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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed
4 Apr 13 2022 11:18 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 DANIEL CHARLES COOKE,
Appellant,

6 vs.

CASE NO. 83578

7 THE STATE OF NEVADA,
Respondent.

8 **APPENDIX TO RESPONDENT'S BRIEF**

9 Appeal From The Fourth Judicial District Court
Of The State of Nevada
10 In And For The County Of Elko

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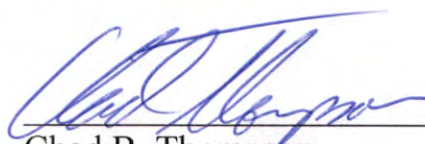
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Dated this 13 day of April, 2022.

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4 IN THE FOURTH JUDICIAL DISTRICT COURT
5 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,
6 BEFORE THE HONORABLE NANCY PORTER, DISTRICT JUDGE

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10 STATE OF NEVADA,

11 Plaintiff,

Case No. CR-FP-16-0007293

12 V.

Dept. No. 12

13 DANIEL CHARLES COOKE,

14 Defendant.

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Transcript of Proceedings

Sentencing Hearing

April 27, 2017

Elko, Nevada

Transcribed By: Julie Rowan - (775) 745-2327

A P P E A R A N C E S

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-oOo-

I N D E X

WITNESSES ON BEHALF OF THE PLAINTIFF:	<u>Page</u>
DAPHNE COOKE	
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WITNESSES ON BEHALF OF THE DEFENSE:	
None	
EXHIBITS:	
None	

1 THE COURT: Good morning, you may be seated.
2 (Whereupon, Mr. Green and the Defendant
3 confer)

4 THE COURT: Mr. Green, has your client had an
5 opportunity to read the presentence report? Is that
6 what you're talking about over there?

7 MR. GREEN: It was. We did. We went over it
8 -- actually, I think I met with him twice at the jail
9 concerning the presentence investigation report.

10 THE COURT: Okay. So are we ready to proceed
11 then?

12 MR. GREEN: Yes.

13 THE COURT: This is Case No. CR-FP-16-7293,
14 the State of Nevada versus Daniel Charles Cooke. The
15 Defendant is present in court in custody, represented by
16 Mr. Green, Mr. Thompson is here on behalf of the State,
17 and Ms. Macias from Parole and Probation.

18 The Defendant has pled guilty to Count 1,
19 attempted sexual assault of a child who was less than
20 16 years of age, a category B felony. This is the time
21 set for entry of judgment and the imposition of
22 sentence.

23 Are the parties ready to proceed?

24 MR. THOMPSON: The State is.

25 MR. GREEN: Yes, Your Honor.

1 THE COURT: A presentence report was ordered
2 and has been received, along with the psychosexual
3 evaluation. Mr. Cooke, have you had the opportunity to
4 read those reports?

5 THE DEFENDANT: Yes.

6 THE COURT: The Division of Parole and
7 Probation has made a sentencing recommendation. It is
8 their recommendation that I sentence you to a maximum
9 term of 96 months in prison and that you serve a minimum
10 of 30 months before you would be eligible for probation,
11 and they are not recommending that I place you on
12 probation.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Green, did you see any errors
16 or omissions in the presentence report?

17 MR. GREEN: No, Your Honor.

18 THE COURT: Mr. Cooke, did you see any errors
19 or omissions in the presentence report?

20 THE DEFENDANT: Only that they made the
21 presentence report based off the first -- I believe
22 (indiscernible) before it got amended.

23 THE COURT: I'm not sure I know what you're
24 talking about.

25 MR. GREEN: Let me take a look here.

1 THE DEFENDANT: I did an amended plea, which
2 I know that you have because I took it last time, but
3 all that sentence is a 2 to 20 with a maximum of 8, and
4 that's what they did the presentence based off of.

5 MR. GREEN: No, the plea negotiations in this
6 PSI says 20 years. We're free to argue on the minimum.

7 THE COURT: Is that what you're confused
8 about?

9 THE DEFENDANT: I just know it's different
10 than the plea I took because I had them send me a copy
11 three times, and it's different than the revised.

12 MR. GREEN: It is not different.

13 THE COURT: Okay. The plea agreement said
14 that you were pleading guilty to attempted sexual
15 assault of a child who was less than 16 years of age.
16 So if you look at the first page of the presentence
17 report down at the bottom under charge information,
18 that's what it says.

19 Do you see that?

20 THE DEFENDANT: Yeah, I --

21 THE COURT: Okay. And then if you look on
22 page 5 of the presentence report, it shows the original
23 charges against you and then it shows disposition where
24 it shows you pled guilty to attempted sexual assault of
25 a child who was less than 16 years of age.

1 Do you see that?

2 THE DEFENDANT: Yeah.

3 THE COURT: Okay. So --

4 THE DEFENDANT: Wait --

5 THE COURT: -- I don't understand -- I want
6 to make sure I understand here because if there's
7 something wrong we've got to fix it.

8 THE DEFENDANT: What does it say right below
9 that, though, because the -- on yours?

10 THE COURT: It says instant offense
11 sentencing 4/17/2017.

12 THE DEFENDANT: As far as the stipulations.

13 MR. GREEN: I think what perhaps Mr. -- I
14 think what Mr. Cooke might be confused, on the original
15 plea agreement entered in this case was an agreed-upon
16 recommendation anyway for 20 years with eligibility for
17 parole after 8 years, basically the maximum sentence.

18 And then when he did enter his plea and we
19 renegotiated and -- and during those negotiations, then
20 we agreed for free to argue on the amount of time to
21 become eligible for parole, but the State stuck with the
22 20-year stipulation or joint recommendation for a
23 20-year sentence, just free to argue on the eligibility
24 for parole. And I'm wondering if Mr. Cooke is somehow
25 confused and believes that we renegotiated that 20-year

1 provision.

2 Is that what you believe?

3 THE DEFENDANT: No, it's the -- in this it
4 says that I have to do the maximum of eight, right?

5 MR. THOMPSON: No.

6 MR. GREEN: No.

7 THE COURT: No, no, that's just the
8 possibility.

9 THE DEFENDANT: As far as the plea agreement,
10 I'm not seeing the same one I revised -- signed yet.

11 MR. GREEN: This is the revised one right
12 here, okay. At the time of sentence and I'll stipulate
13 the maximum sentence of 20 years and both sides remain
14 free to argue the minimum amount of time I must serve
15 before being eligible for parole, and that's the same
16 thing it says in the presentence investigation.

17 THE DEFENDANT: Let me see this. Yeah, it's
18 just different than the revised one.

19 MR. GREEN: This is the amended.

20 THE DEFENDANT: It's the only time I seen it
21 when I did my evaluation. I remember taking the plea in
22 court, the revised one.

23 MR. GREEN: This is the amended --

24 THE DEFENDANT: And then the amended, let me
25 read the amended then.

1 MR. GREEN: This is the amended.

2 THE DEFENDANT: Okay.

3 MR. GREEN: Okay. This is page 1, this is
4 page 2 of the amended.

5 THE DEFENDANT: I'm just not seeing the same
6 stuff, and I had the -- when I did the sexual evaluation
7 and he read it through to me, the same charge, that's
8 the only time I've seen the amended one. So I don't
9 know --

10 THE COURT: Okay, you signed that, Mr. Cooke,
11 and I asked you in court if that was your signature when
12 I took your plea. So what are you thinking it's
13 supposed to say?

14 THE DEFENDANT: You signed one but -- I
15 signed the first one --

16 THE COURT: Right.

17 THE DEFENDANT: -- and then you rejected it.
18 I don't know if you remember that.

19 THE COURT: I didn't let you plead, right?

20 THE DEFENDANT: Yeah, and then I did a
21 revised one.

22 THE COURT: Uh-huh.

23 THE DEFENDANT: And I'm just not seeing the
24 same paperwork.

25 MR. GREEN: That's what this revised one --

1 it's called an amended, okay. You only signed two,
2 right? This is the amended and --

3 THE COURT: The original one said you were
4 stipulating to a maximum sentence of 20 years with
5 eligibility for parole after 8 years. That's the
6 original one. The current one doesn't say anything
7 about the minimum. The most time I could give you on
8 the minimum -- if I gave you 20 years maximum, the most
9 I could give you on the minimum is 8.

10 THE DEFENDANT: What does the new one say in
11 your paperwork?

12 THE COURT: The new one says you're agreeing
13 to 20 years maximum, but your attorney can argue about
14 what the minimum should be. So he's going to argue for
15 less.

16 THE DEFENDANT: What does it say on the
17 bottom end?

18 THE COURT: It doesn't. It says you get to
19 argue about that.

20 MR. GREEN: Which is this one.

21 THE DEFENDANT: I kind of think the paper got
22 thrown away but --

23 MR. GREEN: No.

24 THE DEFENDANT: -- we can carry on.

25 MR. GREEN: This one says Memorandum of Plea

1 Agreement. This was the first one. She didn't accept
2 your plea. And then this is the second one you signed,
3 an amended Memorandum of Plea Agreement, where we
4 changed this part about the minimum sentence.

5 MR. THOMPSON: And I think that maybe what
6 he's referencing is here on the PSI where they denote
7 the penalty, they informed me that it's 2 years on the
8 minimum, and it says 20. And then in the plea
9 agreement, we put in there that he may be punished up to
10 8 years. So he was advised of what the possibilities
11 are, and I think that might be the source of the
12 confusion because he was referencing the plea agreement
13 where it says 2 to 20 and this one says 8 to 20. I
14 think that might be where he's confused.

15 THE COURT: Is that what you're confused
16 about, Mr. Cooke?

17 THE DEFENDANT: I know in the amended one it
18 said it can be from zero to 20, and it doesn't matter
19 what the -- this is the part I can't find. It doesn't
20 matter what the District Attorney wants and it doesn't
21 matter what Brian Green wants, it's what the Judge
22 decides.

23 MR. GREEN: That's what the Judge said in
24 court was for --

25 THE DEFENDANT: No, he was reading it to me,

1 though, on the amended one in the sexual evaluation.

2 THE COURT: Okay. It is a minimum of two
3 years by law, and you are correct, it doesn't matter
4 what the attorneys argue, I make the final decision. I
5 consider what the attorneys say, what you say, what any
6 other witnesses say, I consider the recommendation of
7 the Division of Parole and Probation, but I make the
8 final determination of what the sentence will be. I'm
9 looking through your plea agreement. I don't see
10 anything that says that it could be --

11 THE DEFENDANT: It did say zero to 20,
12 though, in that amended.

13 THE COURT: Okay. Well, I'm not finding
14 that, and it can't be zero to 20. A felony always is at
15 least a year in prison.

16 THE DEFENDANT: Yeah, I'm not arguing that.
17 I'm just saying that --

18 MR. GREEN: In his particular statute, it's a
19 minimum of two years, non-probational.

20 THE COURT: All right. What we're going to
21 do here, we're going to take a break, Mr. Green, and see
22 if you can resolve Mr. Cooke's issues. Let me know when
23 you're ready.

24 MR. GREEN: All right.

25 (Whereupon, court recessed)

1 THE COURT: You may be seated.

2 Mr. Green, what's going on?

3 MR. GREEN: I think Mr. Cooke is having a
4 memory difficulty. He's remembering something
5 incorrectly, and now he's thinking that Dr. Cord told
6 him something, read him something, and it's a different
7 agreement than the amended Memorandum of Plea Agreement
8 that's in the file in this case.

9 He talks about things being destroyed or
10 lost. Nothing has been -- that he has signed has been
11 destroyed or lost. This plea agreement, Dr. Cord
12 contacted our office asking for a copy of the plea
13 agreement. Once we get these plea agreements signed by
14 our clients, we send it to the D.A. The D.A. signs
15 them. They give them back to us to make copies. We
16 file them.

17 After they're file-stamped, we go back -- the
18 caseworker does all this. They take them back to the
19 office, and they scan them and store them in the client
20 filing cabinet in the JustWare program. And so what's
21 in our database in our computer program is this copy.
22 This is -- she's stamped this that it's been scanned,
23 and it's in our system. And that's what she sent to
24 Dr. Cord.

25 Somehow he's still remembering -- thinks that

1 Dr. Cord read something different to him, and as much as
2 I assured him that's not the case, he just doesn't
3 remember it that way. So I guess, unless he tells me
4 otherwise, I guess what he's looking for is to continue
5 this and try to get -- see if I can get the copy of the
6 Memorandum of Plea Agreement from Mr. Cord -- Dr. Cord,
7 the one that he's been provided, and give him an
8 opportunity to review it and see that it is, in fact,
9 the same as this one, the one that he signed.

10 Dr. Cord met with him only after he had
11 entered his plea pursuant to this plea agreement, and he
12 was advised of the consequences in court, but
13 nonetheless, he's having this -- this memory difficulty
14 believing something. And I sincerely believe that he
15 believes that he read or was told something different,
16 but --

17 THE COURT: I guess my question is: Why does
18 it matter? I thoroughly canvassed him at the time he
19 entered his plea. He was advised of the potential
20 consequences at the time he entered his plea. So what
21 does it matter what Dr. Cord told him after his plea?

22 MR. GREEN: Well, I don't see at all that it
23 matters because this is what he pled guilty to, and this
24 was -- I'm in standard practice, and it was followed in
25 this case. The Court asked what the plea agreement is,

1 and that was recited in open court, so. And he said --
2 he acknowledged that that's his understanding of the
3 plea agreement.

4 And there is nothing -- I prepare these plea
5 agreements myself for my cases. I do not have
6 caseworkers do them. I prepare these and standard
7 language. And when I go in, there's only a few things
8 to add; the client's name, District Attorney's Office,
9 the charge, and the terms of plea agreement, and
10 occasionally, I might have to put in there that I'm not
11 eligible for probation rather than the standard I am
12 eligible for probation.

13 THE COURT: Which is what it says in the
14 agreement, that he is not eligible for probation.

15 MR. GREEN: But the rest of this, the
16 voluntariness of plea, the waiver of rights, the
17 certificate of counsel, several -- several paragraphs
18 and the consequences of plea -- most paragraphs and the
19 consequences of plea, you know, they don't change from
20 one plea agreement to the next. And so I prepare these
21 plea agreements myself, and I can assure the Court that
22 I never put in any document that was provided to him or
23 read to him that it was zero to 20.

24 THE COURT: Is he wanting to withdraw his
25 plea? Is that where we are?

1 MR. GREEN: We haven't discussed that.

2 THE DEFENDANT: I would like to just call
3 Ward [sic] and let him read his plea agreement and see
4 if it's the same because --

5 THE COURT: Well, I'm not going to continue
6 your sentencing for that, Mr. Cooke. You were
7 thoroughly questioned at the time you entered your plea,
8 and I explained to you what the consequences of the plea
9 were. The District Attorney explained that to you. So
10 if you're telling me you want to withdraw your plea,
11 then we'll recess this hearing, and I'll give Mr. Green
12 the opportunity to file a motion to withdraw your plea.
13 It doesn't mean I'm going to grant the motion.

14 THE DEFENDANT: What was the --

15 THE COURT: But otherwise, we're going ahead.

16 THE DEFENDANT: What was the date I entered
17 that plea?

18 MR. GREEN: February 16th.

19 THE COURT: That's correct, 2017.

20 THE DEFENDANT: Where's that new one?

21 MR. GREEN: What's that?

22 THE DEFENDANT: What's the date on that new
23 one?

24 MR. GREEN: It was filed February 14th. You
25 signed it on -- you signed it on February 9th, okay.

1 And then it went over to the D.A. The D.A. signed it
2 the 10th, and then it had to get back to our office. So
3 it didn't get filed until the 14th. And then they filed
4 the third amended complaint on the 14th, the same day
5 the plea agreement was filed, the amended plea agreement
6 was filed.

7 THE COURT: You didn't see Dr. Cord until
8 March, and you saw him after you entered your plea. So
9 I need to know, are you going to ask your attorney to
10 file a motion to withdraw your guilty plea? Is that
11 what you want to do?

12 THE DEFENDANT: No.

13 THE COURT: All right. We're going to go
14 ahead with sentencing then.

15 Mr. Thompson, did you see any errors or
16 omissions in the presentence report?

17 MR. THOMPSON: The only thing would be the
18 credit for time served is calculated to 4/17. Today
19 is --

20 THE COURT: We have ten more days?

21 MR. THOMPSON: Ten more days. Other than
22 that, I don't see anything.

23 THE COURT: And then on the first page, the
24 sentencing date would be changed to today's date.

25 Ms. Macias, do you have anything to add?

1 MS. MACIAS: No, Your Honor.

2 THE COURT: It appears, reading the
3 presentence report, that before you prepared the report,
4 you did have the psychosexual evaluation, correct?

5 MS. MACIAS: Correct.

6 THE COURT: And did you take that into
7 consideration in making your recommendation?

8 MS. MACIAS: Yes, Your Honor.

9 THE COURT: All right. Do we have witnesses
10 or victim impact statements?

11 MR. THOMPSON: We do so we would invoke the
12 process where either I go first and then they go first
13 and then Ms. Cooke would go last.

14 THE COURT: I think that the statute says --
15 I have to pull it up. I believe it says the Defendant
16 makes his recommendation, then the State, and then the
17 witness's testify. Does anybody --

18 MR. THOMPSON: It actually doesn't say
19 anything about me --

20 THE COURT: Okay.

21 MR. THOMPSON: -- but it does say the
22 Defendant's first and then the victim's last. So
23 whether I go before the Defendant or after is up to you.

24 THE COURT: Mr. Green, do you have any
25 preference?

1 MR. GREEN: No.

2 THE COURT: All right. Why don't we start
3 with your recommendation, Mr. Thompson.

4 MR. THOMPSON: Your Honor, you've read the
5 factual basis on this particular crime. It's -- this
6 was -- and I'm not going to refer to the victim by name.
7 We'll just refer to her as the victim, and then when
8 Ms. Daphne Cooke testifies, we'll have her refer to her
9 as her daughter.

10 She was 13 years old, and this was originally
11 charged as a sex assault on a child under the age of 14,
12 which he was exposed to 35 to life in that particular
13 scenario. I recognize that in his statement, he doesn't
14 admit to that. What he admits to in his statement would
15 have qualified as a lewdness, 10 to life. And we have
16 negotiated this settlement here where he's pleading to
17 attempted sex assault.

18 Now, from the State's perspective, he's
19 received all the benefit or argument he ought to receive
20 at this juncture, and we're going to ask for a maximum
21 sentence of 8 to 20 years on him. And the reason for
22 that is, I mean, these kinds of cases are difficult.
23 They're difficult for society to deal with.

24 We want to send a message out there, but at
25 the same time, from the State's perspective, we are very

1 concerned about the victims, and putting them on the
2 stand and going through a trial is very difficult for
3 them. It's basically re-traumatizing them again. I've
4 heard that over and over from doctors and social workers
5 that that's not a good thing. So we try to do what we
6 can.

7 I'll tell you that I have yet to meet the
8 victim. I've never met her because we haven't had to
9 have her on the stand. But I've dealt with her family.
10 They're aware of this plea agreement. They're in line
11 with it and largely because it does save her from having
12 to be re-traumatized again.

13 But again, our position is that this is as
14 low as it goes, and he ought to get the 8 to 20. He
15 deserves that. His -- his explanation that alcohol
16 played a part in this, alcohol has a tendency to block
17 your inhibitions, to block your common-sense thinking.
18 And the State sees this as somebody who does have a
19 tendency for an adolescent girl, but then when he takes
20 the alcohol, those inhibitions go away, and he acted on
21 those natural tendencies.

22 So we do see him as somebody who's dangerous.
23 This is his very own niece for crying out loud. He knew
24 exactly how old she was. This isn't even one of those
25 cases where they say, well, I don't know how old she was

1 or she acted older or something like that. And so from
2 our perspective, that makes him dangerous. It makes
3 this case especially egregious because it's his own
4 niece, which would warrant the maximum sentence of 8
5 to 20.

6 And a lot of times these hearings can turn
7 into, you know, what do we do for him or how do we
8 rehabilitate him? She's going to live with this for the
9 rest of her life. She's going to be in a prison without
10 walls. She'll have to deal with this for the rest of
11 her life, and there's nothing you can do to fix that and
12 nothing here is going to fix that. So he deserves the
13 maximum of 8 to 20.

14 THE COURT: Thank you. Mr. Green.

15 MR. GREEN: Yes, Your Honor. First of all,
16 pursuant to the plea agreement, we are obligated to
17 stipulate to a 20-year -- a 20-year sentence for this
18 offense. You examine his criminal history in this case,
19 and he's got one other -- it only shows one other
20 contact with law enforcement for public intoxication and
21 false personal information, and it shows no disposition.

22 And that was a case in which he was picked up
23 walking around in the Salt Lake area. And, ultimately,
24 they determined there was some mental health issues, and
25 they transferred him to a facility for evaluation and

1 treatment. And it's not clear how long he was in -- in
2 that facility. Frankly, it appears that Mr. Cooke may
3 have some memory issues. He thought it was relatively a
4 short period of time, and talking to one of his
5 brothers, I was getting information, it was months --
6 two or three months that he may have been in that
7 program.

8 And so he -- dealing with Mr. Cooke it's
9 become obvious he has some comprehension and memory
10 issues. Dr. Cord had some concerns during his
11 evaluation. He called me up and said that -- that he
12 thought perhaps Mr. Cooke was mildly mentally retarded
13 and wanted to perform some tests, but I didn't see
14 anything in the evaluation indicating he found that to
15 be the case.

16 THE COURT: He found him to be of average
17 intelligence --

18 MR. GREEN: Yeah.

19 THE COURT: -- and he tested his
20 intelligence.

21 MR. GREEN: Correct, but, you know, average
22 is a range, and I'm not sure where -- what the high and
23 low numbers for an IQ are for determining an average.
24 But like I say, of course, he doesn't have a high school
25 diploma. He's got a limited education. So he seems to

1 have some comprehension problems as well as, as I said,
2 it seems like some memory problems.

3 THE COURT: He was evaluated at Lake's
4 Crossing and found competent to proceed, correct?

5 MR. GREEN: He was.

6 THE COURT: Are you concerned about his
7 competency today?

8 MR. GREEN: No. He understands what's going
9 on. And throughout the case has been able to -- to
10 discuss the facts. The problem is is this is another
11 case that inebriation played a substantial role that --
12 that's partly blocking his memory. And I listened to
13 the interview at the Police Department, and, you know,
14 he was basically saying he didn't remember much. And
15 when the officer -- when the detective would ask him
16 questions, well, what about did you do -- oh, I -- yeah,
17 I kind of remember that.

18 Some of the things he did say was I don't
19 remember that. I don't remember doing that. But some
20 of the things he did remember. So that's not an
21 uncommon situation with inebriation is patchy memory.
22 And so when you've got memory issues -- you know, he's
23 able to provide what he remembers. I don't expect him
24 to be able to provide everything if he can't -- if he
25 says he can't remember parts of it.

1 But he has been able to communicate with --
2 sometimes it takes a little bit of a discussion to
3 communicate and convey those ideas. As far as the
4 memory problem, if he memorize -- or if he remembers
5 something incorrectly after it's explained to him and he
6 understands it, I don't know that that -- that that in
7 itself deals with competency. So I do not at this point
8 question his competency to understand the nature of the
9 proceedings and to assist me to the limited ability of
10 his memory.

11 THE COURT: Okay. So your position on
12 sentencing then.

13 MR. GREEN: As I said, we're obligated to
14 stipulate to the 20-year sentence. Dr. Cord notes on
15 here that Mr. Cooke does meet diagnosis -- diagnostic
16 criteria for alcohol abuse disorder moderate. It
17 appears from (indiscernible) that he -- Mr. Cooke might
18 not get drunk all the time or drink heavily all the
19 time, but that there are occasions at least when he
20 starts drinking that he doesn't know when to stop.

21 And that's kind of what happened in this
22 case, and, in fact, he intended the night of the
23 incident -- he was at Red Lion -- he actually intended
24 to get a room at the Red Lion. And if he'd have done
25 so, he probably -- we probably wouldn't be here at all

1 whether -- because of that night or any subsequent
2 night. In fact, if he'd have -- he used the poor
3 judgment of driving home, and if he'd had got stopped
4 and picked up for DUI, we wouldn't be here today.

5 But, unfortunately, this is the way it turned
6 out. He got home. His niece was watching television.
7 He kind of got on the couch or whatever it was where she
8 slept, and they were kind of next to each other and
9 watching television, and I think that being that close
10 to a female in his intoxicated state, he became aroused
11 and -- and did things that he not only shouldn't have
12 done but things that there's no indication he's had a
13 prior propensity to do, to mess with underage girls.

14 And he's fortunate. He's fortunate here that
15 the victim, she was a little taken off guard, a little
16 surprised, and, you know, the flight, fright, or free
17 syndrome, and at some point, she kind of froze. But
18 when given the opportunity, she took flight before
19 things got worse. And, you know, that's just a lucky
20 benefit for Mr. Cooke that things didn't get worse when
21 she took flight.

22 The discovery -- without a doubt, the
23 discovery -- when she went into her brother's room, she
24 was horrified at what had taken place. And it does have
25 a traumatic -- it can have a traumatic effect. It did

1 have a traumatic -- appears to have had a traumatic
2 effect that night. Whether that's going to be a
3 long-term trauma that she needs to deal with, I guess,
4 may need to be seen, and I think we'll hear from her
5 mother and perhaps get some further information with
6 regard to this.

7 With that in mind, what we're asking the
8 Court to do is adopt the recommendation of Parole and
9 Probation for a minimum of three years, turn this over
10 to the Department of Corrections and the Parole Board so
11 that they can evaluate him, see what he does in custody,
12 what programs he takes advantage of, what counseling he
13 gets, how he responds to the rehabilitative efforts at
14 NDOC, and give the Parole Board the flexibility of
15 determining when he should be released from custody
16 after three years.

17 He is going to be -- he understands he's
18 going to be subject to lifetime supervision and
19 registration requirements, but given the -- given the
20 lack of prior criminal history and, particularly, any
21 prior criminal history involving improper conduct with
22 minors, we are asking the Court to give him eligibility
23 for parole after three years.

24 THE COURT: Thank you. Mr. Cooke, you have
25 an opportunity to make a statement on your own behalf.

1 You're not required to, but you're entitled to. Is
2 there anything further you would like to state?

3 THE DEFENDANT: Only that I know there was no
4 force, and at one point, she actually got up and left
5 the room then came back before the whole thing ended and
6 then went to bed. So there are some discrepancies in
7 her report, which I think it's just for her to save
8 self-value for herself because she's embarrassed about
9 it probably but that's -- other than that, that's it
10 other than I'm sorry that it happened for sure.

11 THE COURT: You may be seated.

12 Mr. Thompson, would you like --

13 THE DEFENDANT: And I'm sorry to their family
14 and her mother and everyone that's hurt.

15 THE COURT: Anything else you'd like to tell
16 me?

17 THE DEFENDANT: That's it.

18 THE COURT: Okay. You can be seated.

19 Mr. Thompson, would you like to call your
20 witness.

21 MR. THOMPSON: Ms. Daphne Cooke.

22 THE COURT: Come forward, please.

23 THE CLERK: Do you solemnly swear the
24 testimony you're about to give in this matter is the
25 truth, the whole truth, and nothing but the truth, so

1 help you God?

2 MS. COOKE: Yes.

3 THE COURT: Please state and spell your first
4 and last names.

5 THE WITNESS: Daphne Cooke; D-A-P-H-N-E,
6 C-O-O-K-E.

7 THE COURT: Thank you. Go ahead,
8 Mr. Thompson.

9 DAPHNE COOKE

10 (Sworn as a witness, testified as follows)

11 DIRECT EXAMINATION

12 BY MR. THOMPSON:

13 Q. Ms. Cooke, you're the biological mother of the
14 victim in this case?

15 A. Yes.

16 Q. And she's how old now?

17 A. She just turned 14.

18 Q. Okay. Can you tell us from the time of this
19 incident, how did the last school year go for her?

20 A. The first part of the school year, she was getting
21 F's in most of her grades, and this last quarter, she's
22 pulled them up.

23 Q. Okay. How has she been doing socially at school?

24 A. She says she only has two friends. Everyone else
25 has dropped her. She's not worth anything.

- 1 Q. What did she tell you about that?
- 2 A. She says people just look at me like I'm -- like I'm
- 3 bad, and I didn't do anything bad, mother, I didn't do
- 4 anything bad.
- 5 Q. How's she been at home?
- 6 A. She's very, very emotional. She -- she gets angry
- 7 really easy, and she used to be just a perfect -- just
- 8 get along with everybody. And she just gets really
- 9 angry.
- 10 Q. Has it been a noticeable difference from before this
- 11 incident --
- 12 A. Oh, yes, very much.
- 13 Q. -- to afterwards?
- 14 Okay. Have you sought counseling for her?
- 15 A. Yes. She does see a counselor.
- 16 Q. How long has she been seeing a counselor?
- 17 A. For -- I think it's been about six months.
- 18 Q. Okay. Does that appear to be helping?
- 19 A. Yes, it does.
- 20 Q. How are things at home with her dad?
- 21 A. Well, her dad and I just about got divorced over
- 22 this deal. So she's had a rocky road with her dad the
- 23 last few months.
- 24 Q. And did you offer her the opportunity to come today
- 25 and to do the statement?

1 A. Yes, I did, and she says no way.

2 Q. Okay. Was she afraid of being here, or what was it?

3 A. She just said I don't want to see him again.

4 Q. Okay. You heard the recommendation that I made to
5 the Court. Do you have any problem with that
6 recommendation?

7 A. No.

8 Q. Do you have your own recommendation for the Court?

9 A. No.

10 Q. Has this been difficult for you because the
11 Defendant's a family member?

12 A. Yes, it's very difficult.

13 Q. Being her mother, how has this affected you?

14 A. Well, I was raped when I was little, and I never
15 told anybody. So I told my children, I have to do this
16 for them so they don't have to feel the pain I have felt
17 my whole entire life.

18 Q. Have you been going to seek counseling?

19 A. Yes.

20 Q. Is there anything else you'd like the Court to know?

21 A. No.

22 Q. This is possibly your only opportunity.

23 A. That's fine.

24 Q. Okay.

25 MR. THOMPSON: I don't have anything else.

1 THE COURT: Mr. Green, any questions?

2 MR. GREEN: No, Your Honor.

3 THE COURT: Thank you, Mrs. Cooke, you may
4 step down.

5 Any other witnesses, Mr. Thompson?

6 MR. THOMPSON: No.

7 THE COURT: Any witnesses, Mr. Green?

8 MR. GREEN: No, Your Honor.

9 THE COURT: The Defendant will stand and face
10 the Court. The Court will order that a Judgment of
11 Conviction be entered against the Defendant finding him
12 guilty of Count 1, attempted sexual assault of a child
13 who was less than 16 years of age, a category B felony,
14 as defined by NRS 200.366 and NRS 193.330.

15 The Defendant shall pay the \$25
16 administrative assessment fee, the \$60 forensic fee, and
17 the \$100 genetic testing fee. The Defendant shall pay
18 the psychosexual evaluation fee in the amount of \$855.
19 Pursuant to NRS 176.0931, the Defendant is sentenced to
20 lifetime supervision after his release from
21 incarceration and from parole.

22 I read the file thoroughly. I listened to
23 the parties' recommendations. I listened carefully to
24 Mrs. Cooke and the pain this has caused her family. I
25 considered Mr. Cooke's upbringing in the FLDS Church,

1 which may provide some explanation of his commission of
2 this crime, but it does not provide an excuse.

3 His excessive alcohol consumption on that
4 night neither explains nor excuses his commission of
5 this crime. The Court's primary obligation is
6 protection of the public. Mr. Cooke has received a
7 substantial benefit in this case with the plea bargain.

8 The Defendant is sentenced to a maximum term
9 of 240 months with minimum parole eligibility of 96
10 months in the Nevada Department of Corrections with
11 credit for 244 days previously served.

12 Mr. Cooke, you have a duty to register
13 initially with the local law enforcement agency of the
14 jurisdiction in which you are convicted. You have a
15 duty to register in this State during any period in
16 which you were a resident of this State or non-resident,
17 who is a student or worker within this State within 48
18 hours after arriving in a community or establishing a
19 residence.

20 You have a duty to register in any other
21 jurisdiction during any period in which you are a
22 resident of the other jurisdiction or a non-resident who
23 is a student or worker within the other jurisdiction.
24 If you move from this State to another jurisdiction, you
25 have a duty to register with the appropriate law

1 enforcement agency in the other jurisdiction.

2 You have a duty to notify the local law
3 enforcement agency in whose jurisdiction you formerly
4 resided in person or in writing. If you change the
5 address at which you reside, including if you move from
6 this State to another jurisdiction or change the primary
7 address at which you were a student or worker.

8 You have a duty to notify immediately the
9 appropriate local law enforcement agency if you are,
10 expect to be, or become enrolled as a student at an
11 institution of higher education or change the date of
12 commencement or termination of enrollment at an
13 institution of higher education or if you are, expect to
14 be, or become a worker at an institution of higher
15 education, or change the date of commencement or
16 termination of your work at an institute of higher
17 education.

18 Let the record reflect that the clerk is
19 handing the Defendant a copy of the requirements for
20 registration. Mr. Cooke, you need to read those
21 requirements fully and sign the form indicating you have
22 read them. If you have any questions, Mr. Green is
23 there to answer them for you. You can sit down to read
24 those.

25 (Whereupon, the Defendant complies)

1 THE COURT: That last page is for my
2 signature, Mr. Cooke.

3 THE DEFENDANT: Is what?

4 THE COURT: The record will reflect that the
5 Defendant has read and signed the registration
6 requirements.

7 Is there anything further, counsel?

8 MR. THOMPSON: No.

9 MR. GREEN: No.

10 THE COURT: We're adjourned.

11 (Whereupon, proceeding concluded)
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C E R T I F I C A T I O N

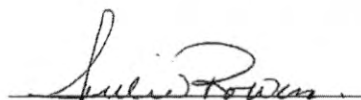
I, JULIE ROWAN, do hereby certify:

That on April 27, 2017, a sentencing hearing was held in the within-entitled matter in the Fourth Judicial District Court, within the State of Nevada, in and for the County of Elko;

That said hearing was recorded on a recording system, and said recording was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 34, is a full, true, and correct transcript of said recording performed to the best of my ability.

Dated this 22nd day of December, 2020.


Julie Rowan