRIEF

9 Appeal From The Fourth Judicial District Court

10 Of The State of Nevada

11 In And For The County Of Elko

12 THE HONORABLE AARON D. FORD

13 ATTORNEY GENERAL OF NEVADA

14 100 N. CARSON STREET

15 CARSON CITY, NV 89701

16 TYLER J. INGRAM
Elko County District Attorney's
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17 Elko, NV 89801
By: JEFFREY C. SLADE
18 State Bar No. 13249
ATTORNEYS FOR RESPONDENT

BENJAMIN GAUMOND
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ATTORNEY FOR APPELLANT

1 **Table Of Contents Supplemental Appendix**
2 **To The Respondent's Brief**

3 **Description Of Document(s) In**

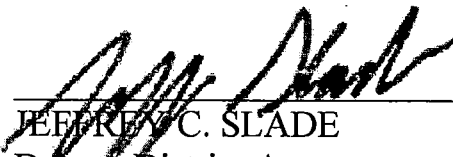
4 **Alphabetical Order (N.R.A.P. 30[c][2])**

Page Nos. In Appendix

5 Order Denying Post Conviction Relief as
6 to Grounds 1,2, and 31-4

7 Dated this 12th day of January, 2022.

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1 Case No. CV-HC-17-267

2 Dept. No. 1

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ELKO CO. DISTRICT ATTORNEY

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY X

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

8
9 DEVON RAY HOCKEMIER

10 Petitioner,

**ORDER DENYING POST
CONVICTION RELIEF AS TO
GROUNDS 1, 2, and 3**

11 V.

12 JAMES DZURENDA, Director,
13 Nevada Department of Corrections,

14 Respondent.
15 _____ /

16 Devon Ray Hockemier (hereinafter "Petitioner") filed a Petition for Writ of Habeas Corpus
17 (hereinafter "Petition") on April 12, 2017. Petitioner pled guilty to two felony counts of lewdness
18 with a child on March 16, 2015. On June 9, 2015, this Court entered a judgment of conviction.
19 Petitioner filed a Notice of Appeal on June 29, 2015. The Nevada Supreme Court entered an order
20 affirming the judgment of conviction and a remittitur on June 19, 2016. Hence, the Petition was
21 timely filed. For the following reasons, the Court denies post-conviction relief on Grounds 1, 2, and
22 3 of the Petition.

23 **Ground 1: Prosecutorial misconduct related to multiplicitous charging deprived Petitioner**
24 **of a fair trial.**

25 A multiplicitous indictment is one that charges the same offense in more than one count.

26 Bedard v. State, 118 Nev. 410, 413, 48 P.3d 46, 48 (2002) (*citation omitted*). The rule against

1 multiplicity requires that separate offenses must contain an additional fact that does not apply to
2 the other offenses. Id. Offenses that occur at different times and different places are not
3 multiplicitous. Id.

4 Alleged prosecutorial misconduct due to multiplicitous charging is a claim that is barred
5 for purposes of Petitioner's post-conviction relief. When a petitioner's conviction is the result of
6 a guilty plea, a post-conviction petition for writ of habeas corpus must be based upon allegations
7 that the plea was involuntarily or unknowingly entered, or that the plea was entered without
8 effective assistance of counsel. NRS 34.810(1)(a). Therefore, prosecutorial misconduct is not
9 within the scope of claims permitted by NRS 34.810(1)(a). Ground 1 is **DENIED**.

10 **Ground 2: The sentencing judge exhibited bias toward Petitioner when she unfairly**
11 **sentenced Petitioner to a longer term in prison than the term recommended**
by the Division of Parole and Probation.

12 A sentencing judge is accorded wide discretion when imposing a sentence. Martinez v.
13 State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998). Absent an abuse of discretion, an appellate
14 court will not disturb a judge's sentencing determination. Id. Even in cases where a defendant
15 reaches a plea agreement with the State, the sentencing judge retains discretion to deviate from the
16 State's sentencing recommendation. *See generally* Kelly v. State, 108 Nev. 545, 837 P.2d 416
17 (1992); Dieudonne v. State, 127 Nev. 1, 245 P.3d 1202 (2011). Petitioner's Amended
18 Memorandum of Plea Agreement, which was filed on February 18, 2015, states that the Court was
19 not obligated to follow any sentencing recommendation.

20 In any event, Petitioner's claim that this Court exhibited bias during sentencing is barred.
21 Again, when a petitioner's conviction is the result of a guilty plea, a post-conviction petition for
22 writ of habeas corpus must be based upon allegations that the plea was involuntarily or
23 unknowingly entered, or that the plea was entered without effective assistance of counsel. NRS
24 34.810(1)(a). Therefore, judicial bias in sentencing is not within the scope of claims permitted by
25 NRS 34.810(1)(a). Ground 2 is **DENIED**.

26 //

1 **Ground 3: Petitioner has been subjected to cruel and unusual punishment as a result of**
2 **cumulative violations of the Fourth, Fifth, and Sixth Amendments to the**
3 **United States Constitution, including ineffective assistance of counsel.**

4 The United States and Nevada Constitutions prohibit the imposition of cruel and unusual
5 punishment. U.S. CONST. amend. VIII; Nev. CONST. art. 1, § 6. A term of imprisonment that is
6 within statutory limits is not considered cruel and unusual punishment in the constitutional sense.
7 Schmidt v. State, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978). Petitioner's sentence is permissible
8 under NRS 201.230(2).

9 Petitioner does not allege that his confinement conditions are cruel and unusual
10 punishment; he argues that he has been subjected to cruel and unusual punishment solely because
11 he disagrees with the length of his sentence. This claim is also barred by NRS 34.810(1)(a).
12 Petitioner had the opportunity to raise this claim on direct appeal but he did not. Ground 3 is
13 **DENIED.**

14 With regard to Petitioner's blanket claim of ineffective assistance of counsel, the Court will
15 address this issue during Petitioner's evidentiary hearing scheduled for the 1st day of July, 2020,
16 at 9:30 a.m.

17 Therefore, **IT IS HEREBY ORDERED** that Grounds 1, 2, and 3 of the Petition for Writ
18 of Habeas Corpus filed on April 12, 2017 are **DENIED.**

19 SO ORDERED this 21 day of May, 2020.

20 
21 NANCY PORTER
22 DISTRICT JUDGE - DEPT. 1
23
24
25
26

1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial
3 District Court, Department 1, and that on this 22nd day of May, 2020, I deposited for mailing in
4 the U.S. mail at Elko, Nevada, postage prepaid, a copy of the foregoing **ORDER DENYING**
5 **POST CONVICTION RELIEF AS TO GROUNDS 1, 2, and 3** addressed to:

6 Aaron D. Ford, Esq.
7 Nevada Attorney General
8 100 North Carson St.
9 Carson City, NV 89701

James Dzurenda, Director
Nevada Department of Corrections
5500 Snyder Avenue, Bldg. 17
Carson City, NV 89701

9 Devon Ray Hockemier - Inmate #1140743
10 C/O Lovelock Correctional Center
11 1200 Prison Road
12 Lovelock, Nevada 89419

Mercedes Mendive

12 CERTIFICATE OF HAND DELIVERY

13 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
14 Court, Department 1, and that on this 22nd day of May, 2020, I personally hand delivered a file-
15 stamped copy of the foregoing **ORDER DENYING POST CONVICTION RELIEF AS TO**
16 **GROUNDS 1, 2, and 3** addressed to:

17 Tyler J. Ingram, Esq.
18 Elko County District Attorney
19 540 Court Street, 2nd Floor
20 Elko, NV 89801
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