

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVON RAY HOCKEMIER,  
Appellant,

v.

RENEE BAKER, WARDEN LOVELOCK  
CORRECTIONAL CENTER (LLC),  
Respondent.

) CASE NO. 83147

) Electronically Filed  
) May 21 2022 02:06 p.m.  
) Elizabeth A. Brown  
) Clerk of Supreme Court

Appeal from the Order Denying Petitions for Writ of Habeas  
Corpus

Fourth Judicial District Court, County of Elko  
The Honorable Kriston N. Hill, District Court Judge, Dept. 1

**Appellant's Petition for Supreme Court Review**

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1                                    MEMORANDUM OF POINTS AND AUTHORITIES

2        **1. Factual and Procedural Background**

3                    Counsel on behalf of Appellant Devon Ray Hockemier filed the  
4                    Opening Brief on November 15, 2021 in the instant case. The four-  
5                    volume Joint Appendix was also filed on November 15, 2021. The State  
6                    filed its Answering Brief on January 18, 2022 along with its Appendix  
7                    to Respondent's Brief. Counsel for Mr. Hockemier filed his Reply Brief  
8                    on March 3, 2022.  
9                   

10                    On March 30, 2022, this Court issued the order to have this  
11                    matter transferred to the Court of Appeals. On May 5, 2022, the Court  
12                    of Appeals issued its Order of Affirmance.  
13                   

14                    Mr. Hockemier agreed to plead to two counts of Lewdness with a  
15                    Child Under 14 Years of Age. *Joint Appendix 354 (Volume 2)*. The  
16                    district court judge imposed consecutive prison sentences of 10 years to  
17                    life. *Joint Appendix 405-407 (Volume 2)*. A direct appeal to this Court  
18                    followed in case number 68333. *Joint Appendix 409 (Volume 2)*.  
19                   

20                    In the opening brief on the instant appeal, Mr. Hockemier  
21                    asserted that this Court should overturn the district court's denial of  
22

1 habeas relief because trial counsel did not object to the jurisdiction of  
2 the justice court to proceed with a preliminary hearing. *Appellant's*  
3 *Opening Brief 24*. In particular, the investigating detective started  
4 investigating allegations against Mr. Hockemier before Mr. Hockemier's  
5 21st birthday. *Appellant's Opening Brief 24*.

7 Mr. Hockemier cited NRS 62B.330(3)(c)(2), which makes it crystal  
8 clear that for a juvenile to come under the purview of the adult court,  
9 the identity of the suspect would have to be discovered after the  
10 suspect's twenty-first (21st) birthday. *Appellant's Opening Brief 29*.

12 The investigating officer said, in no uncertain terms, that the  
13 investigation of Devon Ray Hockemier began three (3) days before Mr.  
14 Hockemier's twenty-first (21st) birthday. *Appellant's Opening Brief 29*.  
15 Mr. Hockemier's defense counsel at the preliminary hearing did not  
16 lodge an objection to jurisdiction. *Appellant's Opening Brief 29-30*. Mr.  
17 Hockemier was between the ages of 16 and 17 for the acts in question.  
18 *Appellant's Opening Brief 5*.

22 In its Order of Affirmance, the Court of Appeals addressed Mr.  
23 Hockemier's claim that counsel in the justice court level was ineffective



1 for failing to question the investigative officer about when that detective  
2 learned of Mr. Hockemier's identity relative to Mr. Hockemier's 21st  
3 birthday. *Order of Affirmance 3-4*. The Court of Appeals, in denying  
4 relief on that ground, asserted that "Hockemier failed to demonstrate  
5 counsel was objectively unreasonable for not reraising at the  
6 preliminary hearing the issue he had just unsuccessfully litigated."  
7

8 *Order of Affirmance 4*.

9  
10 The Court of Appeals ended its Order of Affirmance by stating  
11 that "ORDER the judgment of the district court AFFIRMED." *Order of*  
12 *Affirmance 5*.

## 13 14 **2. Argument**

15 NRAP 40B(a) articulates that a "decision of the Court of Appeals  
16 is a final decision that is not reviewable by the Supreme Court except  
17 on petition for review." Such review "is not a matter of right but of  
18 judicial discretion." NRAP 40B(a). Such factors that this Court  
19 considers includes "(1) Whether the question presented is one of first  
20 impression of general statewide significance; (2) Whether the decision of  
21 the Court of Appeals conflicts with a prior decision of the Court of  
22  
23  
24  
25

1 Appeals, the Supreme Court, or the United States Supreme Court; or  
2 (3) Whether the case involves fundamental issues of statewide public  
3 importance.” NRAP 40B(a).  
4

5 Such a petition must be filed within 18 days following the filing of  
6 the decision of the Court of Appeals. NRAP 40B(c).  
7

8 In Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166  
9 (2005), citing Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107  
10 (1996), this Court stated that a “claim of ineffective assistance of  
11 counsel presents a mixed question of law and fact that is subject to  
12 independent review.” This Court continued on, stating that “a district  
13 court’s factual findings will be given deference by this court on appeal,  
14 so long as they are supported by substantial evidence and are not  
15 clearly wrong.” Id., citing Riley v. State, 110 Nev. 638, 647, 878 P.2d  
16 272, 278 (1994).  
17  
18

19 To prevail on a claim of ineffective assistance of counsel, a  
20 petitioner (1) “must demonstrate that his trial or appellate counsel’s  
21 performance was deficient, falling below an objective standard of  
22 reasonableness,” and (2) “must show prejudice.” Id. at 686, 1166-67,  
23  
24  
25



1 citing Strickland v. Washington, 466 U.S. 668, 687-88, 80 L. Ed. 2d 674,  
2 104 S. Ct. 2052 (1984); Kirksey at 987-88, 1107.

3       Pertaining to trial counsel, “prejudice is demonstrated by showing  
4 that, but for trial counsel’s errors, there is a reasonable probability that  
5 the result of the proceedings would have been different.” Id., citing  
6 Strickland at 694.

7  
8       In Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984),  
9 citing Grondin v. State, 97 Nev. 454, 634 P.2d 456 (1981), this Court  
10 held a “defendant seeking post-conviction relief is not entitled to an  
11 evidentiary hearing on factual allegations belied or repelled by the  
12 record.”  
13  
14

15       In this case, Mr. Hockemier asks for Supreme Court review. Mr.  
16 Hockemier understand that this “is an extraordinary remedy outside  
17 the normal process of appellate review” as NRAP 40B(b) indicates. But  
18 this is an extraordinary case insofar as a young man who was a juvenile  
19 between the ages of 16 and 17 during the acts in question gets sent to  
20 the state penitentiary for two (2) consecutive prison terms of 10 years to  
21  
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1 life. It is all the more extraordinary when we consider that jurisdiction  
2 in the justice court was wholly lacking.

3 The detective started the investigation into Devon Ray Hockemier  
4 before Mr. Hockemier's 21st birthday. As such, the evidence is crystal  
5 clear that justice court would not have had jurisdiction over this case  
6 pursuant to NRS 62B.330(3)(c)(2). This was a crystal clear case of  
7 ineffective assistance of counsel insofar as an objection was not lodged  
8 in justice court.  
9  
10

11 The Court of Appeals averred that there was not a requisite  
12 showing of a probability of a different outcome but for the alleged  
13 ineffectiveness of trial counsel. However, that showing is clear in the  
14 preliminary hearing transcript. The Court of Appeals had the benefit of  
15 the entire preliminary hearing transcript. The timeline was clear for  
16 the Court of Appeals to see. Undersigned counsel made a clear showing  
17 that NRS 62B.330(3)(c)(2) put this case out of the purview of justice  
18 court. There could not have been much more of a clearer showing.  
19  
20  
21

22 As to whether this is a case of first impression pertaining to a  
23 matter of general statewide importance, Mr. Hockemier argues that  
24  
25



1 this is. There is the case of George J. v. State (In re George J.), 128  
2 Nev. 345, 279 P.3d 187 (2012). In that case, this Court's majority cited  
3 NRS 62B.330(3)(c)(1) in stating that said statute "provides that the act  
4 is not a 'delinquent act' and divests the juvenile court of jurisdiction if  
5 the person is identified and charged between the ages of 20 years, 3  
6 months and 21 years." Id. at 347, 188.

7  
8 The instant case is distinguishable from In re George J. insofar as  
9 the juvenile in that other case was identified and charged between the  
10 ages of 20 years, 3 months and 21 years. That is not the case with Mr.  
11 Hockemier. Mr. Hockemier was identified before his 21st birthday like  
12 George J. Mr. Hockemier was not charged until after his 21st  
13 birthday.  
14  
15

16 As such, the instant case does present a matter of first impression.  
17 It would appear that this is also of general statewide importance. The  
18 State of Nevada has a vested interest in making sure that juveniles who  
19 are charged with serious felonies have some opportunities for  
20 rehabilitation before society goes to the extreme of considering life  
21 sentences in the Nevada Department of Corrections. This is especially  
22  
23  
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25



1 true of the crimes that Mr. Hockemier pled to – which carry mandatory  
2 prison terms. NRS 176A.100(1)(a). It is nothing short of a quantum  
3 leap to go from treatment in the juvenile court to treatment in the adult  
4 court when the ultimate aggregate prison sentence for Mr. Hockemier is  
5 20 years to life.  
6

7       The error of the district court in denying habeas relief was clear.  
8  
9 The error of trial counsel in not objecting to the procession of this case  
10 in adult court was clear. The identity of Mr. Hockemier as a suspect  
11 before his 21st birthday was clear. NRAP 40B(a) provides the clear  
12 basis for this Court to review the Court of Appeals' decision.  
13

14       This case does not belong in adult court. Mr. Hockemier does not  
15 belong in the Nevada Department of Corrections.  
16

17       Devon Ray Hockemier asks that this Court grant the instant  
18 petition for Supreme Court review. The errors in the lower courts are  
19 clear. The stakes (20 years to life in prison) are just too high for this  
20 petition to be denied.  
21

22 ///

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1 requirements of NRAP 32(a)(6) because this Petition for Supreme Court  
2 Review has been prepared in a proportionally spaced typeface using  
3 Microsoft Word in size 14 Century Schoolbook font.  
4

5 2. I further certify that this Petition for Supreme Court Review  
6 complies with the page or type-volume limitations of NRAP 40B(d)  
7 because, excluding the parts of the petition exempted by NRAP  
8 32(a)(7)(C), it is either:  
9

10 ☒ Proportionately spaced, has a typeface of 14 points or more,  
11 and contains 1,549 words; or  
12

13 ☐ Monospaced, has 10/5 or fewer characters per inch, and  
14 contains \_\_\_\_ words or \_\_\_\_ lines of text; or

15 ☒ Does not exceed 10 pages.  
16

17 3. Finally, I hereby certify that I have read this petition, and to  
18 the best of my knowledge, information, and belief, it is not frivolous or  
19 interposed for any improper purpose. I further certify that this petition  
20 complies with all the applicable Nevada Rules of Appellate Procedure,  
21 in particular NRAP 40B(d), which states that this "petition shall  
22 succinctly state the precise basis on which the party seeks review by the  
23  
24  
25



1 Supreme Court and may include citation of authority in support of that  
2 contention. No citation to authority or argument may be incorporated  
3 into the petition by reference to another document.”  
4

5 I understand that I may be subject to sanctions in the event that  
6 the accompanying petition is not in conformity with the requirements of  
7 the Nevada Rules of Appellate Procedure.  
8

9 DATED this 21st day of May, 2022.

10 BEN GAUMOND LAW FIRM, PLLC  
11

12 By:   
13

14 BENJAMIN C. GAUMOND, ESQ.  
15 Nevada Bar Number 8081  
16 495 Idaho Street, Suite 209  
17 Elko, Nevada 89801  
18 (775)388-4875 (phone)  
19 (800)466-6550 (facsimile)

20 CERTIFICATE OF SERVICE  
21

22 (a) I hereby certify that this petition was electronically filed with  
23 the Nevada Supreme Court on the 21st day of May, 2022.  
24

25 (b) I further certify that on the 21st day of May, 2022, electronic  
service of the foregoing petition shall be made in accordance with the

1 Master Service List to Aaron Ford, Nevada Attorney General; and Tyler  
2 J. Ingram, Elko County District Attorney; and Jeffrey C. Slade, Deputy  
3 Elko County District Attorney.  
4

5 (c) I further certify that on the 23rd day of May, 2022, this petition  
6 shall be mailed with postage prepaid to Devon Ray Hockemier, NDOC #  
7 1140743, Lovelock Correctional Center, 1200 Prison Road, Lovelock, NV  
8 89419.  
9

10 DATED this 21st day of May, 2022.

11  
12  
13  
14 Benjamin C. Gaumond, Owner  
Ben Gaumond Law Firm, PLLC  
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