

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

Electronically Filed  
Apr 01 2024 11:58 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

RODERICK STEPHEN SKINNER,

Petitioner,

vs.

Sup. Ct. Case No. 88296

Case No. CR14-0644

Dept. 8

WARDEN OLSEN, NNCC, NEVADA  
ATTORNEY GENERAL, ET AL,

Respondents.

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RECORD ON APPEAL

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

\* \* \*

RODERICK STEPHEN SKINNER,

Petitioner,

Case No. CR14-0644

v.

Dept. No. 8

WARDEN OLSEN, NNCC,  
NEVADA ATTY GENERAL, ET AL.,

Respondents.

**STATE'S RESPONSE TO COURT'S ORDER: 1) HOLDING PETITION IN  
ABEYANCE; 2) DIRECTING STATE TO RESPOND; AND 3) STRIKING  
REQUEST FOR SUBMISSION**

COMES NOW, the State of Nevada, by and through Jennifer P. Noble, Chief Appellate Deputy, and responds to this Court's Order: 1) Holding Petition in Abeyance; 2) Directing State to Respond; and 3) Striking Request for Submission entered November 21, 2023. This Response is based upon the records of this Court and the following points and authorities.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Procedural History**

The Petitioner pled guilty and was convicted of one count of Promotion of a Sexual Performance of a Minor, Age 14 or Older, and sentenced to a term of life imprisonment with parole eligibility after five years. *See* Judgment of Conviction filed September 11, 2014.

The Petitioner appealed his conviction, alleging that the Court abused its discretion by sentencing him to prison rather than placing him on probation. The Court of Appeals rejected the Petitioner's argument. *See Skinner v. State*, Docket No. 66666-COA (Order of Affirmance, July 14, 2015).

The Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction) ("First Petition") on July 13, 2016. The Petitioner perfected the First Petition with a verified petition on October 7, 2016. The Court ordered the State to file an answer within 45 days of October 11, 2016. The State filed an answer on November 22, 2016.

The Petitioner requested the appointment of counsel on December 12, 2016, and counsel was subsequently appointed in an order filed February 6, 2017. Counsel filed a Supplemental Petition for Writ of Habeas Corpus (Post Conviction) ("First Supplemental Petition") on January 12, 2018. The State filed an answer to the First Supplemental Petition on February 26, 2018.

The Court held an evidentiary hearing on the First Petition and First Supplemental Petition on September 26, 2019. Following that hearing, the Court entered an Order Denying Petition for Writ of Habeas Corpus on October 9, 2019. The Petitioner appealed, and the Court of Appeals affirmed this Court's decision. *See Skinner v. Baca*, Docket No. 79981-COA (Order of Affirmance, February 8, 2021). The

Petitioner sought review of the Court of Appeals' decision by the Nevada Supreme Court. The Nevada Supreme Court denied the petition for review on June 25, 2021. *See Skinner v. Baca*, Docket No. 79981 (Order Denying Petition for Review, June 30, 2021).

On March 29, 2022, the Petitioner filed his second Petition for Writ of Habeas Corpus (Post-Conviction) ("Second Petition") and requested submission on the same day. The Court entered an order striking the Petitioner's request for submission. The Petitioner re-filed the Second Petition on April 4, 2022. He also filed a third Petition for Writ of Habeas Corpus (Post-Conviction) (hereinafter "Third Petition") on November 15, 2022. The State moved to dismiss the Second and Third Petitions, and this Court dismissed them on June 9, 2023. The Petitioner's appeal regarding the dismissal of the Second and Third Petitions is currently pending in the Nevada Supreme Court. *See Skinner v. State*, Docket Nos. 86846 and 86893.

On November 3, 2022, the Petitioner filed a Petition for Writ of Factual Innocence. On July 20, 2023, he filed a Motion for Judicial Action on Petition. On September 25, 2023, he prematurely filed a request for submission. On November 21, 2023, this Court issued its Order 1) Holding Petition in Abeyance; 2) Directing State to Respond; and 3) Striking Request for Submission. Pursuant to that Order, the State provides the following response.

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## II. Argument

A. Prior to ordering a response to a Petition for Factual Innocence, NRS 34.960 requires district courts to determine whether the Petition meets minimum threshold requirements, and to issue an order specifying which allegations in the Petition might establish bona fide factual innocence.

Petitions for factual innocence are governed by NRS 34.960 and NRS 34.970, which was passed as Assembly Bill 356 during the Nevada Legislature's 2019 session.

NRS 34.960 provides, in relevant part:

**34.960. Filing of petition; notice and copy of petition to be served on district attorney and Attorney General; contents; review by court; grounds for dismissal; explanation of decision by court; preservation of evidence; proceedings governed by Nevada Rules of Civil Procedure**

1. At any time after the expiration of the period during which a motion for a new trial based on newly discovered evidence may be made pursuant to NRS 176.515, a person who has been convicted of a felony may petition the district court in the county in which the person was convicted for a hearing to establish the factual innocence of the person based on newly discovered evidence. A person who files a petition pursuant to this subsection shall serve notice and a copy of the petition upon the prosecuting agency.

2. A petition filed pursuant to subsection 1 must contain an assertion of factual innocence under oath by the petitioner and must aver, with supporting affidavits or other credible documents, that:

- (a) Newly discovered evidence exists that is specifically identified and, if credible, establishes a bona fide issue of factual innocence;
- (b) The newly discovered evidence identified by the petitioner:
  - (1) Establishes innocence and is material to the case and the determination of factual innocence;
  - (2) Is not merely cumulative of evidence that was known, is not reliant solely upon recantation of testimony by a witness against the petitioner and is not merely impeachment evidence; and
  - (3) Is distinguishable from any claims made in any previous petitions;
- (c) If some or all of the newly discovered evidence alleged in the petition is a biological specimen, that a genetic marker analysis was performed pursuant to NRS 176.0918, 176.09183 and 176.09187 and the results were favorable to the petitioner; and

(d) When viewed with all other evidence in the case, regardless of whether such evidence was admitted during trial, the newly discovered evidence demonstrates the factual innocence of the petitioner.

3. In addition to the requirements set forth in subsection 2, a petition filed pursuant to subsection 1 must also assert that:

- (a) Neither the petitioner nor the petitioner's counsel knew of the newly discovered evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction petition, and the evidence could not have been discovered by the petitioner or the petitioner's counsel through the exercise of reasonable diligence; or
- (b) A court has found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the newly discovered evidence.

*4. The court shall review the petition and determine whether the petition satisfies the requirements of subsection 2. If the court determines that the petition:*

*(a) Does not meet the requirements of subsection 2, the court shall dismiss the petition without prejudice, state the basis for the dismissal and send notice of the dismissal to the petitioner and the prosecuting agency.*

*(b) Meets the requirements of subsection 2, the court shall determine whether the petition satisfies the requirements of subsection 3. If the court determines that the petition does not meet the requirements of subsection 3, the court may:*

*(1) Dismiss the petition without prejudice, state the basis for the dismissal and send notice of the dismissal to the petitioner and the prosecuting agency; or*

*(2) Waive the requirements of subsection 3 if the court finds the petition should proceed to a hearing and that there is other evidence that could have been discovered through the exercise of reasonable diligence by the petitioner or the petitioner's counsel at trial, and the other evidence:*

*(I) Was not discovered by the petitioner or the petitioner's counsel;*

*(II) Is material upon the issue of factual innocence; and*

*(III) Has never been presented to a court.*

5. Any second or subsequent petition filed by a person must be dismissed if the court determines that the petition fails to identify new or different evidence in support of the factual innocence claim or, if new and different grounds are alleged, the court finds that the failure of the petitioner to assert those grounds in a prior petition filed pursuant to this section constituted an abuse of the writ.

6. The court shall provide a written explanation of its order to dismiss or not to dismiss the petition based on the requirements set forth in subsections 2 and 3.

7. A person who has already obtained postconviction relief that vacated or reversed the person's conviction or sentence may also file a petition pursuant to subsection 1 in the same manner and form as described in this section if no retrial or appeal regarding the offense is pending.

8. After a petition is filed pursuant to subsection 1, any prosecuting agency, law enforcement agency or forensic laboratory that is in possession of any evidence that is the subject of the petition shall preserve such evidence and any information necessary to determine the sufficiency of the chain of custody of such evidence.

9. A petition filed pursuant to subsection 1 must include the underlying criminal case number.

10. Except as otherwise provided in NRS 34.900 to 34.990, inclusive, the Nevada Rules of Civil Procedure govern all proceedings concerning a petition filed pursuant to subsection 1.

NRS 34.960 (*emphasis added*).

NRS 34.970 provides, in relevant part:

**34.970. Order by court requiring response to petition; contents of order; time for response; reply; consideration of petition by court; hearing on petition; stipulation of factual innocence of petitioner; issuance of order of factual innocence; explanation by court; appeal**

1. If the court does not dismiss a petition after reviewing the petition in accordance with NRS 34.960, the court shall order the prosecuting agency to file a response to the petition. *The court's order must:*

(a) *Specify which claims identified in the petition warrant a response from the prosecuting agency; and*

(b) *Specify which newly discovered evidence identified in the petition, if credible, might establish a bona fide issue of factual innocence.*

2. The prosecuting agency shall, not later than 120 days after receipt of the court's order requiring a response, or within any additional period the court allows, respond to the petition and serve a copy upon the petitioner and, if the prosecuting agency is the district attorney, the Attorney General.

3. Not later than 30 days after the date the prosecuting agency responds to the petition, the petitioner may reply to the response. Not later than 30 days after the expiration of the period during which the petitioner may



reply to the response, the court shall consider the petition, any response by the prosecuting agency and any reply by the petitioner. *If the court determines that the petition meets the requirements of NRS 34.960 and that there is a bona fide issue of factual innocence regarding the charges of which the petitioner was convicted, the court shall order a hearing on the petition. If the court does not make such a determination, the court shall enter an order denying the petition. For the purposes of this subsection, a bona fide issue of factual innocence does not exist if the petitioner is merely relitigating facts, issues or evidence presented in a previous proceeding or if the petitioner is unable to identify with sufficient specificity the nature and reliability of the newly discovered evidence that establishes the factual innocence of the petitioner. Unless stipulated to by the parties, the court may not grant a hearing on the petition during any period in which criminal proceedings in the matter are pending before any trial or appellate court.*

4. If the court grants a hearing on the petition, the hearing must be held and the final order must be entered not later than 150 days after the expiration of the period during which the petitioner may reply to the response to the petition by the prosecuting agency pursuant to subsection 3 unless the court determines that additional time is required for good cause shown.

5. If the court grants a hearing on the petition, the court shall, upon the request of the petitioner, order the preservation of all material and relevant evidence in the possession or control of this State or any agent thereof during the pendency of the proceeding.

6. If the parties stipulate that the evidence establishes the factual innocence of the petitioner, the court may affirm the factual innocence of the petitioner without holding a hearing. If the prosecuting agency does not stipulate that the evidence establishes the factual innocence of the petitioner, a determination of factual innocence must not be made by the court without a hearing.

7. If the parties stipulate that the evidence establishes the factual innocence of the petitioner, the prosecuting agency makes a motion to dismiss the original charges against the petitioner or, after a hearing, the court determines that the petitioner has proven his or her factual innocence by clear and convincing evidence, the court shall:

- (a) Vacate the petitioner's conviction and issue an order of factual innocence and exoneration; and
- (b) Order the sealing of all documents, papers and exhibits in the person's record, minute book entries and entries on dockets and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order.

8. The court shall provide a written explanation of its determination that the petitioner proved or failed to prove his or her factual innocence by clear and convincing evidence.

9. Any order granting or denying a hearing on a petition pursuant to this section may be appealed by either party.

NRS 34.970 (*emphasis added*).

NRS 34.960(4) provides that “The court shall review the petition and determine whether the petition satisfies the requirements of subsection 2.” NRS 34.960(4)(a) and (b) alternatively describe the processes to be applied by the Court after it determines whether the petition satisfies NRS 34.960(2). If the Court finds that a petition satisfies the requirements of NRS 34.960(2) and (3), NRS 34.970(1) provides that “the court shall order the district attorney or the Attorney General to file a response to the petition.” It goes on to direct that “The court’s order must: (a) Specify which claims identified in the petition warrant a response from the district attorney or the Attorney General; and (b) Specify which newly discovered evidence identified in the petition, if credible, might establish a bona fide issue of factual innocence.”

The Legislature’s use of the word “shall” requires the Court undertake a preliminary analysis of the Petition and enter an order containing specific findings prior to requiring a substantive response from the prosecuting agency. See NRS 0.025(d) (“‘Shall’ imposes a duty to act.”); *see also Barral v. State*, 131 Nev. 520, 523, 353 P.3d 1197, 1198 (2015) (use of the word “shall” divests the district court of discretion), *Nev. Pub. Emps. Ret. Bd. V. Smith*, 129 Nev. 618, 627, 310 P.3d 560, 566 (2013) (“It is a well-settled principle of statutory construction that statutes using the word[...] ‘shall’ are presumptively mandatory.”) (citation omitted). Additionally, the Legislature’s use of the word “must,” in describing the contents of the Court’s Order, “expresses a requirement.” NRS 0.025(c)(1).

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Although the statutory language is unambiguous, it is worthwhile noting that the records of the Nevada Legislature demonstrate that stakeholders agreed that a preliminary analysis by district courts was a critical part of statutory provisions governing petitions to establish actual innocence as proposed by Assembly Bill 356. During a Senate Judiciary Committee meeting on May 30, 2019, representatives of various agencies addressed this gatekeeping function. Michelle Feldman of the Innocence Project testified that a petition “must show there is new, non-DNA evidence that establishes his or her innocence and is material to the case,” that the evidence “is not merely cumulative of what was known or recantation evidence,” and “it is distinguishable from prior claims.” *See* Exhibit 1 attached, p. 7. Ms. Feldman described this as “a high gateway claim” that has to be overcome “for a petition to not be summarily dismissed by a judge.” *Id*; *see also* Exhibit 1 at pages 11-12 (testimony from Jennifer Noble on behalf of the Nevada District Attorney’s Association regarding amendment that ultimately created the threshold finding requirements, noting that “[m]any people will endeavor to use this procedural mechanism for claims that do not fit within A.B. 356 as amended, so the courts need to conduct meaningful reviews and indicate to the parties what parts of the petition may support factual innocence” because “[o]therwise, we incur the danger of righteous claims – potentially meritorious claims – getting lost in the shuffle.”).

### III. Conclusion

The State respectfully requests that prior to ordering a substantive response from the State regarding the Petition for Factual Innocence, this Court undertake the preliminary analysis contemplated by NRS 34.960 (4) and determine whether the Petition may properly be summarily dismissed. If it deems summary dismissal

inappropriate, the State further requests that this Court issue an order for response consistent with the requirements of NRS 34.970 1 (a) and (b).

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: January 2, 2024.

CHRISTOPHER J. HICKS  
District Attorney

By /s/ Jennifer P. Noble  
JENNIFER P. NOBLE  
Chief Appellate Deputy  
Nevada Bar No. 9446

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on January 2, 2024, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Roderick Skinner #1126964  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

/s/ Dafne Toledano  
DAFNE TOLEDANO

**EXHIBIT LIST**

1. Minutes of the Senate Committee on Judiciary

**31 pages**

# EXHIBIT 1

# EXHIBIT 1

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
May 30, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 9:12 a.m. on Thursday, May 30, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Nicole J. Cannizzaro, Chair  
Senator Dallas Harris, Vice Chair  
Senator James Ohrenschall  
Senator Marilyn Dondero Loop  
Senator Melanie Scheible  
Senator Scott Hammond  
Senator Ira Hansen  
Senator Keith F. Pickard

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27  
Assemblyman William McCurdy, Assembly District No. 6

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Committee Policy Analyst  
Nicolas Anthony, Committee Counsel  
Jenny Harbor, Committee Secretary

**OTHERS PRESENT:**

The Honorable James Hardesty, Chief Justice, Nevada Supreme Court  
Holly Welborn, American Civil Liberties Union of Nevada  
Kendra G. Bertschy, Deputy Public Defender, Office of the Public Defender,  
Washoe County



John J. Piro, Deputy Public Defender, Office of the Public Defender,  
Clark County  
Jennifer Noble, Nevada District Attorneys Association  
Tonja Brown, Advocates for the Innocent  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Eric Spratley, Nevada Sheriffs' and Chiefs' Association  
Michelle Feldman, Innocence Project  
Odilia Berry  
Alanna Bondy, Nevada Attorneys for Criminal Justice  
Jim Sullivan, Culinary Workers Union Local 226  
Christine Saunders, Progressive Leadership Alliance of Nevada  
Laura Fitzsimmons  
Jim Hoffman, Nevada Attorneys for Criminal Justice  
Rebecca Gasca, American Civil Liberties Union Foundation  
Dagny Stapleton, Nevada Association of Counties  
Darin Imlay, Public Defender, Office of the Public Defender, Clark County

CHAIR CANNIZZARO:

I will open the hearing on Assembly Bill (A.B.) 80.

**ASSEMBLY BILL 80 (2nd Reprint)**: Makes various changes relating to the Nevada Sentencing Commission. (BDR 14-469)

THE HONORABLE JAMES HARDESTY (Chief Justice, Nevada Supreme Court):

I am here as Chair of the Nevada Sentencing Commission for the last Interim. Assembly Bill 80 has been modified by the Assembly from the Sentencing Commission's original bill draft request (BDR), but it is in substantially the same form. The Sentencing Commission was created by the 2017 Legislature and includes 25 members of the criminal justice system: judges, law enforcement, public defenders, district attorneys and the like.

It is not often one is able to secure a unanimous vote on topics like this, but the bill that comes to this Committee is a product of the unanimous vote of the Sentencing Commission during the Interim.

The overarching concept behind A.B. 80 is to provide Nevada with a full-time, independent, stand-alone central staff to assist the Sentencing Commission in fulfilling its salutatory duties. During the Interim, we heard testimony from sentencing commission representatives from Virginia, North Carolina,

Connecticut, Utah and Oregon, as well as the Executive Director of the Robina Institute of Criminal Law and Criminal Justice. In all of those instances, the sentencing commissions have the benefit of full-time, nonpartisan dedicated staff services to coordinate and compile necessary exchange of data between criminal justice agencies and policy makers on which important criminal justice decisions can be made.

At least 11 states have sentencing commissions located in the executive branch, 6 others are located in the judicial branch and only 3 are in the legislative branch. Assembly Bill 80 leaves the existing Sentencing Commission function as an advisory body to the Legislature while dedicating necessary resources to allow it to make informed, data-driven policy recommendations.

I will briefly describe sections of the second reprint of A.B. 80 approved by the Assembly Committees on Judiciary and Ways and Means.

Section 2 provides definitions.

The Department of Sentencing Policy has been created in section 5. The Executive Director will be appointed by the Governor from a list of three persons recommended by the Sentencing Commission. It is an unclassified service position and must be filled by an attorney. This individual will supervise the activities of the Sentencing Commission from a staff standpoint.

The Executive Director is given authority to employ necessary employees or consultants within the confines of the budget as approved by the Legislature each biennium.

Section 6 outlines the Executive Director's responsibilities, which are significant but essential to the operation of the Sentencing Commission.

Section 9 outlines the various members of the Sentencing Commission. We removed the Attorney General individually because of the demands on that Office's time. While he or she can sit; this bill allows him or her to designate someone from that office. This section also makes an adjustment on the representation from the public defenders' offices to one each from Clark and Washoe Counties.

Assembly Bill 80 also requires and increases the number of meetings the Sentencing Commission can conduct. One of the difficulties in the last Interim and one of the difficulties the Advisory Commission on the Administration of Justice (ACAJ) faces is the limitation on the number of meetings necessary to provide meaningful and quality input and recommendations to the Legislature. This bill requires the first meeting to be conducted on September 1, and requires meetings at least every three months in order to perform the numerous tasks outlined in section 10.

Fiscal issues are oftentimes referred to the Finance Committee, but I want to note this has been vetted by the Governor's Finance Office. It was included in the Governor's recommended budget and has been reviewed by the Assembly Committee on Ways and Means.

CHAIR CANNIZZARO:

We had a bill that expanded, in a more general sense, the duties and responsibilities of the ACAJ in an effort to provide the Sentencing Commission more latitude to focus on the things that need to be studied versus some of the dictates in statute. What is the interplay with A.B. 80 and how it would affect the ACAJ?

CHIEF JUSTICE HARDESTY:

Assembly Bill 236 is a major criminal justice reform bill that was recommended by the ACAJ and approved by the Assembly.

**ASSEMBLY BILL 236 (2nd Reprint)**: Makes various changes related to criminal law and criminal procedure. (BDR 14-564)

There are a number of additional data analysis requirements to be performed by the Sentencing Commission in that bill. The Sentencing Commission is the oversight commission for purposes of collecting data and assessing that data is consistent with sentencing practices. The first couple of sections of A.B. 236 lay out tasks for the Sentencing Commission to track the effects and the fiscal, criminal justice and public safety impacts of the reforms suggested in the bill.

CHAIR CANNIZZARO:

I was referring to A.B. 112.

**ASSEMBLY BILL 112 (1st Reprint)**: Revises provisions governing the Advisory Commission on the Administration of Justice. (BDR 14-589)

I am reading A.B. 80 as an expansive set of duties to more fully study some things. I understand A.B. 112 will expand the ability of the ACAJ to direct its capabilities and capacity to whatever is deemed an appropriate criminal justice topic to study.

CHIEF JUSTICE HARDESTY:

The intent of A.B. 112 was to reduce some of the activities the Legislature previously assigned to these criminal justice commissions. The Legislature has deferred to these commissions a potpourri of activity that have neither the staff nor time to assess. The ACAJ has given some flexibility on criminal justice issues, but the specific purpose of the Sentencing Commission revisions was to collect and coordinate data for future sentencing recommendations.

SENATOR OHRENSCHALL:

I was on the Assembly Corrections, Parole, and Probation Committee last Session. We added the Director of Employment Training and Rehabilitation to the membership of the Sentencing Commission, and I remember how interested he was in trying to help folks who had served their time and gotten out of prison, tried to start over and get trained in new positions. We also added "representative of an organization that works with offenders upon release from incarceration to assist in reentry" language in section 9, subsection 1, paragraph (u) of this bill. I was pleased in those changes to the membership.

I am concerned about losing the language regarding *Nevada Revised Statutes* (NRS) 218D.216. What is the thought behind losing that?

CHIEF JUSTICE HARDESTY:

I was disappointed the Assembly pulled that provision out of the bill. I testified in front of the Assembly Judiciary Committee that this Commission should be able to request the drafting of legislative measures. Frankly, that provision brought A.B. 80 forward.

I hope the Sentencing Commission submits a BDR next Session that not only responds to the numerous issues being raised by criminal justice reform efforts this Session but also outlines specific changes that can be set forth by the

Legislature. It does not mean this Body has to agree with it, but having that ability facilitates an examination and understanding of those issues.

The Advisory Commission has never submitted a BDR; it makes recommendations and hopes to find either the chair of a judiciary committee or a Legislator to carry them out. One would think the Legislature would want to hear directly from this legislative Commission through a BDR.

I disagree a bit with the way A.B. 80 came out of the Assembly, and I do not know why this language was pulled out as I was not a part of those discussions. I want to state, on behalf of the Sentencing Commission, this is an important provision that should have been left in the bill.

SENATOR OHRENSCHALL:

I thought it was important last Session as well.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

We support A.B. 80. The continuation and the formation of this Department is critically important for the State.

KENDRA G. BERTSCHY (Deputy Public Defender, Office of the Public Defender, Washoe County):

The Sentencing Commission is vital to Nevada; we support A.B. 80.

JOHN J. PIRO (Deputy Public Defender, Office of the Public Defender, Clark County):

We support A.B. 80. Studying these issues in the Interim will lead us to better solutions in coming Sessions.

JENNIFER NOBLE (Nevada District Attorneys Association):

We support A.B. 80.

TONJA BROWN (Advocates for the Innocent):

We support A.B. 80.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

We support A.B. 80.

ERIC SPRATLEY (Nevada Sheriffs' and Chiefs' Association):  
We support A.B. 80.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 80. I will open the hearing on A.B. 356.

**ASSEMBLY BILL 356 (1st Reprint)**: Revises provisions governing criminal procedure. (BDR 3-863)

ASSEMBLYMAN WILLIAM MCCURDY (Assembly District No. 6):

Assembly Bill 356 establishes provisions for the filing of a petition to establish factual innocence.

Before I get into the details of the bill, I would like to share a story. On April 24, 1994, a man armed with a pistol robbed a Carl's Jr. restaurant in North Las Vegas. Although most of the employees were unharmed, Charles Burkes, the restaurant manager, was killed during the incident. The suspect was able to escape on foot.

After receiving several tips and eyewitness testimony from the employees, the police investigation identified an 18-year-old man named DeMarlo Berry, who was also in the area that night, as the main suspect. Despite inconsistent testimony from eyewitnesses and a lack of physical evidence linking Mr. Berry to the crime, he was convicted of first degree murder, robbery and burglary, and sentenced to life in prison with the possibility of parole.

In spite of his conviction, Mr. Berry maintained his innocence throughout the trial. He filed several petitions for his case to be considered in light of circumstances that arose both during and after his sentencing, including an admission of guilt from the actual perpetrator of the crime in 2013. Nearly all the petitions were dismissed, resulting in Mr. Berry spending more than 20 years in prison for a crime he did not commit. In late June 2017, with the help of the Rocky Mountain Innocence Center, the charges against Mr. Berry were finally dismissed, and he was released from prison after 22 years in custody.

According to the National Registry for Exonerations compiled by the University of Michigan, over 2,400 people have been exonerated of crimes since 1989. This equates to approximately 21,000 years of their lives lost in prison. Under

NRS 176.515, a defendant can be granted a new trial based on newly discovered evidence. Though there is no time limit for introducing new DNA evidence of innocence, statute only allows persons to present new, non-DNA evidence within two years of his or her conviction, even if there is no way the evidence could have been discovered within that time frame. The average time spent in prison for someone who is later exonerated is nine years. Not only are innocent people in prison for crimes they did not commit, they are also incarcerated for longer than necessary under statute.

Since 2011, there has been a steep increase in exonerations based on non-DNA evidence such as false testimony, mistaken identification or misconduct of officials, all of which played a factor in the process that put Mr. Berry in prison.

Additionally, 80 percent of wrongful convictions in the United States have been overturned with the types of non-DNA evidence just mentioned. Assembly Bill 356 creates an outline of specific processes for both the court and the petitioner to follow when establishing factual innocence, regardless of when the new evidence is discovered.

I recognize our criminal justice is not perfect. Although we may never live in a society completely free of situations like DeMarlo Berry's, this legislation helps rectify wrongful convictions quickly and effectively.

MICHELLE FELDMAN (Innocence Project):

There is an amendment to A.B. 356 ([Exhibit C](#)) representing the compromise language to provide some structure for people who have new, non-DNA evidence of their innocence.

There is a gap in statute when someone has new, non-DNA evidence that is discovered beyond two years of his or her conviction. Right now, if you get DNA testing and it is favorable to a person's case, the standard to get relief is "establishes a reasonable probability the defendant will be acquitted." Under the motion for a new trial law, if you discover new, non-DNA evidence within two years of the conviction that is the same reasonable probability standard, the defendant will be acquitted. A final way to get relief is through State habeas claims when evidence that was not presented can be tied to a constitutional violation. An example would be if the State illegally withheld exculpatory evidence from a defendant and the judge rules it is so powerful it would

establish a reasonable probability of a different outcome. All those standards are reasonable probability the defendant would have been acquitted.

The standard in A.B. 356 is much higher. In a perfect world, I would have removed the two-year time limit and the motion for new trial statute. Several states have recognized sometimes new evidence that is not DNA comes out beyond two years of someone's conviction. But this bill represents a compromise; it is a narrow way for a person who has new, strong and compelling non-DNA evidence that shows his or her innocence to get relief.

Sections 1 through 5 are definitions. Factual innocence is defined in section 4; these are high standards for somebody to even get his or her petition through the door with a judge.

Section 6 outlines additional criteria. One must show there is new, non-DNA evidence that establishes his or her innocence and is material to the case. It is not merely cumulative of what was known or recantation evidence; it is distinguishable from prior claims. Those requirements have to be met for a petition to not be summarily dismissed by a judge. It is a high gateway claim but a fair compromise.

If the judge finds someone's petition meets those requirements, he or she can either hold a hearing or provide relief if the State agrees the person met the criteria and is actually innocent. If the relief is contested, the judge can hold a hearing, and the burden for the defendant to meet would be clear and convincing evidence of factual innocence.

There are few people who would be able to meet this high standard, but A.B. 356 provides some pathway to bring new, non-DNA evidence after two years of a conviction for individuals like DeMarlo Berry. He provided strong and compelling evidence including the real perpetrator confessing to the crime, the corroboration of that confession by people who were with him and the recantation by the jailhouse informant who claimed DeMarlo confessed to him. There was no way for Mr. Berry to bring that evidence to court. He had to allege a constitutional claim through State habeas; it was dismissed and went back and forth through the court system until the Clark County District Attorney's Conviction Review Unit took it up and exonerated him.



SENATOR OHRENSCHALL:

Is there a reason for the two-year time limit? Is it part of the compromise? Will it keep some people from pursuing this remedy?

MS. FELDMAN:

The two-year time limit after a conviction is under the motion for a new trial statute. Assembly Bill 356 removes any time limit; a claim can be presented whenever that new, compelling evidence becomes available.

SENATOR SCHEIBLE:

This is an excellent policy proposal. I am a stickler when it comes to opening up postconviction litigation avenues, but A.B. 356 hits the right balance of being available to people who need relief without opening the floodgates.

It seems this would fall under the category of postconviction release. What kind of rights would a person have to an attorney if he or she wanted to file this type of claim?

MS. FELDMAN:

It is a new and different chapter within the State habeas law, but whatever the provision is in the State habeas provision would apply to this bill.

SENATOR SCHEIBLE:

We have a form in statute that is useful for pro per clients. It outlines 13 questions, and the answers are handwritten in. Would this be added as a section to that form that may read, "Are you claiming actual innocence," with bullet points provided of what they have to plead?

MS. FELDMAN:

That would be a great idea if it was added to the form; that is the general idea.

ODILIA BERRY:

I am DeMarlo Berry's wife; he wanted to be here, but he had to work. I support A.B. 356.

MS. WELBORN:

This bill is a more conservative approach to innocence statutes from other states, but most of the parties have come together to develop something that

provides relief for people like DeMarlo Berry. For these reasons, the American Civil Liberties Union of Nevada supports A.B. 356.

MR. PIRO:

The Clark County Office of the Public Defender supports A.B. 356. This is probably my greatest professional fear and a fear shared by many prosecutors as well.

Assembly Bill 356 provides a mechanism to bring in that new evidence. We work in a system that oftentimes values finality over getting the right results. This provides a pathway to get to that right result. Hopefully, if somebody ever makes that mistake where he or she did not get everything needed to prevent a wrongful conviction, there is a pathway to find relief before 22 years of someone's life goes by.

MS. NOBLE:

Assembly Bill 356 strikes a good balance between ensuring factually innocent persons can assert newly discovered evidence supporting their innocence in an efficient way, ensuring criminal convictions have a presumption of integrity and taking victims into consideration.

People think this process is over for victims at the time of conviction; I can assure you it is not. I am still in weekly contact with victims whose family members were murdered in the 1990s. This process goes on and on for them. Our existing procedural mechanisms such as the petition for writ of habeas corpus and direct appeal, appeals of those decisions for omnibus other writs in most cases provide a procedural mechanism that would allow newly discovered evidence if it was the result of some sort of constitutional error such as ineffective assistance of counsel or a *Brady* claim, to assert that with our existing petition for writ of habeas corpus.

However, the Nevada District Attorneys Association has heard the concerns from representatives of the Innocence Project. It is good that this is a narrowly tailored procedural mechanism because it is a small class of persons who will have newly discovered evidence that truly cannot be connected to a constitutional claim in an efficient manner.

We want to ensure that district courts conduct meaningful reviews prior to ordering the State to respond, and part of our Exhibit C amendment captures

that intent. As attorneys who handle these petitions on a daily basis, we find a lot of duplication and petitions from folks who file in proper person after they have been represented on their first three petitions for writ of habeas corpus. Many people will endeavor to use this procedural mechanism for claims that do not fit within A.B. 356 as amended, so the courts need to conduct meaningful reviews and indicate to the parties what parts of the petition may support factual innocence. Otherwise, we incur the danger of righteous claims—potentially meritorious claims—getting lost in the shuffle.

Criminal convictions are entitled to a presumption of integrity, and when we disturb those, it needs to be for a good reason. Assembly Bill 356 as amended will allow persons who have newly discovered, non-DNA evidence a more efficient means of getting that in front of a court and not having to shoehorn it into a constitutional claim.

The Nevada District Attorneys Association supports A.B. 356 as amended.

ALANNA BONDY (Nevada Attorneys for Criminal Justice):

We support A.B. 356. This is a compromise piece of legislation, but it is a good and necessary bill that helps make Nevada's criminal justice system more fair and just. Wrongful convictions are a serious problem in the State, and it is important for those wrongfully convicted to have an ongoing ability to raise credible claims of innocence based on newly discovered evidence.

It is important those convicted in Nevada have an effective, fair and ongoing method to challenge their convictions based on evidence of factual innocence. Individuals like DeMarlo Berry, Kirsten Lobato and Fred Steese spent decades in prison for crimes they did not commit. There should never be a time limit to correct an injustice.

MS. BERTSCHY:

The Washoe County Office of the Public Defender supports A.B. 356. Unfortunately, juries sometimes get it wrong and convict innocent people. This bill allows a mechanism for individuals to address a wrongful conviction. We do not want innocent people languishing in our prisons for years just because proper procedural mechanisms were not in place.

JIM SULLIVAN (Culinary Workers Union Local 226):

We join the Nevada Coalition for the Wrongfully Convicted to fight to change Nevada's outdated criminal justice laws this Session. It is shameful that Nevada is only one of five states that has a timeline on presenting non-DNA evidence for the wrongfully convicted. It is past time to change this law. Assembly Bill 356 does just that, and we support this bill.

MS. BROWN:

I have provided an amendment ([Exhibit D](#)) to include posthumous petitions. On April 3, I appeared in front of this Committee on behalf of Senate Bill (S.B.) 384.

**SENATE BILL 384**: Revises provisions relating to criminal procedure.  
(BDR 14-857)

That bill was similar to this bill; however, that bill did include "posthumously." While S.B. 384 did not make it out of Committee, there did not seem to be a problem with the term "posthumously."

What happened to DeMarlo Berry was tragic. Fortunately for Mr. Berry, he was exonerated. But what if the outcome had been different? What if he had been executed first and then the real perpetrator confessed to the crime? Would the lawmakers say to Mr. Berry's widow, "So what, we don't care. He's dead"? It should not matter if the person who has been wrongfully convicted is alive or dead; justice delayed is justice denied.

The families of those who have passed away should be permitted to exonerate their loved ones' names and give the families the closure they have longed for. As someone who has had a loved one who has been wrongfully convicted, I know the anguish and suffering one feels on a daily basis. I have also been fortunate in an odd sort of way compared to others who have been wrongfully convicted. Some have never had the opportunity or chance to search for the truth and find out what went wrong in the case. I have. I have been fortunate to speak to a member of the jury that convicted my loved one, Nolan Klein. This was put into a postconviction petition, and neither the District Court nor the Nevada Supreme Court addressed this or 22 other claims. It eventually went to federal court, and the federal court sent it back to District Court in which the District Attorney's office argued those claims were procedurally barred.

In 2000, I was fortunate to have former Governor Kenny C. Guinn take an interest in my brother's case and conduct a thorough investigation. At the end of the investigation, former Governor Guinn was going to try to have Mr. Klein placed on the Nevada Board of Pardons Commissioners' agenda. An application was sent, and the Pardons Board denied his application as it does not accept anyone who is still appealing his or her conviction.

In 2009, Mr. Klein and I were fortunate to learn former Second Judicial District Court Judge Brent Adams ordered former Washoe County District Attorney Dick Gammick to turn over the entire file in the case. In the file, it showed the prosecuting attorney did not turn over the materiality and exculpatory evidence that supported the defense's case of mistaken identity.

On September 20, 2009, Mr. Klein died prior to any motion for a new trial being filed. In 2011, Mr. Klein's attorney filed a petition of exoneration posthumously which was denied. The judge issued an order stating "the petition failed to provide any controlling legal authority which provides this court with the authority to grant the subject petition." It was appealed to the Nevada Supreme Court. The Court lacked jurisdiction and went on to state,

[Contrary to appellant's suggestion that] "[t]his court is the only body in the State of Nevada that can set the course for petitions for exoneration after death," it is for the Legislature to create a cause of action or remedy and provide for an appeal.

My amendment, [Exhibit D](#), will create a petition of factual innocence. If the petitioner is deceased,

the petitioner through his or her spouse, biological or adopted children, biological parents, siblings, executor or heir to his or her estate may file a petition for factual innocence in the district court as provided in the sections above as though the person were alive except that the standard of factual proof in order to be granted a new trial shall be more likely than not.

I have asked to change section 1 to include section 15.

I have asked to include section 15 in section 2.

The amendment also proposes to move "This act becomes effective on July 1, 2019," to section 16, and to replace it with the language previously stated.

I am happy to provide my correspondence to the Governor's Office dated October 2, 2000, if the Committee wants to verify former Governor Guinn had performed the investigation and was attempting to get Mr. Klein onto the Pardons Board.

It should not matter whether a person is alive or dead. Justice should be equal. Coming from someone who has had someone wrongfully convicted, I have made a promise to clear his name no matter what. I am hoping this will work.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):

I echo the comments made by the ACLU and the Public Defenders Offices of Clark and Washoe Counties. We support A.B. 356.

ASSEMBLYMAN MCCURDY:

This bill will have a significant impact on the lives of so many. The system is not perfect, but A.B. 356 would bring us one step closer to making sure it performs better for the citizens of this State.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 356. I will open the hearing on A.B. 81.

**ASSEMBLY BILL 81 (3rd Reprint)**: Makes various changes relating to the oversight and provision of legal representation of indigent defendants in criminal cases. (BDR 14-436)

ASSEMBLYWOMAN TERESA BENITEZ-THOMPSON (Assembly District No. 27):

Assembly Bill 81 was introduced on behalf of the Nevada Right to Counsel Commission, which was created by the passage of S.B. No. 377 of the 79th Session. The Counsel Commission was comprised of 2 Legislators, myself and Senator Richard S. "Tick" Segerblom, as well as 11 other members representing various stakeholders from local government and the legal community.

The Counsel Commission met ten times throughout the Interim. The purpose of this Commission was to study issues related to the provisions of indigent

defense in the State. A report prepared by the Sixth Amendment Center ([Exhibit E](#)) provides a comprehensive look at criminal defense in Nevada, including a discussion of the manner in which criminal defense is provided, the framework of the courts and the observation of the Center after conducting the study. It is worthwhile to read the study as it includes an incredible amount of detail. One has to be able to know what the drive is like to understand the logistics and complications that are unique to the State, so we were able to allocate additional dollars for the folks from the Sixth Amendment Center who came out to the State to travel to all the courts and drive rural Nevada.

Together through extensive conversation and deliberation, we have before us a reasonable, well-structured model. Although no one gets everything they want, [A.B. 81](#) allows counties to continue to provide indigent defense while allowing the State some ability to control what is happening and ensure adequate counsel is being provided.

[Assembly Bill 81](#) provides a new framework for oversight of criminal defense in the State. To do this, [A.B. 81](#) establishes a Board on Indigent Defense Services and a Department of Indigent Defense Services. This Board acts as a policy maker, and the Department carries out the day-to-day responsibilities for the overseeing the provisions of indigent defense services in the State.

In the initial draft, the composition of the Indigent Defense Services Board was nearly identical to that of the Nevada Right to Counsel Commission. However, section 6 was amended at the request of the counties. This revised Board consists of 13 members appointed by the Governor and the Legislature. Five members represent small counties, four of whom are selected by the Nevada Association of Counties. The Chief Justice of the Nevada Supreme Court or his or her designee also serves in a nonvoting capacity. There is a one-page document ([Exhibit F](#)) that outlines the makeup of the Board of Indigent Defense Services as it is listed in [A.B. 81](#).

The Executive Director will collaborate with this Board on the activities of the Department and the manner in which indigent defense services are provided throughout the State. In addition, the Board of Indigent Defense Services is required to establish standards for the delivery of indigent defense services to ensure those services meet constitutional requirements and attorneys are not compensated in a way that provides a disincentive for effective representation.

We heard contract attorneys, for example, are paid with flat fees. If an attorney makes the same amount regardless of whether the case goes to trial, there could be a strong incentive to settle that case. The Board of Indigent Defense Services will also work with the Department of Indigent Defense Services to develop a manner to receive and resolve complaints about indigent defense services. It is also required to adopt regulations to establish standards for indigent defense. Regulations are needed because standards apply to the provisions of all indigent defense services. In addition, by establishing standards by regulation, there is public notice and a public hearing. The regulations will also have to be approved by the Legislative Commission so the Legislature stays informed.

The other important piece is found in section 8 and requires the Board of Indigent Defense Services to adopt regulations to establish a formula for determining the maximum amount a county will be required to pay for the provisions of defense services.

By adopting these regulations, the potential amount counties are required to pay will be decided in a public hearing. What the cost will be and who will bear that cost has been a bone of contention. Because this also must be approved by the Legislative Commission, there is also legislative input into the formula. This seems fair since the State will ultimately be responsible for any amount above which counties are required to pay.

Assembly Bill 81 also establishes the Department of Indigent Defense. The Executive Director of this Department is selected by the Governor from a list of three persons recommended by the Board of Indigent Defense Services. Once selected, the Executive Director will collaborate with this Board.

The goal is to give independence to this Department in the oversight of indigent defense services, so there was much deliberation over how it was structured. In addition to the Executive Director, the Department will include two deputy directors.

Section 12 states one deputy director will be responsible for oversight of the provisions of criminal defense in smaller counties. In addition, the deputy has the oversight of the State Public Defender's Office, which is going to be moved from the Department of Health and Human Services. This deputy director will



also be responsible for developing and providing continuing education programs for attorneys who provide free criminal defense services.

Section 12, subsection 4 contains a requirement for the deputy to provide assistance to counties required to revise the manner in which indigent defense services are provided because of the standards adopted by the Board of Indigent Defense Services. This change was requested by the counties.

The second deputy director will be responsible for auditing the manner in which indigent defense services are provided throughout the State. This deputy will collect statistics regarding caseloads, salaries and other information as well as conduct on-site visits of court proceedings. This function is similar to what the consultant did for us in the Interim but on an ongoing basis.

Although the State has allowed counties to choose to accept the responsibility for providing indigent defense services, the State remains responsible for ensuring these services are effectively taking place. Therefore, it is critical to have continuing review of how services are provided to ensure defendants are properly represented.

The deputy director will report and address any person found to be providing these services in an inappropriate or ineffective manner. In addition, the deputy director may suggest entering into a corrective action plan with any county that fails to meet the minimum standards. A corrective action plan will allow for collaboration between the deputy director and the appropriate board of county commissioners regarding the time and manner of the specifics to be put into that plan. Any disagreement will be resolved by the Board of Indigent Defense Services.

If the addition of a correction action plan causes the county to expend more money than it spent during the previous budget year plus inflation, the Executive Director is required to add that amount into the next budget cycle in order for the Department of Indigent Defense Services to assist that county in providing those services. However, if money is needed sooner for the county to meet its responsibilities, this Department has the authority to request money from the contingency account through the Interim Finance Committee.

Section 14, subsection 4 states if additional money is not made available to the county, it has the option to continue to provide indigent services or turn that

responsibility over to the State. If a county fails to comply with a plan in a timely manner, the Executive Director will be informed.

Section 14, subsection 5 instructs the Executive Director to review the issue. He or she may determine whether to enter into another corrective action plan or recommend transferring authority to provide indigent defense services to the State Public Defender. Any recommendation must be approved by the Board of Indigent Defense Services.

Assembly Bill 81 also provides the process for transferring the responsibility to the State as well as back to the county once it shows it is able to meet the standards.

This framework with the Board and Department creates a check and balance. The Board creates a policy, the Legislature approves the policy and the Department oversees the system to ensure compliance. This is fair. Any proposal that seeks complete indemnification of local governments from additional costs of providing effective defense counsel is not feasible.

With a lawsuit pending against the State that alleges it is not meeting its obligation to provide adequate defense services to indigent defense persons, we need to be mindful of our duty as a State to ensure effective assistance of counsel is provided.

There are a few provisions that are a bit unrelated to the overall framework, but I want to mention them.

Section 1 revises the provisions relating to the appointment of counsel. This was added at the request of the counties to ensure anyone who declines the appointment of counsel does that knowingly and voluntarily with an understanding of the consequences of doing so.

A section was also added at the request of the counties. Since an attorney must be provided anytime a defendant could serve time in jail, that concept was added.

Section 31.3 staggers the terms of the members of the Board of Indigent Defense Services, so approximately 30 percent are selected every year to avoid a 100 percent turnover.

I have submitted an amendment on sections 8 and 14 ([Exhibit G](#)). The intent of section 8 is to make sure we balance the role of the Department of Indigent Defense Services and its Executive Director. They need to be able to answer to their Executive Branch and to the Governor on an equal footing with their Board.

This amendment also requests to replace "agree" with "collaborate" in section 14, subsection 1.

Others will bring their amendments and speak to their concerns. There is a lot of history with this bill, and some amazing, smart, passionate people have been working on this issue for over 20 years. This is a nuanced issue.

Ultimately, we as a State must provide this oversight. In the report, [Exhibit E](#), our consultant noted a lack of oversight does not mean indigent defense is not adequate in all cases. It means we leave open the possibility of serious harm to our citizens and potential liability to the State. This is not acceptable.

Assembly Bill 81 provides a compromise that everyone is not happy with, but, ultimately, we are setting up a fair process full of checks and balances, the opportunity to express concerns around policy and funding, and a way for this conversation to continue.

SENATOR PICKARD:

I was surprised to hear our counties were not doing a good job with the Public Defender's Office, so we are creating an entire department to oversee public defenders, presumably because the counties have not risen to the occasion.

How will the line of authority work? Does this create another level of oversight whereby the group created in A.B. 81 will oversee county public defenders' offices, which in turn oversee the attorneys working who are working cases? How does this vertical structure work?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

The Sixth Amendment Center Report, [Exhibit E](#), talks about the fact that Nevada is uniquely structured. Our two-largest counties oversee their own public defenders' offices and different things are happening in rural counties. The Nevada State Public Defender's Office provides services for a couple of small counties, but then the other counties are providing their own services.

The system we have now was born out of necessity. Counties picked up the ball and have been doing the work that the State should. The Nevada Right to Counsel Commission produced a report that indicates, while the counties are doing their best effort, the State is not doing its job in terms of being the final oversight for the provision of service deliveries for indigent defense. We have no idea what the quality is, no manner to measure and no ongoing discussions. Ultimately, that is where the State falls down on its responsibilities.

Assembly Bill 81 will require the State to own this responsibility. It creates the Department, comes up with regulations and standards, collects data and finds a better way of doing this.

SENATOR PICKARD:

As I understood this, the initial responsibility for prosecution and defense is at the county level, and it is up to the counties to provide those services in an adequate fashion. If we have a conflict, we turn to the Office of the Special Public Defender or the Office of the Attorney General to get involved on the prosecutorial side. I thought there was a structure in place, so I am surprised we are not requiring the counties to do what has been required of them. Has that been attempted and it failed, so now we need to step up and create a new bureaucracy to oversee this?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

Yes. What we are seeing is a trend where similarly structured states are facing legal challenges and are not prevailing. We need to get ahead of our constitutional obligation.

SENATOR OHRENSCHALL:

Assembly Bill 81 is needed and will help ensure people are receiving and exercising their constitutional rights.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

I was one of two Legislators who sat on the Right to Counsel Commission; I am a social worker and I do not live in this world at all. We are here out of necessity and function because we have the question before us regarding due diligence and whether the State can show there is a framework in place that meets its constitutional obligations. Whether A.B. 81 prevails, we will have an answer and have to work from that point.

SENATOR HANSEN:

I represent several rural counties, and there has been concern over how the State is going to finance this because some counties have struggled for years to be able to afford public defenders; they have done the contract thing. What is the funding mechanism for the counties?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

First, I would look to the composition of the Board of Indigent Defense Services which is created by A.B. 81. We worked hard to make sure we had adequate county representation in that Board since it is going to be part of the conversation about every regulation and standard that is put forth and what is happening with the State office. We have a balance so we do not unintentionally do too much too fast and incur unrealistic expenses that would cause counties to simply hand their programs back over to the State. There is ongoing concern about the corrective action plans and whether the State had to assume the county responsibilities; ultimately everyone likes the system that works. The counties do not want a State takeover, which is fair because the State is in no position to do that. We see a better product with a collaboration between the State and counties, so building the Board in a way that has healthy county representation is important.

Within the structure of A.B. 81 and creating the Department, there are a number of different ways in which the financing parts are going to be discussed. One: we know there is going to be an additional fiscal burden if we put in place things like caseload standards that cause counties to hire more staff. The Department of Indigent Defense Services has to build those additional costs into its budget and request that money through the Governor's Office just as every other department does. You have to come back and fight for your money every two years by making your case and justifying your expenses. We are giving them the avenue to do that, and it does not exist right now. Giving them that avenue is important.

Second: we are also allowing the Department to come to the Interim Finance Committee should there be an urgent need and dollars need to move sooner rather than later. Once again, it would have the ability to come to this Body and request those dollars to help meet the standards it promulgates.

SENATOR HANSEN:

Hopefully, we can work something out because those were the concerns expressed.

LAURA FITZSIMMONS:

I support A.B. 81. I was appointed by former Governor Brian Sandoval to serve on the Nevada Right to Counsel Commission. It was a huge amount of work; it took State funds and a lot of support by a lot of people who were involved. There were a lot of county members, including those who represented the rural counties. The function of this Commission was to focus on rural counties, and I have had substantial professional experience representing indigent people in rural counties.

We came up with a unanimous vote that these issues needed to be addressed, and the most important thing was the preamble. The State needs to recognize it has the constitutional obligation to provide effective assistance of counsel. So the preamble on this bill gave the rural counties a sense of comfort that funding would increase if needed.

We now have \$1.7 million in the budget from former Governor Sandoval. That is enough money to staff the Department, hire an Executive Director, appoint a Board and create agreed-upon standards. In terms of the funding concern, in two years we are going to know which rural counties are not compliant and the additional costs needed to bring them into compliance.

It is my understanding this Commission never focused on Clark and Washoe Counties because they are fully funded and are compliant with national standards. We are talking about two categories; the rural counties are different.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):

We support A.B. 81. It is kismet this bill was heard on the same agenda as A.B. 356 because the latter bill is what happens when you make a mistake. As Ms. Noble testified, the process to try to correct that mistake can be long and arduous. Assembly Bill 81 creates a structure so we can do a better job in the first place. This results in a better quality of counsel and fewer mistakes so we do not have to go through that long, arduous, expensive process.

On a policy level, A.B. 81 is a good bill because it fixes these issues before problems arise. We also support the amendment by the Clark County Public Defender's Office, but we support A.B. 81 with or without it.

MS. BROWN:

Advocates for the Innocent supports A.B. 81.

REBECCA GASCA (American Civil Liberties Union Foundation):

My history extends back to 2008 on this matter when ADKT No. 411 was first issued by the Nevada Supreme Court regarding caseload standards. At the time, I was working for the ACLU of Nevada. While we support the massive amount of time and effort that has gone into this bill by the Indigent Defense Commission, the ACAJ and the tireless efforts of the Right to Counsel Commission as well as the intent and remarks put on the record by Assemblywoman Benitez-Thompson, we oppose A.B. 81 as section 14 needs to be changed.

Section 14 has been amended to allow for some Interim budgetary issues to be addressed via the contingency account. It is our fear that contingency account is not the appropriate way to address this long-standing issue. For a sustainable approach to adequately providing defense services, there needs to be permanent, programmatic funding of the Department itself beyond administrative personnel.

That money was put into the Governor's budget, so we appreciate the creation of this mechanism as a whole, but it is necessary to begin funding the work this Board and Department will be doing to respond to the severe deficiencies the ACLU has alleged in a lawsuit against the State, most recently requesting for class certification to move this forward and have some declaratory relief. It would be our preference that this Body have this funding mechanism issue considered by the Senate Finance Committee before the end of this Session because this is the opportunity the State has to move forward in good faith to adequately address these issues, particularly with respect to rural counties. The lawsuit against the State does not allege Clark or Washoe Counties are engaging in any inadequate defense. This is about providing rural counties with adequate funding to address the structural deficiencies noted in the Sixth Amendment Center report, [Exhibit E](#), and considered throughout the Interim by the Right to Counsel Commission.

SENATOR HANSEN:

What is the status of the lawsuit you discussed? We normally do not do legislation that may get in the middle of something like that.

MS. GASCA:

You are correct; this is an extremely abnormal case. The lawsuit is pending, the class certification has been filed, the Attorney General has responded, Governor Steve Sisolak is named in his official capacity as is the State in general. This is out of the ordinary because the State has nearly a dozen years of continued inaction in adequately funding the rural counties. For that reason, I am here to put on the record the unique position in which we find ourselves. We do believe this is the opportunity the Legislature has to move forward and address those structural deficiencies, much of which is being done by this bill, but that funding mechanism is incredibly important.

DAGNY STAPLETON (Nevada Association of Counties):

Important and far-reaching reforms are being proposed, and counties understand that as they are the main providers of this service. Though we are opposed to A.B. 81, Nevada's counties are not opposed to reform. We do support much of what is in this bill. We appreciate the preamble language that articulates the State's constitutional responsibility to provide indigent defense; I will provide some background on this issue from the county perspective.

Nevada has a strong history of providing indigent defense. In fact, Nevada was one of the first states to guarantee this right over 100 years ago. However, over the last few decades, Nevada's counties have taken this responsibility over from the State. Rural counties have testified to the fact that, due to the reduction in State resources for these critical services in years past, there have been situations where defendants were left sitting in jail without adequate representation. As a result, most rural counties step up and pay for almost 100 percent of the indigent defense services in the State. Fifteen out of Nevada's 17 counties provide and pay for 100 percent of this service.

The Nevada Association of Counties (NACO) has been proactively engaged on the issue of indigent defense for over a decade. We have been part of the Supreme Court's Indigent Defense Commission; NACO introduced legislation seeking reforms and funding for indigent defense four out of the last five Sessions.



This is something our organization and our counties—including rural counties—care about. County representatives also participated in the Right to Counsel Commission during the Interim.

In light of this history and the fact that counties are the primary providers of this service, we view ourselves as full partners in this. While we agree reforms need to be made, the crux of this legislation for us rests on the acknowledgment and assurance the State recognizes its responsibility as well. Counties are willing to continue their partnership and financial contribution to this, but additional costs for reforms should be borne by the State.

Assembly Bill 81 provides the framework for doing that. However, our opposition is based on two things. First, there were a few amendments we asked for—one that Clark County was interested in—that could not be incorporated.

Secondly and most importantly, this bill was introduced with funding to pay for the anticipated reforms. That funding is no longer in the bill, and without it we are concerned about the State's ability and commitment to fund reforms in the future. As Ms. Gasca mentioned, we need that sustained funding mechanism for the actual reforms that need to take place in the counties.

MR. PIRO:

The Clark County Office of the Public Defender disagrees with sections 14 and 15 of A.B. 81 that deal with takeover provisions that could possibly happen. A good analogy was made to me before the hearing that the State taking over Clark County's public defending would be like an ant trying to eat an elephant. We are concerned the State would not be able to handle both the budget and what we do; the amendment proposed by County Manager Jeff Wells would provide a carveout for Clark County in that regard.

State oversight is important. Public defense systems in Colorado and Kentucky are overseen by the State and work well, but we do not want to run into a situation like Missouri where it is poorly run. Clark County is not perfect by any means, and definitely the rural counties need help—I am learning that more and more.

The other concern is that there are a lot of county officials who are going to be part of the makeup of the Board on Indigent Defense Services. Public defenders

have different concerns than those of the counties. Counties are concerned with budgets and containing costs, while public defenders are concerned with vigorous defense and holistic rehabilitation which is not always convenient for county budgets. That is where the head banging sometimes happens—that is where our differences lie. It will be important to watch how this Board works.

This Department should be created and progress should be made, but we are concerned with the takeover provision.

DARIN IMLAY (Public Defender, Office of the Public Defender, Clark County):

In addition to being the Public Defender of Clark County, I also sit on the Indigent Defense Commission. Our concern is with section 14, subsections 5 and 6 of A.B. 81.

As you have heard, the primary concern is A.B. 81 is intended to deal with is the rural counties. As Ms. Fitzsimmons mentioned, Clark and Washoe Counties are in compliance and are well-funded, so the focus is on the rural communities.

As Senator Pickard was questioning about the surprise for the counties and representation, the representation provided by Clark County Public Defender's Office as well as the County's Special Public Defender's Office is the gold standard for Nevada. Because of the resources we have and the size of our Office, I have the advantage of being able to recruit some of the top law students from throughout the Country. I have 30 to 50 law students who come every year from top universities and law schools because of the training and resources we provide. I am also able to recruit some of the best social workers, investigators and mitigation specialists to handle homicide cases.

In my Office, we have some of the best attorneys in Las Vegas handling everything from juvenile cases through the Juvenile Office to specialty teams that handle DUI cases, homicide cases as well as sexual assault cases. Every one of these attorneys is exceptionally well-trained. We are able to send them to different states to receive additional training.

We request an amendment in section 14, subsection 5 first sentence "to exclude counties with a population of 100,000 or more," so this subsection would apply to counties with a population of 100,000 or less. This would not take Clark County out of the oversight of A.B. 81; we would still be able to receive recommendations from the Executive Director and address any

shortcomings or concerns. We recognize indigent defense is continually evolving and changing, and we need to evolve and change as well. We need to continually improve—we can always do things better. But the representation of indigent clients in Clark County is not only being adequately met, but receiving some of the best representation in Las Vegas and in the State. We are providing those services now. My concern is if there is a transfer, voluntary or involuntary, there is no way the State Public Defender's Office would be able to take over the 25,000 cases we handle every year, the 200-plus employees or the 120 attorneys in my Office. I do not see how the State Public Defender's Office would be able to handle that transfer without causing life-altering consequences to the indigent clients in Clark County.

For those reasons, we oppose A.B. 81. If that amendment is accepted, we would be in support of this bill.

MS. BERTSCHY:

The Washoe County Office of the Public Defender is neutral for A.B. 81. The policy regarding indigent defense is long-needed, so we do appreciate Assemblywoman Benitez-Thompson for bringing forward this important legislation. The principles in section 8 are necessary requirements of providers of indigent services to meet the requirement of the Sixth Amendment of the United States Constitution and *Gideon vs. Wainwright*, 372 U.S. 335 (1963).

Specifically, we support sections 8 which discuss caseload standards, proper training and education of attorneys, fair compensation and, most significantly, vertical representation whereby the client has the same attorney throughout his or her entire case. Additionally, we support the performance standards in section 8 which would comply with caselaw and what is appropriate for attorneys.

This bill would codify those worthy goals and ensure Nevadans receive high quality, zealous representation. In the Assembly hearing, Clark County proposed an amendment. If that amendment would be accepted, we would support A.B. 81.

ASSEMBLYWOMAN BENITEZ-THOMPSON:

I do not necessarily agree with moving out Clark and Washoe Counties, but it is fine. The holdback on that has been due to legislative concerns about the use of population caps and how they apply in statute, so it is not that I have a

complete disregard for the acceptance of those proposed amendments. They make a lot of sense and their arguments are spot on; the internal conversation about the use of population caps is where the biggest amount of consternation comes from.

Remainder of page intentionally left blank; signature page to follow.

CHAIR CANNIZZARO:

I will close the hearing on A.B. 81. This meeting is adjourned at 10:49 a.m.

RESPECTFULLY SUBMITTED:

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Jenny Harbor,  
Committee Secretary

APPROVED BY:

---

Senator Nicole J. Cannizzaro, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	5		Attendance Roster
A.B. 356	C	1	Michelle Feldman / Innocence Project	Proposed Amendment
A.B. 356	D	1	Tonja Brown	Proposed Amendment
A.B. 81	E	190	Assemblywoman Teresa Benitez-Thompson	Evaluation of Indigent Defense Services
A.B. 81	F	1	Assemblywoman Teresa Benitez-Thompson	Testimony
A.B. 81	G	1	Assemblywoman Teresa Benitez-Thompson	Proposed Amendment

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-01-02 14:22:56.204.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-01-02 14:22:58.626.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-01-02 14:22:57.079.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-01-02 14:23:00.469.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-01-02 14:22:53.766.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-01-02 14:23:01.673.

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

01-02-2024:14:01:51

**Clerk Accepted:**

01-02-2024:14:22:13

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Response

- \*\*Continuation

**Filed By:**

Jennifer Patricia Noble

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CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER



KARLA BUTKO, ESQ. for RODERICK STEPHEN  
SKINNER

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

FILED

JAN 31 2024

ALICIA L. LEBOD, CLERK  
By: [Signature]  
DEPUTY CLERK

RODERICK SKINNER

(Name)

1126964

(I.D. No.)

Northern Nevada Correctional Center  
Post Office Box 7000  
Carson City, NV 89702

In Proper Person

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

RODERICK SKINNER

Plaintiff/Petitioner

vs.

WARDEN N.N.C.C., STATE OF NEVADA,

et al

Defendant/Respondent

Case No.: CR14-0644

RESPONSE TO STATES FILING  
AS ORDERED BY THIS COURT

COMES NOW, RODERICK SKINNER, in proper person and herein  
above respectfully moves this Honorable Court for a(n) ORDER PERMITTING PETITIONER  
30 DAYS TO RESPOND TO THE STATE'S FILING OF THEIR SUBSTANTIVE  
RESPONSE REGARDING HIS PETITION FOR WRIT OF FACTUAL INNOCENCE.

The instant motion is made and based upon all papers and pleadings on file herein as well  
as the following Memorandum of Points and Authorities and attached exhibits (where  
applicable).

MEMORANDUM OF POINTS AND AUTHORITIES

ON 21<sup>ST</sup> NOVEMBER 2023, THIS COURT ORDERED THE STATE TO RESPOND TO PETITIONER'S 'PETITION FOR WRIT OF FACTUAL INNOCENCE' FILED ON 3<sup>RD</sup> NOVEMBER 2022, WITHIN 40 DAYS OF THE FILING OF THE COURT'S ORDER.

THE STATE FILED "STATE'S RESPONSE TO COURT'S ORDER..." ON 2<sup>ND</sup> JANUARY 2024. IN THAT RESPONSE, THE STATE CITED NRS 34.970 TO THE COURT WHICH SETS OUT VARIOUS REQUIREMENTS A COURT MUST COMPLY WITH BECAUSE "PETITIONS FOR FACTUAL INNOCENCE ARE GOVERNED BY NRS 34.960 AND NRS 34.970, WHICH WAS PASSED AS ASSEMBLY BILL 356 DURING THE NEVADA LEGISLATURE'S 2019 SESSION." See, page 4 lines 1-6 of "STATE'S RESPONSE TO COURT ORDER..." IN IT'S CONCLUSION, THE STATE REQUESTED THAT THIS COURT ISSUE AN ORDER FOR RESPONSE CONSISTENT WITH THE REQUIREMENTS OF NRS 34.970(1)(a) AND (b).

SINCE THE COURT ALSO ORDERED PETITIONER TO "RESPOND TO THE STATE'S FILING" WITHIN 30 DAYS, PETITIONER RESPECTFULLY IN THE CIRCUMSTANCES REQUESTS THAT THIS 30 DAYS COMMENCE WHEN THE STATE ULTIMATELY FILES IT'S SUBSTANTIVE RESPONSE REGARDING THE PETITION FOR FACTUAL INNOCENCE, IF THE COURT IS INCLINED TO FOLLOW THE STATE'S REQUEST.  
RESPECTFULLY SUBMITTED IN COMPLIANCE WITH THIS COURT'S ORDER OF 11/21/2023.

CERTIFICATE OF SERVICE

I, RODERICK SKINNER certify that on this date I did serve a true and correct copy of the foregoing Motion upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

CLERK OF THE COURT

SECOND JUDICIAL DISTRICT COURT

75 COURT ST

RENO N.V. 89501

AND

JENNIFER NOBLE

DISTRICT ATTORNEY'S OFFICE

1 5TH SIERRA ST

RENO N.V. 89501

Dated this 25<sup>TH</sup> day of JANUARY, 2024.

By: Rod Skinner

RODERICK SKINNER  
In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

\*\* I certify that the foregoing document DOES NOT contain the social security number of any Persons.

25<sup>TH</sup> JANUARY 2024  
(Date)

Rod Skinner.  
(Signature)

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

RODERICK STEPHEN SKINNER, Case No.: CR14-0644  
Petitioner, Dept. No.: 8

v.

WARDEN OLSEN, NNCC,  
NEVADA ATTN Y GENERAL, ET AL.,  
Respondents.

**ORDER DENYING PETITIONER'S PETITION FOR WRIT OF FACTUAL  
INNOCENCE PURSUANT TO NRS 34.960(2)**

Before the Court is Respondents' *Response to Court's Order: 1) Holding  
Petition in Abeyance; 2) Directing State to Respond; and 3) Striking Request for  
Submission* filed January 2, 2024. This *Response* was filed in reply to the Court's  
*Order* entered November 21, 2023. Petitioner Roderick Stephen Skinner thereafter  
filed a *Response to State's Filing as Ordered by This Court* on January 31, 2024. The  
matter was then taken under submission by the Court.

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Pursuant to NRS 34.960(4), the Court will conduct a preliminary analysis of Petitioner's *Petition for Writ of Factual Innocence* filed November 3, 2022, in line with the requirements set forth under NRS 34.960(2), to better assist the State in a potential substantive *Response*.<sup>1</sup>

### **PROCEDURAL HISTORY**

Petitioner Roderick Stephen Skinner ("Petitioner") is currently serving a term of life imprisonment with the possibility of parole after five (5) years in the Nevada Department of Corrections.<sup>2</sup> Petitioner appealed this conviction on October 7, 2014, alleging the District Court abused its discretion by sentencing him to prison rather than placing him on probation. The Nevada Court of Appeals rejected this argument and affirmed the judgment of conviction.<sup>3</sup>

Petitioner filed his first *Writ of Habeas Corpus (Post Conviction)* on July 13, 2016, perfecting it with a verified petition on October 7, 2016. The State filed a Court-ordered answer on November 22, 2016. Petitioner was appointed counsel on February 6, 2017, and filed a *Supplemental Petition for Writ of Habeas Corpus (Post Conviction)* on January 12, 2018. The State answered this *Petition* on February 26, 2018.

On September 26, 2019, the Court held an evidentiary hearing on these two *Petitions* and entered an *Order Denying Petition for Writ of Habeas Corpus* on October 9, 2019. Petitioner again appealed, and the Nevada Court of Appeals affirmed this Court's decision on February 11, 2021.<sup>4</sup> Petitioner sought review of

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<sup>1</sup> The Court acknowledges the State's *Response* filed January 2, 2024, and appreciates the helpful nudge in alerting the Court to its oversight regarding the review of *Petitions for Factual Innocence* under NRS 34.960 and NRS 34.970 when issuing its original *Order*.

<sup>2</sup> Petitioner pled guilty and was convicted of one felony count of Promotion of a Sexual Performance of a Minor, Age 14 or Older, on May 27, 2014.

<sup>3</sup> See *Skinner v. State*, Docket No. 66666-COA.

<sup>4</sup> See *Skinner v. Baca*, Docket No. 79981-COA.

1 this decision with the Nevada Supreme Court, which ultimately denied the petition  
2 for review on June 30, 2021.<sup>5</sup>

3 Petitioner filed his second *Writ for Habeas Corpus (Post-Conviction)* on March  
4 29, 2022, which was stricken and properly re-filed on April 4, 2022. Months later,  
5 Petitioner filed a third *Writ for Habeas Corpus (Post-Conviction)* on November 15,  
6 2022. The State moved to dismiss these two filings, which the Court did on June 9,  
7 2023.<sup>6</sup>

8 Separately, on November 3, 2022, Petitioner filed a *Petition for Writ of*  
9 *Factual Innocence*, followed by a *Motion for Judicial Action on Petition* filed July 20,  
10 2023. On September 25, 2023, Petitioner prematurely submitted this matter for  
11 review, however, the Court entered an *Order 1) Holding Petition in Abeyance; 2)*  
12 *Directing State to Respond; and 3) Striking Request for Submission* on November  
13 21, 2023. The State submitted its *Response* to this Court's *Order* on January 2,  
14 2024.

### 15 LEGAL AUTHORITY

16 Petitions for factual innocence are governed by NRS 34.960 and NRS 34.970.<sup>7</sup>  
17 Prior to ordering a response to a *Petition for Factual Innocence*, NRS 34.960  
18 requires district courts to determine whether the Petition meets “minimum  
19 threshold requirements, and to issue an order specifying which allegations in the  
20 Petition might establish bona fide factual innocence.”

21 Specifically, the court is guided in its review of the Petition by NRS 34.960(4),  
22 which in relevant part states:

23 *4. The court shall review the petition and determine whether the petition*  
24 *satisfies the requirements of subsection 2. If the court determines that the*  
25 *petition:*

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26 <sup>5</sup> See *Skinner v. Baca*, Docket No. 79981.

27 <sup>6</sup> Petitioner's appeal regarding the dismissal of these two Writs is currently pending  
28 before the Nevada Supreme Court. See *Skinner v. State*, Docket Nos. 86846 and  
86893.

<sup>7</sup> These statutes were passed as Assembly Bill 356 (AB356) during the Nevada  
Legislature's 2019 session.

1           (a) Does not meet the requirements of subsection 2, the court shall  
2           dismiss the petition without prejudice, state the basis for the dismissal  
3           and send notice of the dismissal to the petitioner and the prosecuting  
4           agency.

5           (b) Meets the requirements of subsection 2, the court shall determine  
6           whether the petition satisfies the requirements of subsection 3. If the  
7           court determines that the petition does not meet the requirements of  
8           subsection 3, the court may:

9                   (1) Dismiss the petition without prejudice, state the basis for the  
10                  dismissal and send notice of the dismissal to the petitioner and  
11                  the prosecuting agency; or

12                  (2) Waive the requirements of subsection 3 if the court finds the  
13                  petition should proceed to a hearing and that there is other  
14                  evidence that could have been discovered through the exercise of  
15                  reasonable diligence by the petitioner or the petitioner's counsel  
16                  at trial, and the other evidence:

17                           (I) Was not discovered by the petitioner or the petitioner's  
18                           counsel;

19                           (II) Is material upon the issue of factual innocence.

20           Under NRS 35.970, if the court chooses not to dismiss a petition after  
21           reviewing and analyzing it under NRS 34.960, the court shall order the prosecuting  
22           agency to file a response. In its order, the court must:

23                   (a) Specify which claims identified in the petition warrant a response  
24                   from the prosecuting agency; and

25                   (b) Specify which newly discovered evidence identified in the petition, if  
26                   credible, might establish a bona fide issue of factual innocence.

27           If the court determines that a petition meets the requirements of NRS  
28           34.960(2) and (3), NRS 34.970(1) guides in the next steps of ordering the named  
          prosecuting agency to file a response to the petition. The State argues this



analytical breakdown of the *Petition for Factual Innocence* is mandated under these statutes, and the Court agrees.<sup>8</sup>

### DISCUSSION

The Court will now conduct a preliminary analysis of Petitioner's *Petition for Factual Innocence*.

Before reaching this analysis under NRS 34.960(4), the statute first contemplates reviewing the *Petition* to determine whether it satisfies the requirements set forth in NRS 34.960(2). The *Petition* must contain an assertion of factual innocence under oath by the petitioner, and must assert with supporting affidavits or other credible documents that:

- (a) *Newly discovered evidence exists that is specifically identified and, if credible, establishes a bona fide issue of factual innocence;*
- (b) *The newly discovered evidence identified by the petitioner:*
  - (1) *Establishes innocence and is material to the case and the determination of factual innocence;*
  - (2) *Is not merely cumulative of evidence that was known, is not reliant solely upon recantation of testimony by a witness against the petitioner and is not merely impeachment evidence; and*
  - (3) *Is distinguishable from any claims made in any previous petitions;*
- (c) *If some or all of the newly discovered evidence alleged in the petition is a biological specimen, that a genetic marker analysis was performed pursuant to NRS 176.0918, 176.09183 and 176.09187 and the results were favorable to the petitioner; and*
- (d) *When viewed with all other evidence in the case, regardless of whether such evidence was admitted during trial, the newly*

---

<sup>8</sup> See NRS 0.023(d); see also *Barral v. State*, 131 Nev. 520, 523, 353 P.3d 1197, 1198 (2015); *Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 627, 310 P.3d 560, 566 (2013).

1                   *discovered evidence demonstrates the factual innocence of the*  
2                   *petitioner.*

3           In review of the *Petition*, the Court finds that the filing does not contain  
4 newly discovered evidence demonstrating Petitioner's factual innocence. *See* NRS  
5 34.960(2)(d). Petitioner asserts two primary grounds for relief based upon "credible  
6 and newly discovered evidence readily identifiable" per NRS 34.930: (1) questioning  
7 the credibility of the State's expert witness, former Washoe County Sheriff Sergeant  
8 Dennis Carry; and (2) the weight of defense expert Tammy Loehrs' testimony at  
9 Petitioner's evidentiary habeas corpus hearing held on September 26, 2019.

10          Petitioner believes Sergeant Carry's extracurricular activities (separate from  
11 his testimony and actions in this matter) warrant scrutiny due to his dishonesty  
12 which may have mislead the Court. Petitioner further believes Ms. Loehrs'  
13 testimony was substantive, exculpatory in nature, and had questioned the State's  
14 case-in-chief.

15          As it relates to the first claim for relief, the Court declines to find that  
16 Sergeant Dennis Carry's separate actions, occurring outside of the instant  
17 proceedings, in any way affected Petitioner's final disposition. Simply, there is no  
18 discernable correlation between the two. Additionally, the Court believes this does  
19 not fall under "newly discovered evidence" which would ultimately demonstrate the  
20 factual innocence of Petitioner. *See* NRS 34.960(2)(a). While the prosecution relied  
21 on Sergeant Carry's disposition at the evidentiary hearings in this matter, his  
22 independent personal conduct in unrelated matters have no legal relation.

23          Further, the Court believes there is no new evidence relating to Petitioner's  
24 second claim for relief. Defense expert Tammy Loehrs had testified at Petitioner's  
25 evidentiary habeas corpus hearing in September of 2019. The Court believes no new  
26 evidence was presented during this hearing and that if anything, this evidence  
27 seems to fall in line with NRS 34.960(2)(b)(2) in that it is known evidence which is  
28 cumulative in nature and indistinguishable from previous claims. Petitioner pled  
guilty in this matter in 2014, and no new evidence has been provided which would  
require deviation from that initial guilty plea and sentence.

**CONCLUSION**

After review of the *Petition* under NRS 34.960, the Court believes no new evidence has been presented by Petitioner to demonstrate his factual innocence. As such, the *Writ for Factual Innocence* is **DENIED**, and the State is not required to respond.

**IT IS SO ORDERED.**

**DATED** this 28<sup>th</sup> day of February, 2024.



---

BARRY L. BRESLOW  
District Judge

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 28th day of February, 2024, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JENNIFER P. NOBLE, ESQ.

Further, I certify that on the 28th day of February, 2024, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Roderick Skinner #1126964  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

  
Judicial Assistant

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-02-28 11:33:40.096.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-02-28 11:33:43.814.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-02-28 11:33:41.986.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-02-28 11:33:45.127.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-02-28 11:33:37.299.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-02-28 11:33:47.142.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***

**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

02-28-2024:11:32:31

**Clerk Accepted:**

02-28-2024:11:32:54

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Ord Denying Motion

**Filed By:**

Judicial Asst. JBarrett

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NEVADA

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

KARLA BUTKO, ESQ. for RODERICK STEPHEN  
SKINNER

**V11. 1811**

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

**V11. 1811**

## IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER,  
Appellant,

vs.

KYLE OLSEN, WARDEN; NNCC; AND  
THE STATE OF NEVADA,  
Respondents.

No. 86846

RODERICK STEPHEN SKINNER,  
Appellant,


vs.

KYLE OLSEN, WARDEN; NNCC; AND  
THE STATE OF NEVADA,  
Respondents.

No. 86893

**FILED**

MAR 01 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

## ORDER

The district court clerk filed the record on appeal in this court on July 28, 2023, and August 2, 2023. Volumes 10-16 were filed under seal. Appellant has now filed a motion to unseal volumes 11-16. Counsel for appellant states she cannot access those volumes to prepare the opening brief.

Review of the sealed volumes of the appendix reveals they contain some documents that appear to have been filed on the district court's public docket, including: (1) a July 13, 2016, motion for leave to proceed in forma pauperis, (2) a July 13, 2016, postconviction petition for a writ of habeas corpus, (3) an October 7, 2016, postconviction petition for a writ of habeas corpus, (4) a June 20, 2017, ex parte motion for authorization to employ an investigator, (5) an August 17, 2017, ex parte motion for authorization of expert witness fees, (6) an August 23, 2018, application for an order to produce prisoner, and (7) a number of ex parte claims for attorney compensation and motions for payment of transcripts at public



expense filed between 2018-2020. It is unclear why these documents were filed under seal in this court. Other documents in the sealed record on appeal appear to have been filed under seal in the district court and are properly filed under seal in this court. Under these circumstances, this court orders as follows.

The district court clerk shall have 14 days from the date of this order to inform this court, in writing, which of the documents included in volumes 10-16 of the sealed record on appeal were filed under seal in the district court. For any documents that were filed under seal in the district court, the clerk shall provide this court with a copy of any district court order sealing those documents or inform this court of the basis for sealing those documents. For any documents in the sealed volumes of the record on appeal that were not sealed in the district court, the clerk shall provide this court with the basis for filing the documents in this court under seal. This court defers ruling on appellant's motion to unseal pending further order of this court.<sup>1</sup>

Appellant has also filed a motion for an extension of time to file the opening brief.<sup>2</sup> The motion is granted. NRAP 31(b)(3)(B). Appellant shall have until April 8, 2024, to file and serve the opening brief.<sup>3</sup> Given the length of this initial extension request, no further extensions shall be

---


<sup>1</sup>In the meantime, appellant's counsel may obtain copies of any documents in the district court record from the district court clerk.

<sup>2</sup>Appellant has filed two copies of this motion, as well as the motion to unseal and the docketing statement. Although these appeals are consolidated, appellant need not file multiple copies of documents.

<sup>3</sup>Because the record on appeal has been filed, appellant is not required to file an appendix as directed in this court's October 11, 2023, order.

permitted absent extraordinary circumstances and extreme need. NRAP 31(b)(3)(B). Counsel's caseload normally will not be deemed such a circumstance. *Cf. Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974). Failure to timely file the opening brief may result in the imposition of sanctions.

It is so ORDERED.

\_\_\_\_\_, C.J.

cc: Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-03-08 11:47:09.368.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-03-08 11:47:10.15.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-03-08 11:47:09.728.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-03-08 11:47:10.525.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-03-08 11:47:08.587.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-03-08 11:47:10.915.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***

**PROOF OF SERVICE OF ELECTRONIC FILING**

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-08-2024:11:46:28

**Clerk Accepted:**

03-08-2024:11:46:52

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Supreme Court Order

**Filed By:**

Deputy Clerk KOliphant

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NEVADA

DIV. OF PAROLE & PROBATION

JENNIFER P. NOBLE, ESQ. for STATE OF  
NEVADA

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

KARLA BUTKO, ESQ. for RODERICK STEPHEN  
SKINNER

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

V11. 1818

RODERICK SKINNER, # 1126964  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, Nevada, 89702

**FILED**  
MAR 11 2024  
ALICIA L. LIND, CLERK  
By: [Signature]  
DEPUTY CLERK

In Propria Persona

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

RODERICK SKINNER

Plaintiff,

Vs.

WARDEN OLSEN, NNCC

Defendant.

CASE No. CR14-0644

DEPT. No. 8

Dkt. No. \_\_\_\_\_

NOTICE OF APPEAL

Please take notice that RODERICK SKINNER, Defendant, and in his proper person, hereby appeals to the Nevada Court of Appeals / Nevada Supreme Court, the judgment(s) in the above-entitled action(s) entered in this Honorable Court on or about the 28<sup>TH</sup> day of FEBRUARY, 2024.

This notice of Appeal is timely filed pursuant to NRAP 4(b).

DATED this FIFTH day of MARCH, 2024.

RESPECTFULLY SUBMITTED,

Rod Skinner

In Propria Persona

V11. 1818

**CERTIFICATE OF MAILING**

I, RODERICK SKINNER, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

JENNIFER P. NOBLEDistrict Attorney1 STH SIERRA STRENO NV. 89501

(Copy to)

CLERK OF THE COURTSECOND JUDICIAL DISTRICT COURT75 COURT STRENO NV. 89501

DATED this 5<sup>TH</sup> day of MARCH, 2024

BY: Rod Skinner

Appellant, In Proper Person

LEGAL MAIL  
CONFIDENTIAL

RODERICK SKINNER  
NACC # 1126764  
P.O. Box 7000  
CARSON CITY, NV 89701



RENO, NV 895

07 MAR 2024 PM 3 T

CLERK OF THE COURT  
SECOND JUDICIAL DISTRICT COURT  
75 COURT ST  
RENO N.V. 89501



2851810568

BS # 2785636



RODERICK SKINNER # 1126964  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, Nevada 89702  
Appellant, In Proper Person

FILED

MAR 11 2024

ALICIA L. LERUD, CLERK  
By: [Signature]  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

RODERICK SKINNER

Appellant,

Vs.

WARDEN OLSEN, NNCC

Respondent.

CASE No. CR14-0644

DEPT. No. 8

Dkt. No. \_\_\_\_\_

**DESIGNATION OF RECORD ON APPEAL**

Please take notice that RODERICK SKINNER, Appellant, and in his proper person, hereby files this Designation of Record on Appeal in the above entitled action, pursuant to NRAP 10(b); and respectfully herein asks this Honorable Court to designate the record on appeal, to be certified by the Clerk of the District Court and transcribed to the Clerk of the Nevada Court of Appeals / Nevada Supreme Court: All motions, pleadings, judgments and transcripts.

DATED this FIFTH day of MARCH, 2024.

RESPECTFULLY SUBMITTED,

Rod Skinner

Appellant in pro se

**CERTIFICATE OF MAILING**

I, RODERICK SKINNER, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

JENNIFER P NOBLEDistrict Attorney1 5TH SIENNA STRENO NV. 89501

(Copy to)

CLERK OF THE COURTSECOND JUDICIAL DISTRICT COURT75 COURT STRENO NV 89501

DATED this 5<sup>TH</sup> day of MARCH, 2024

BY: Rod Skinner

Appellant, In Proper Person

1 Code 1310

2

3

4

5

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR THE COUNTY OF WASHOE

7

8 **RODERICK STEPHEN SKINNER,**

9

**Petitioner,**

**Case No. CR14-0644**

10

**vs.**

**Dept. No. 8**

11

**WARDEN OLSEN, NNCC,  
NEVADA ATTORNEY GENERAL, ET AL,**

12

**Respondents.**

13

14

15

**CASE APPEAL STATEMENT**

16

This case appeal statement is filed pursuant to NRAP 3(f).

17

1. Appellant is Roderick Skinner.

18

2. This appeal is from an order entered by the Honorable Judge Barry L. Breslow.

19

3. Appellant is representing himself in Proper Person on appeal. The Appellant's  
address is:

20

21

Roderick Skinner #1126964

22

N.N.C.C.

23

PO Box 7000

24

Carson City, Nevada 89702

25

26

4. Respondent is the State of Nevada. Respondent is represented by the Washoe

27

County District Attorney's Office:

28

29

Jennifer P. Noble, Esq., SBN: 9446

30

P.O. Box 11130

31

Reno, Nevada 89520

32

33

5. Respondent's attorney is not licensed to practice law in Nevada: NA

6. Appellant is represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information filed May 2<sup>nd</sup>, 2014.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying  
Petitioner's Petitioner for Writ of Factual Innocence Pursuant to Nrs 34.960(2) filed  
February 28<sup>th</sup>, 2024.
11. The case has been the subject of a previous appeal to the Supreme Court.  
Supreme Court No.: 66666, 79981, 84894, 86839, 86846 and 86893
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 12th day of March, 2024.

Alicia L. Lerud  
Clerk of the Court  
By: /s/ Y.Viloria  
Y.Viloria  
Deputy Clerk

1 Code 1350  
2  
3

4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR THE COUNTY OF WASHOE  
6

7 **RODERICK STEPHEN SKINNER,**

8 **Petitioner,**

**Case No. CR14-0644**

9 **vs.**

**Dept. No. 8**

10 **WARDEN OLSEN, NNCC,**  
11 **NEVADA ATTORNEY GENERAL, ET AL,**

12 **Respondents.**  
13 \_\_\_\_\_/

14 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

15 I certify that I am an employee of the Second Judicial District Court of the State of  
16 Nevada, County of Washoe; that on the 12th day of March, 2024, I electronically filed the  
17 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

18 I further certify that the transmitted record is a true and correct copy of the original  
19 pleadings on file with the Second Judicial District Court.

20 Dated this 12th day of March, 2024.

21 Alicia L. Lerud  
22 Clerk of the Court  
23 By /s/Y.Viloria  
24 Y.Viloria  
25 Deputy Clerk  
26  
27  
28

## Return Of NEF

### Recipients

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-03-12 15:33:52.716.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-03-12 15:33:53.575.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-03-12 15:33:53.075.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-03-12 15:33:54.013.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-03-12 15:33:51.919.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-03-12 15:33:54.403.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-12-2024:15:33:04

**Clerk Accepted:**

03-12-2024:15:33:26

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Case Appeal Statement  
Certificate of Clerk

**Filed By:**

Deputy Clerk YViloria

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NEVADA

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JENNIFER P. NOBLE, ESQ. for STATE OF  
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CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

KARLA BUTKO, ESQ. for RODERICK STEPHEN  
SKINNER

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):



1 Code 3880  
2  
3  
4  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 **RODERICK STEPHEN SKINNER,**

**Case No. CR14-0644**

10 **Appellant,**

**Dept. No. 8**

11 **Vs,**

**SCN: 85846**

12 **KYLE OLSEN, WARDEN; NNCC; and THE STATE OF**  
13 **NEVADA,**

**86883**

14 **Respondents.**  
15 \_\_\_\_\_ /

16 **RESPONSE TO ORDER**

17 COMES NOW, the Clerk of the Court for the Second Judicial District Court of the  
18 State of Nevada (hereinafter "the Clerk") and hereby responds to the Order of the  
19 Supreme Court, filed on March 1, 2024, ordering the Clerk to "...inform this Court, in  
20 writing, which of the documents included in volumes 10-16 of the sealed record were filed  
21 under seal in the district court. For any documents that were filed under seal in the district  
22 court, the clerk shall provide this court with a copy of any district court order sealing those  
23 documents or inform this court of the basis for sealing those documents. For any  
24 documents in the sealed volumes of the record on appeal that were not sealed in the  
25 district court, the clerk shall provide this court with the basis for filing the documents in this  
26 court under seal." Skinner v. Olsen, *et al* (2022 & 2023) 2 Nev.

27 Below is an itemized list of the sealed documents contained within volumes 10-16,  
28 filed with the Supreme Court, with the basis for sealing said records:

- 1 • Presentence investigation report filed 7/11/14: Confidential pursuant to NRS  
2 176.156 and the Policy For Handling Filed, Lodged, And Presumptively Confidential  
3 Documents Rule 2, Section 5(a)(25) [vol. 10].
- 4 • Psychosexual evaluation filed 8/6/14: Confidential pursuant to NRS 176.156 and  
5 the Policy For Handling Filed, Lodged, And Presumptively Confidential Documents  
6 Rule 2, Section 5(a)(22) [vol. 10].
- 7 • Memorandum In Support of Probation filed 8/20/14: The lead document, as well as  
8 the Exhibits, were set to “sealed” by the filer, Christopher Frey, Esq., at the time of  
9 electronic filing. A copy of the hearing transcript for the hearing held on 8/21/14 is  
10 attached hereto as **Exhibit 1** (see pages 4 – 5) wherein the District Court briefly  
11 addresses the sealing of this document [vols. 10 & 11].
- 12 • Motion for Leave to Proceed In Forma Pauperis filed 7/13/16: Confidential per the  
13 Policy For Handling Filed, Lodged, And Presumptively Confidential Documents Rule  
14 2, Section 5(a)(18) [vol. 11].
- 15 • Petition for Writ of Habeas Corpus filed 7/13/16: Only Exhibit 36 is marked as  
16 confidential in the District Court’s record as it contains personal medical information  
17 and was set to confidential per the Policy For Handling Filed, Lodged, And  
18 Presumptively Confidential Documents Rule 2, Section 5(a)(22) [vols. 11, 12, & 13].
- 19 • Petition for Writ of Habeas Corpus filed 10/7/16: Only Exhibit 36 is marked as  
20 confidential in the District Court’s record as it contains personal medical information  
21 was set to confidential per the Policy For Handling Filed, Lodged, And  
22 Presumptively Confidential Documents Rule 2, Section 5(a)(22) [vols. 13, 14, 15, &  
23 16].
- 24 • Ex Parte Motion to Employ Investigator filed 6/20/17: Sealed pursuant to ADKT 411  
25 The Second Judicial District Court – Indigent Defense Report Amended Model Plan  
26 2019 (attorney-client privilege) [vol. 16].

27 ///

28 ///

- 1 • Ex Parte Claim for Attorney Compensation filed 6/30/17: Sealed pursuant to ADKT  
2 411 The Second Judicial District Court – Indigent Defense Report Amended Model  
3 Plan 2019 (attorney-client privilege) [vol. 16].
- 4 • Recommendation and Order Granting Investigative Fees filed 7/3/17: Sealed  
5 pursuant to ADKT 411 The Second Judicial District Court – Indigent Defense Report  
6 Amended Model Plan 2019 (attorney-client privilege) [vol. 16].
- 7 • Ex Parte Motion for Authorization of Expert Witness Fees filed 8/17/17: Sealed  
8 pursuant to ADKT 411 The Second Judicial District Court – Indigent Defense Report  
9 Amended Model Plan 2019 (attorney-client privilege) [vol. 16].
- 10 • Ex Parte Claim for Attorney Compensation filed 10/25/17: Sealed pursuant to  
11 ADKT 411 The Second Judicial District Court – Indigent Defense Report Amended  
12 Model Plan 2019 (attorney-client privilege) [vol. 16].
- 13 • Ex Parte Claim for Attorney Compensation filed 2/6/18: Sealed pursuant to ADKT  
14 411 The Second Judicial District Court – Indigent Defense Report Amended Model  
15 Plan 2019 (attorney-client privilege) [vol. 16].
- 16 • Ex Parte Claim for Attorney Compensation filed 7/9/18: Sealed pursuant to ADKT  
17 411 The Second Judicial District Court – Indigent Defense Report Amended Model  
18 Plan 2019 (attorney-client privilege) [vol. 16].
- 19 • Application for Order to Produce Prisoner filed 8/23/18: This document was set to  
20 “confidential” by the filer, Joseph R. Platter, III, Esq., at the time of electronic filing  
21 [vol. 16].
- 22 • Ex Parte Claim for Attorney Compensation filed 11/20/18: Sealed pursuant to  
23 ADKT 411 The Second Judicial District Court – Indigent Defense Report Amended  
24 Model Plan 2019 (attorney-client privilege) [vol. 16].
- 25 • Ex Parte Motion for Transcripts at Public Expense filed 2/7/19: Confidential per the  
26 Policy For Handling Filed, Lodged, And Presumptively Confidential Documents Rule  
27 2, Section 5(a)(3), (16), (18) [vol. 16].

28

- 1 • Ex Parte Claim for Attorney Compensation filed 5/28/19: Sealed pursuant to ADKT  
2 411 The Second Judicial District Court – Indigent Defense Report Amended Model  
3 Plan 2019 (attorney-client privilege) [vol. 16].
- 4 • Ex Parte Claim for Attorney Compensation filed 10/21/19: Sealed pursuant to  
5 ADKT 411 The Second Judicial District Court – Indigent Defense Report Amended  
6 Model Plan 2019 (attorney-client privilege) [vol. 16].
- 7 • Ex Parte Motion for Transcripts at Public Expense filed 11/13/19: Confidential per  
8 the Policy For Handling Filed, Lodged, And Presumptively Confidential Documents  
9 Rule 2, Section 5(a)(3), (16), (18) [vol. 16].
- 10 • Ex Parte Motion for Transcripts at Public Expense filed 3/18/20: Confidential per  
11 the Policy For Handling Filed, Lodged, And Presumptively Confidential Documents  
12 Rule 2, Section 5(a)(3), (16), (18) [vol. 16].
- 13 • Ex Parte Claim for Attorney Compensation filed 5/7/20: Sealed pursuant to ADKT  
14 411 The Second Judicial District Court – Indigent Defense Report Amended Model  
15 Plan 2019 (attorney-client privilege) [vol. 16].
- 16 • Recommendation for Payment of Interim Attorney Fees filed 5/18/20: Sealed  
17 pursuant to ADKT 411 The Second Judicial District Court – Indigent Defense Report  
18 Amended Model Plan 2019 (attorney-client privilege) [vol. 16].
- 19 • Ex Parte Claim for Attorney Compensation filed 7/30/20: Sealed pursuant to ADKT  
20 411 The Second Judicial District Court – Indigent Defense Report Amended Model  
21 Plan 2019 (attorney-client privilege) [vol. 16].
- 22 • Recommendation for Payment of Interim Attorney Fees filed 8/21/20: Sealed  
23 pursuant to ADKT 411 The Second Judicial District Court – Indigent Defense Report  
24 Amended Model Plan 2019 (attorney-client privilege) [vol. 16].
- 25 • Ex Parte Claim for Attorney Compensation filed 3/24/21: Sealed pursuant to ADKT  
26 411 The Second Judicial District Court – Indigent Defense Report Amended Model  
27 Plan 2019 (attorney-client privilege) [vol. 16].

28 ///

- Recommendation for Payment of Interim Attorney Fees filed 4/3/21: Sealed pursuant to ADKT 411 The Second Judicial District Court – Indigent Defense Report Amended Model Plan 2019 (attorney-client privilege) [vol. 16].

Dated this 15th day of March, 2024.

Respectfully submitted,

Alicia L. Lerud  
Clerk of the Court  
By /s/Yvonne Vilorio  
Deputy Clerk

# EXHIBIT 1

1 Code No. 4185

2  
3  
4  
5 IN THE SECOND JUDICIAL DISTRICT COURT  
6 OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8 THE HONORABLE DAVID A. HARDY

9 -oOo-

10 STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 RODERICK STEPHEN SKINNER,

14 Defendant.

)  
)  
) Case Nos. CR13-1601  
) CR14-0644  
)  
) Dept. No. 15  
)  
)  
)  
)

15  
16 TRANSCRIPT OF PROCEEDINGS

17 Sentencing

18 August 21, 2014

19 RENO, NEVADA  
20  
21  
22  
23

24 Reported By:

RANDI LEE WALKER, CCR # 137

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APPEARANCES:

FOR THE STATE:

WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE  
By: REBECCA DRUCKMAN, DDA.  
1 SOUTH SIERRA STREET  
RENO, NV. 89520

FOR THE DEFENDANT:

WASHOE COUNTY PUBLIC DEFENDER'S OFFICE  
By: CHRISTOPHER FREY, DPD.  
350 S. CENTER STREET  
RENO, NV. 89520

Parole and Probation:

ERIN LUKL



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## INDEX OF EXAMINATIONS

STATE'S WITNESSES	DR	CR	REDR	RECR	VD
DEFT'S WITNESSES	DR	CR	REDR	RECR	VD
ROBIN WELLNER	13	30	39		

1                   RENO, NEVADA, AUGUST 21, 2014, 9:00 A.M.

2                               -oOo-

3  
4                   THE COURT: Are you ready to go on Skinner?

5                   MS. DRUCKMAN: Your Honor, I need to bring to  
6 the Court's attention one of the problems the State  
7 encountered concerning the defendant's memorandum in  
8 support of probation.

9                   I was provided a copy of it this morning, but  
10 apparently Mr. Frey's office filed it under seal  
11 yesterday, the 20th, and it's about 400 pages long. I  
12 haven't had a chance to see the memorandum. I have not  
13 had much of a chance to look at the remaining documents  
14 that were attached thereto.

15                  THE COURT: Well, let me comment, for a moment.  
16 If it was filed under seal, then I want to know more,  
17 because there was a motion to file it under seal -- did  
18 I sign an order granting that motion?

19                  MS. DRUCKMAN: Apparently so, Your Honor. I can  
20 indicate to the Court -- I have a copy of the --

21                  THE COURT: My clerk is telling me that I did  
22 not sign an order.

23                  MS. DRUCKMAN: Well, I can just show the Court  
24 what I printed yesterday. I would ask this be marked as

1 State's Exhibit 1.

2 THE COURT: Is the defendant here?

3 MR. FREY: Yes.

4 THE CLERK: Exhibit 1, marked for  
5 identification.

6 (Exhibit 1 was marked.)

7 MS. DRUCKMAN: When I attempted to look at it in  
8 eFlex yesterday, I had a message that the Court could  
9 read that said: "Security level exceeded." So I was  
10 not able to review counsel's pleadings yesterday,  
11 because of the nature of the way it was --

12 THE COURT: Let me comment in reflection to what  
13 I just heard. There was an incredible amount of time  
14 spent preparing that mitigation statement. And in many  
15 respects it's persuasive, as it distinguishes P&P's  
16 probability assessment.

17 Some of the P&P's assessment is driven by  
18 objective criteria; and other is subjective criteria.  
19 And Mr. Frey has focused on that subjective criteria;  
20 which, if Mr. Frey is accurate, might change P&P's  
21 recommendation. If it doesn't change their  
22 recommendation, it certainly helps me better understand  
23 the full scope.

24 So I want you to be prepared to match what Mr.

1     Frey has done.  If he's filed it in a way that you  
2     haven't seen it until this morning, I'm not going to put  
3     you at a disadvantage.

4             Let me also tell you that I think we have  
5     somebody from Australia.  Is she here?

6             MR. FREY:  Yes, we do, Your Honor.

7             THE COURT:  And we have somebody that's ready to  
8     talk on the phone.

9             So are you talking about that you need another  
10    hour this morning?  Or are you talking about that you  
11    want to reset?

12            MS. DRUCKMAN:  What I would suggest, Your Honor,  
13    is that we begin sentencing hearing, and then we take  
14    all of the persons who are here, and then we continue it  
15    perhaps a week, to give me an opportunity to go through  
16    his document that was provided to me this morning.  It  
17    is probably about 300 or 400 pages long.

18            THE COURT:  But of it -- I printed off  
19    everything except the medical records.  And it's very,  
20    very manageable without the medical records.  And I  
21    would even give you my copy.  But most of it's  
22    photographs.  There's a letter, a very lengthy letter  
23    from an attorney in Australia.  And so I was able to  
24    read it in well under an hour, if I excluded the medical

1 records.

2 MR. FREY: Your Honor, I think that's exactly  
3 right. The bulk of the exhibits are really in the  
4 nature of photographs, certificates of completion of the  
5 police academy, documents that really merit a quick  
6 perusal.

7 The medical documentation is just here to  
8 substantiate some of the medical claims that we've made.  
9 They do not require any more than a quick review.

10 MS. DRUCKMAN: Here's the State's position, Your  
11 Honor, and I just have to be blunt.

12 MR. FREY: Please.

13 MS. DRUCKMAN: You know, the State has been very  
14 accommodating to the defense concerning the date of  
15 sentencing. I have continued it with them to obtain the  
16 people from Australia; I have allowed the people to  
17 testify by phone; I have accommodated the defense.

18 This sentencing has been set for quite a while.  
19 I fully understand that Mr. Frey is busy. But the  
20 State's position here is that I'm completely willing to  
21 go forward partially on sentencing today, to accommodate  
22 all of the things that we have put in place, but I think  
23 it's unfair to the State to hand 400 pages to the person  
24 literally on the morning of the sentencing, and file it

1 in such a way that it -- actually, you know, I could  
2 make an argument here under Rule 13 that it was  
3 improperly served on me in advance of this hearing, and  
4 that it should be stricken. I'm not making that  
5 argument. But I could, because of the way it's been  
6 filed.

7 THE COURT: Ms. Druckman, I agree with you. The  
8 question is whether you need an hour, or you need a  
9 couple of days. That's the question for me.

10 MS. DRUCKMAN: I would like a couple of days,  
11 Your Honor. I think it's appropriate, especially if  
12 we're going to invade the provision of P&P and challenge  
13 their findings. And the Court has indicated it's  
14 somewhat persuasive.

15 THE COURT: It is. And, in fact, if I go to  
16 probation, it won't be because he has a child; it won't  
17 be because he has a child; it won't be because his  
18 daughter has come from Australia. It will be because  
19 the P&P recommendation is impeached. That's why.

20 MS. DRUCKMAN: So I would like some chance to  
21 actually review that, in-depth. I don't feel I can do  
22 it in an hour.

23 THE COURT: So I need to do something quickly,  
24 so I'm going to leave the courtroom for about five

1 minutes.

2 I do have people here, and I want to make as  
3 much time as necessary today. And then I will allow you  
4 to review; and if you think you need to put something in  
5 writing or call people, or however it is, I agree that  
6 receiving it on the morning of the sentencing shifts the  
7 fairness against the State. And we won't do that.

8 (A short recess was taken.)

9 THE COURT: Are you ready to go?

10 MR. FREY: Your Honor, can I put a couple of  
11 matters on the record?

12 THE COURT: Yes, sir.

13 MR. FREY: Number one, my request to continue  
14 last time was as a result of two things: Number one, I  
15 was very disappointed in the recommendation of the  
16 Division, and I wanted to investigate the criteria they  
17 used to arrive at that recommendation.

18 Number two, the psychosexual evaluation had been  
19 completed, but yet was not supplied to us. And that  
20 psychosexual evaluation was actually referenced in the  
21 PSI.

22 So that was something we didn't have going into  
23 sentencing. And that was the second reason why I  
24 requested to continue it.

1           It wasn't simply by the grace of the State that  
2           that continuance was granted, it was a continuance that  
3           had merit because there was a need for a psychosexual as  
4           well as the underlying documentation.

5           The psychosexual note under the Court's docket  
6           was not filed before sentencing, it was only filed post  
7           that sentencing date; hence the reason to continue.

8           So I know the State's been accommodating; but as  
9           I noted in my memorandum, we have also been equally  
10          accommodating, from our standpoint.

11          I'd also note that I understand that you may  
12          rule and continue the case, but I don't believe that  
13          that's merited, unless the State's really willing to  
14          contest Mr. Skinner's Crohn's Disease, cancer, bilateral  
15          amputation. Those are, frankly, plain, from the  
16          surgical scar on his neck, and his wheelchair. It  
17          doesn't seem like that merits a week of preparation  
18          time.

19          I say that only because I have Robin Wellner  
20          here. She's from Australia. She flew in, and she's  
21          going to fly out tomorrow. So that's why I wanted to  
22          put those concerns on the record.

23          THE COURT: And if the State had received the  
24          statement in mitigation sometime before this morning, we



1 wouldn't be having this conversation.

2 MR. FREY: I understand. We did our best. I  
3 expected that they would get it. I didn't get notice  
4 that they didn't get it until this morning. I served  
5 them with a courtesy copy personally and by e-mail. I  
6 wish they would have gotten it yesterday, but apparently  
7 because of our sealing of the document, that didn't  
8 occur.

9 THE COURT: There are two things I would like  
10 this morning: First, there is some suggestion or  
11 understanding by the defense, that upon my decree Mr.  
12 Skinner can just get on an airplane and return to  
13 Australia under supervised probation.

14 Is it as easy as that, Ms. Lukl? Because state-  
15 to-state we have a lot of compacted time-delay issues.

16 THE DIVISION: I don't believe so. I haven't  
17 done one out of the country, so to speak. But just  
18 state-to-state, I agree, Your Honor, it requires a  
19 little bit more documentation, verification, and then  
20 also, then, ultimately the approval from the receiving  
21 country in this case.

22 THE COURT: Right. Second, there is talk behind  
23 the judicial curtain about the P&P probability  
24 matrices -- the forms that are used. So much so, that

1 we had a presentation from P&P, I think just last week  
2 or the week before, in which the forms were given to us,  
3 there were explanations as to how different conclusions  
4 were reached, and there was some acknowledgment of the  
5 imprecision of some of the subjective components.

6 The State's free to argue here. You're not  
7 concurring. But when the State and the Division  
8 disagree, it's relevant to me.

9 Right now there's not a disagreement. But I  
10 don't know if Mr. Frey is going to demonstrate that P&P  
11 is wrong, or should reconsider based upon his analysis  
12 of that probability motion.

13 So when this matter is continued, I want the  
14 actual author present, available to respond to Mr.  
15 Frey's specific attack upon the recommendation. Because  
16 if in light of that recommendation the recommendation  
17 would be the same, it's very important for me to know,  
18 because then I've got the State and P&P telling me the  
19 same thing.

20 Somebody is here from out of country, and I very  
21 much want her time to be used, so that she doesn't fly  
22 without being heard. So at the very least, let's allow  
23 her to address the Court.

24 MR. FREY: Thank you, Your Honor. We would like

1 to call Ms. Robin Wellner, please.

2 THE COURT: When we reset this, I want, Ms.  
3 Clerk, it to be more towards the back end of the  
4 criminal calendar.

5  
6 ROBIN WELLNER,  
7 called as a witness by the State,  
8 who, first having been duly sworn,  
9 was examined and testified as follows:

10  
11 MR. FREY: Thank you, Your Honor.

12 THE COURT: I should note, I have read her  
13 somewhat lengthy letter/report.

14 MR. FREY: Wonderful.

15 DIRECT EXAMINATION.

16 BY MR. FREY:

17 Q. Ma'am, please state your name, and spell your  
18 last name for the record.

19 A. My full name is Robin A. Wellner: W-e-l-l-n-e-r.

20 Q. Thank you. Ms. Wellner, do you know Roderick  
21 Skinner?

22 A. Yes, I do.

23 Q. How do you know Roderick Skinner?

24 A. Roderick was introduced to me and my husband,

1     who is also an attorney, which -- if you don't mind,  
2     Your Honor, my office opened up at 2:00 o'clock this  
3     morning to take a telephone call from Courtney. Is it  
4     possible for the telephone evidence --

5             THE COURT: No. You're on. I'd like to hear  
6     you right now, please. I can reschedule a telephone at  
7     any time, but I have a live witness.

8             MR. FREY: That's fine, Your Honor.

9     BY MR. FREY:

10    Q.       So, Ms. Wellner, you were describing how you  
11    knew Roderick Skinner.

12    A.       About late-2005, a client by the name of Kevin  
13    McTaggart, said that he was going to recommend Mr.  
14    Skinner to come to our office as a possible potential  
15    client for his family-law issue. I think I met him  
16    around about just before the Christmas of 2005, or  
17    early-2006.

18    Q.       Now, what do you do for a living?

19    A.       I'm a lawyer.

20    Q.       How long have you been a lawyer?

21    A.       Since 1997.

22    Q.       Are you currently licensed as such?

23    A.       Yes.

24    Q.       What do you practice, ma'am?

1 A. Family law, property law, deceased's estates.

2 Q. What country do you practice in?

3 A. Queensland, Australia.

4 Q. Did you make a flight very recently to come to  
5 Reno to testify?

6 A. I did. I arrived Reno time, Tuesday afternoon.

7 Q. Was that at your own personal expense?

8 A. In part.

9 Q. When do you plan to leave?

10 A. Tomorrow afternoon.

11 Q. Now, approximately how long have you known Mr.  
12 Skinner?

13 A. Since late-2005, early-2006.

14 Q. Was it always a professional relationship with  
15 him? Or did you guys become personal friends?

16 A. We became friends, as well.

17 Q. And throughout the course of your friendship,  
18 what can you say about Mr. Skinner's character?

19 A. He's an honest man. He's very caring for his  
20 children, and caring for people around him.

21 It took a while to get to know Rod, because in  
22 the past he's had some issues in the family court where  
23 he became very despondent with the legal profession. So  
24 he had to get comfortable with us, before he became

1 friendly, to make sure that we weren't going to be what  
2 he thought was bad people out to get him, and that we  
3 were there to help him with his issues.

4 Q. Do you understand Rod to have a family?

5 A. He does.

6 Q. Who does his family consist of?

7 A. His little daughter, Courtney, is currently 23;  
8 he has a son, Broderick, who is 19; and he has a small  
9 child, Sophie, who is turning three this week sometime.

10 Q. How would you describe his relationship with his  
11 daughter, Courtney?

12 A. Very close. They're very good friends. They're  
13 very close. They talk, chat a lot on the internet.

14 Rod, as part of his visa requirements for living  
15 in the States, I believe, he has to go home every three  
16 months or thereabouts. He's spent that time at home,  
17 with his daughter.

18 Q. How would you describe his relationship with his  
19 son, Broderick?

20 A. I don't think Mr. Skinner has seen Broderick for  
21 some time, because of the family-law issues.

22 Q. And his relationship with his daughter, Sophie,  
23 can you speak to that?

24 A. I saw Sophie for the first time in April of

1 2013, with Rod, when he proudly brought his cute little  
2 girl over to visit. Sophie loves her dad. She was all  
3 over him.

4 Dad was there to teach her, if he saw something  
5 new. She was learning to speak. Her favorite word was  
6 "bird."

7 At my place, I have chickens, I have finches,  
8 we've got lady birds flying around in the garden.  
9 Outside, she's learning the names of the birds.

10 I've got cats. She had to go and talk to my  
11 cats.

12 And Rod was helping with the words, and trying  
13 to formulate names of every one, as well.

14 Q. I'm going to approach you now with a photograph.  
15 Do you recognize what I'm handing you?

16 A. That's Sophie. That's Sophie taken with -- I'm  
17 presuming -- Lynn, before I met her. But --

18 Q. Who else is the photograph?

19 A. That's the father, Rod Skinner.

20 MR. FREY: Your Honor, I'd move to admit the  
21 photograph of Mr. Skinner with his daughter, Sophie.

22 MS. DRUCKMAN: I have no objection.

23 THE COURT: Thank you. It will be admitted.

24 (Whereupon, the exhibit was admitted into

1 evidence.)

2 BY MR. FREY:

3 Q. Where is Sophie now?

4 A. In Australia, living with Courtney.

5 Q. And what sort of living environment are they  
6 living in right now?

7 A. I haven't been to Courtney's place, but I know  
8 that she's just recently moved to a house in Oxley,  
9 which is a suburb of Brisbane, the outer skirts of  
10 Brisbane. It's on the mainland, whereas she was living  
11 on an island off the Queensland coastline.

12 She's moved to the house partly and especially  
13 with her father coming home, so he's got quick access to  
14 medical facilities, should he need them.

15 Q. Is there anything about the house that's  
16 equipped especially for Mr. Skinner?

17 A. I haven't seen the house. All I know is it's a  
18 single-level property. It does have ramps.

19 Q. And that's to accommodate his wheelchair; is  
20 that right?

21 A. Yes.

22 Q. Now upon Mr. Skinner's return to Australia,  
23 should he be granted the privilege of probation here,  
24 can you describe what kind of resources he would have



1 available to him?

2 A. He has his police pension, which I believe he  
3 gets paid about \$3,000 a month from his 3.00 police  
4 pension.

5 Once he becomes a resident of Australia, he will  
6 then be entitled to his Medicare card. And he may be  
7 able to access some Disability and Pension. Medicare is  
8 kind of a Disability Pension, and if not paid in  
9 dollars, will certainly be paid in lieu, by giving him a  
10 pension card, which then it gives him cheaper  
11 medication. And he will have free medical.

12 Q. He has a family-law attorney; correct?

13 A. Yes.

14 Q. How extensive would that Medicare coverage be  
15 with respect to Rod? What would that cover for him?

16 A. It would cover GP -- general practitioners -- as  
17 in a normal family doctor. It would cover any  
18 hospitalization he'd require. It would cover, in part,  
19 specialists' fees, if he had to go to a specialist, say,  
20 for his Crohn's Disease. Some of the specialists don't  
21 just take the Medicare rebate, they may require  
22 additional funds on top of that. Other specialists like  
23 the money up front; and then Rod can make a claim  
24 against the government for a refund, in part, of the

1 fees.

2 Q. What's Rod's circle of family and friends like  
3 back in Queensland?

4 A. I only know Kevin McTaggart and his family. But  
5 from Courtney's telling me, they have a very extensive  
6 family friendship.

7 And the friends that Rod has are also friends of  
8 Courtney's, and they have all told her that they support  
9 her, and Rod upon his return.

10 Q. Now, you understand the nature of the charge  
11 that he pled guilty to; correct.

12 A. I do.

13 Q. I imagine his family understands that as well?

14 A. They do.

15 Q. What's the emotional toll that it's taken on  
16 you? Can you describe that?

17 A. Courtney, in particular, she thinks of nothing  
18 else. She feels as though she's a bit of a failure,  
19 because she hasn't been able to help her dad, as much as  
20 she would have liked.

21 Not that we can do that much in Australia. It's  
22 a different jurisdiction over here. You have different  
23 laws.

24 For instance, we're trying to source a new

1 wheelchair for him, because his original wheelchair  
2 broke, also in detention. The chair that he's using at  
3 the moment, I believe, is provided by the detention  
4 center. It's not suitable for a double amputee.

5 We found one of his wheelchair manufacturers,  
6 who's also a double amputee, in Redcliff, which is north  
7 of Brisbane. He was attempting to get it prepared and  
8 ready so I could bring it with me on Tuesday, but  
9 unfortunately we didn't have enough time, because each  
10 chair for a double amputee has special specifications to  
11 that amputee. That's taken a long time.

12 Getting money onto the jail's ATM, so that she  
13 can have e-mail correspondence with her father, has been  
14 difficult. Funds leaves Australia, but it seems to take  
15 forever to get into the system. So there are lengthy  
16 periods of time when Courtney can't correspond with her  
17 father.

18 I have attempted to get a jail ATM account  
19 going, and I just simply couldn't even get past first  
20 base. I put in a password, and then it just crashed  
21 down on me, time and time and time again.

22 For me, Courtney spends a lot of time in my  
23 office working through issues, trying to understand  
24 what's happened here, trying to understand your

1       legislation, reading your laws.

2               I've spent a lot of time with Courtney, trying  
3       to get Sophie back. Interpreting between the American  
4       Consulate and the American public person who's looking  
5       after Sophie -- the prosecution.

6       Q.       Child Protective Services?

7       A.       Child Protection Services. And now Children  
8       Services. The difference in the legal language caused  
9       issues, caused confusion. The American side was asking  
10      for something, the Australian side was saying, "This is  
11      what you've got."

12              And it was only after I researched this and  
13      that, that I could work out what they were really after.  
14      It was finally all sorted out, and hen everyone was  
15      happy.

16              It turned out we were working towards the same  
17      thing, but thing terminology, so it caused issues there.  
18      I helped with the Children's Services in Brisbane,  
19      between the American child protection people and them,  
20      because of different terminology again.

21              So for me, it's taken many, many hours of my  
22      office time, and out-of-office time.

23      Q.       Robin, you didn't have to make the trip to Reno,  
24      but you did. Why did you feel it was important to come

1 here and be present?

2 A. I felt that -- Rod's a friend. I wouldn't say  
3 he's a best friend, but he's a good friend. He's a good  
4 mate. He's ended up in a bad space, and he needs as  
5 much support as he can.

6 Q. Would he get more of that support in Australia,  
7 if he was to be returned there?

8 A. Sure.

9 Q. Let me ask you a couple of questions: Knowing  
10 what you know of Rod over the course of your  
11 relationship, is Rod employable?

12 A. He's an intelligent man. He can be trained to  
13 do anything.

14 Q. You said he has a police pension; is that right?

15 A. Yes.

16 Q. Is that as the result of early retirement from  
17 the Queensland Police Force?

18 A. Yes.

19 Q. That's as a result of him going through that  
20 horrific accident, that took his leg?

21 A. Actually, no. After he had the accident and he  
22 went back to work with the Queensland Police, he became  
23 a driver trainer, so he was training -- they call them  
24 rookies -- the young policemen how to drive the cars and

1       whatever. I forget the period of time he was doing it  
2       for. It was for a few years. And then he was medically  
3       discharged as unfit, because he developed paranoia.

4       Q.       The pension you described, is that adequate to  
5       cover his cost of living?

6       A.       It's more than what our pensioners would  
7       receive.

8       Q.       Is it fair to say that if Rod didn't need to  
9       work, he wouldn't necessarily have to, because of the --

10      A.       He doesn't need to work, no.

11      Q.       You mentioned his family, which consists  
12      Courtney --

13      A.       Courtney, 23; Broderick, 19; Sophie, 3.

14      Q.       And Mr. Skinner, was he married at one point?

15      A.       He's been married twice.

16      Q.       So he has, obviously, two "ex's." Let's talk  
17      about the first "ex."

18      A.       That's Lynn.

19      Q.       Lynn. Has she reached out to the family at all,  
20      or to Rod?

21      A.       Lynn and Rod had a very acrimonious break up.  
22      They really didn't like each other.

23              Courtney has been with her -- or talking about  
24      Rod's situation with her mother, Lynn, who has

1 remarkably put a hand up and said that she's prepared to  
2 assist Rod as much as she can, as well, because she  
3 doesn't believe the charges. And to Courtney's  
4 astoundment, she's helping out.

5 She's helping Courtney with Sophie. They go  
6 over there weekly. And she was prepared to make a  
7 statement. However, I didn't have a chance to go and  
8 put a statement together right before the Court.

9 Q. She was actually ready to make a statement on  
10 Rod's behalf?

11 A. Yes.

12 Q. This is the ex-wife that he had an acrimonious  
13 separation with?

14 A. That's right.

15 Q. Would you consider police academy training to be  
16 education?

17 A. Education? Yes.

18 Q. Is Mr. Skinner kind of a life-long learner? Is  
19 he one of those folks that are always soaking up  
20 information?

21 A. Yes.

22 Q. Did Mr. Skinner ever serve in the military?

23 A. In the military? Not to my knowledge.

24 Q. Are you familiar with the Army Reserves?

1 A. Yes.

2 Q. Would you consider that to be training for  
3 education?

4 A. Yes.

5 Q. As a family-law attorney, I imagine you deal  
6 with some pretty tense situations between families and  
7 within families; is that right.

8 A. I do.

9 Q. How important is it in your experience, through  
10 the course of your career, is it for people who can be  
11 together, to be together?

12 A. I'm sorry?

13 Q. How important is it, for example, for a father  
14 to be with his daughter?

15 A. The little one, or both? Both?

16 Q. Both.

17 A. For little Sophie, it's very important that she  
18 live with her father, because her mother abandoned her  
19 when she was about two weeks of age.

20 It's important that Sophie knows that she has a  
21 dad who loves her. She tells -- she gets upset and  
22 tells Courtney that she wants to talk to daddy now, on  
23 the telephone.

24 She makes little Lego men at my office of little



1 men on wheels, and calls them "Daddy."

2 She needs to have a family around her. She  
3 needs to know that her dad is there, he loves her, and  
4 is there to support her.

5 Courtney loves her dad dearly, and misses him  
6 dreadfully, and needs to have him back.

7 Q. Robin, is there anything you want to say?  
8 Anything else you want to say in addition to what you've  
9 said already, in addition to your letter, that you would  
10 like His Honor to hear?

11 A. Your Honor, he's a good man. He would no sooner  
12 break the law knowingly or intentionally.

13 When he stayed over for dinner some nights, he  
14 and my husband get along very well. They have a lot  
15 to -- they talk politics. And sometimes the political  
16 talks came around to police corruption.

17 And Rod was very -- in the more recent past --  
18 very much against police corruption. Very much against  
19 police putting people into a position to make them look  
20 guilty, sometimes. He abhors people that break the law.

21 THE COURT: I want to ask about that, because  
22 you're giving a great presentation about one part of  
23 him. Have you read the presentence-investigation  
24 report?

1 THE WITNESS: No.

2 THE COURT: Okay. I'll summarize it. And then  
3 I want you to help me reconcile what I've read, versus  
4 what you're telling me.

5 This is a gentleman who might have masturbated  
6 himself in the presence of his young daughter, while on  
7 his lap; that he might have touched neighbor girls  
8 inappropriately, in inappropriate places; and might have  
9 downloaded and viewed pornography involving underaged  
10 children 10 times in a span of two months; and a man who  
11 is deflecting responsibility for that and saying,  
12 essentially, that he bought a used computer, and there's  
13 some horrible child pornography that's been downloaded  
14 into unallocated hard drive space, and he really had  
15 nothing to do with it.

16 And, finally, Dr. Nielson, who said hat he's not  
17 taking responsibility for his conduct, but he might,  
18 through the therapeutic interventions after  
19 adjudication. How can you --

20 MR. FREY: I can help you reconcile that right  
21 now, Your Honor.

22 THE COURT: Well, I've got a witness telling me  
23 that he abhors criminal conduct; that he talks about  
24 people being unfairly treated; and I'm only going to

1 have her for a second. I'm going to have your arguments  
2 even today or later. I wonder if she knows all of this,  
3 as she's describing him.

4 THE WITNESS: I haven't read the pre-sentence  
5 report. I've read his charges, and I read his plea of  
6 memorandum. That's all I've read.

7 THE COURT: At the right time -- either today or  
8 later -- you'll help me understand why there are 10  
9 downloads that the State's expert is willing to talk  
10 about.

11 Do you have any questions for this witness?

12 MS. DRUCKMAN: I do, if Mr. Frey is done.

13 THE COURT: Excuse me. Are you done?

14 BY MR. FREY:

15 Q. Is there anything else, Robin, that you want to  
16 say to the Court?

17 A. Nothing that I can think of. You have to bear  
18 with me, though. I'm very tired.

19 MR. FREY: I will follow up, to the extent that  
20 I think it's necessary, after Ms. Druckman.

21  
22  
23 (Next page, please.)  
24

CROSS EXAMINATION

BY MS. DRUCKMAN:

Q. Are you familiar with the years that the defendant wasn't living in Australia?

A. He left in about 2008.

Q. And do you know where he went?

A. He went to Vietnam for a while; and then went to Thailand, I think.

Q. And both of those places are areas where there's a lot of sex trafficking; correct?

A. Yes.

Q. And both of those are places that it's not uncommon for people who have the desire to have sex with children, to go on sex holidays with children; correct?

A. If you read -- that's the knowledge, yes.

Q. Now, concerning the child, Sophie, did you know the defendant's Vietnamese wife?

A. No.

Q. You never had an occasion to meet her or know how young she was?

A. I met her on Skype, when Rod was visiting us in Brisbane, three years ago, I think -- maybe more than that. I think her little boy is now five. And I can't recall her name. She's about 15 years his junior. I

1 didn't think hat unusual, because I'm 16 years junior of  
2 my husband.

3 Q. The child, Sophie, you indicated that the  
4 mother, after giving birth, abandoned Sophie and the  
5 defendant?

6 A. That's right.

7 Q. And do you know where she went?

8 A. She went back to Vietnam.

9 Q. And for people who are in Vietnam and they have  
10 children who are not Vietnamese but are a mixed race,  
11 those children are not accepted there; correct?

12 A. No. No. No. No. Your Asian children -- I can  
13 only speak for the Philippines, because my husband's  
14 brother used to live in the Philippines before he passed  
15 away. Your Asian children are -- I can't think of the  
16 word -- guapo: beautiful. They're held not in high  
17 esteem, but they're very special, pretty, male or  
18 female.

19 So if that answers your question? But I'm only  
20 speaking for thing Philippines.

21 Q. That's actually not the case in Vietnam?

22 A. I don't know.

23 Q. Those children are discriminated against?

24 A. I don't know.

1 MR. FREY: Your Honor, she's asking questions  
2 beyond the scope of her expertise.

3 MS. DRUCKMAN: I'll move on, Your Honor.

4 MR. FREY: She can argue it, if she wants.

5 BY MS. DRUCKMAN:

6 Q. Concerning the allegations that have been shared  
7 with you by the Judge, you're aware that there are two  
8 child witnesses -- I believe ages seven and eight -- who  
9 reported the conduct that they observed the defendant  
10 doing?

11 A. I'm not aware of that, because it's not in the  
12 charged sheet that I've read, and it's not in the  
13 memorandum.

14 Q. That's the open-and-gross-lewdness charge, which  
15 is being dismissed.

16 Do you understand that --

17 MR. FREY: Your Honor, I don't think there's a  
18 question there.

19 THE COURT: You know, I disagree. I think that  
20 the State is probing the witness's knowledge.

21 BY MS. DRUCKMAN:

22 Q. Do you understand that these two children were  
23 basically not with any other adults, but were in the  
24 defendant's house, and their stated purpose was that

1 they were there to play with Sophie, who was two at the  
2 time?

3 A. I have no knowledge.

4 Q. Being aware that these two children --

5 A. I'm not aware.

6 Q. Well, okay. But --

7 A. I'm unaware, because you're telling me now.

8 Q. You're giving us your opinion of his good  
9 character, and his good character around children.

10 A. Uh-huh.

11 Q. Does the fact that an investigation was  
12 conducted, and facts were shown that the defendant was  
13 seen watching adult pornography on a computer,  
14 masturbating himself, holding his two-year-old child on  
15 the arm of his wheelchair, in the presence of a seven-  
16 and eight-year-old child, does that fact change your  
17 opinion about his potential dangerousness or his  
18 character concerning --

19 A. Well, that sounds.

20 MR. FREY: Before the witness answers, I would  
21 like to lodge an objection.

22 That case was the subject of some litigation,  
23 and there was a factual dispute in that case about the  
24 accuracy of those observations. So presenting this to

1 the witness as if it was fact, I think, is misleading.  
2 And to call the question here, is to opine on his  
3 dangerousness. And I think we had a psychosexual  
4 evaluator opine on that very issue, and he said he's not  
5 a high risk.

6 THE COURT: Well, then to what extent is this  
7 witness relevant to me? Because if the witness is  
8 relevant to tell me everything that's good about this  
9 man, I want to know what she knows about him and this  
10 event.

11 I know that she knew him for three years,  
12 between the time they met. She's just told me wonderful  
13 things about him. I think it's appropriate that the  
14 State probe whether she knows some of the allegations  
15 the State initially made, and existed before there were  
16 plea negotiations.

17 MR. FREY: Understood. And I like your  
18 characterization.

19 I think that the prosecutor should be framing  
20 this not as fact, but as an allegation: Ms. Wellner,  
21 are you aware of this allegation? Because when she  
22 presents it as a factual matter --

23 THE COURT: I think that's fair.

24 ///



1 BY MS. DRUCKMAN:

2 Q. With those categorizations that counsel has just  
3 made, do you understand that -- you're giving us a good  
4 opinion. Would that change your current opinion?

5 A. The allegations that were made against Mr.  
6 Skinner are out of character to the Mr. Skinner I know.

7 Q. Now it's fair to say that it's been several  
8 years since you really had a close relationship with Mr.  
9 Skinner; correct?

10 A. He would -- when he came back to Australia on  
11 his visa requirements, probably every second time he  
12 would come over to visit us.

13 Q. But you haven't seen him day-to-day, for several  
14 years?

15 A. No.

16 Q. And in between the time that you spent personal  
17 one-on-one time, having a relationship where he was a  
18 friend, he went away to Vietnam, and you think Thailand,  
19 and then he came to the United States, you have not been  
20 with him personally --

21 A. No.

22 Q. -- for a significant period of time since he  
23 moved away from Australia?

24 A. That's correct.

1 Q. So it's fair to say people change, based on  
2 their needs; correct?

3 A. They do.

4 Q. In this instance, based on the volume of child  
5 pornography -- Did you read the original charges?

6 A. I read the 32 -- or 23 charges, yes.

7 Q. And you're aware of how hard-core the  
8 pornography was that was located on his computer?

9 A. No. I haven't seen the photos.

10 Q. But through the description, I mean?

11 A. The description, yes.

12 Q. Is quite hard-core; would you agree?

13 A. Yes.

14 Q. And would you also agree that the fact that  
15 there were downloads occurring over time, and he's the  
16 only person using the computer, would you agree that  
17 that fact indicates that he has a problem in this area?

18 MR. FREY: Your Honor, beyond the scope.

19 THE WITNESS: It's a fact I can't agree or  
20 disagree, because --

21 THE COURT: Overruled.

22 BY MS. DRUCKMAN:

23 Q. So based on that course of conduct, that's been  
24 shown to you, and that you have read the charges, does

1     that in any way change your opinion about the problems  
2     that Mr. Skinner has, impacting his ability to be around  
3     children, including Sophie, and the community?

4     A.       The charges don't match up with the man I know.  
5     I know him to be a good and proper, upright citizen.  
6     The charges simply don't match up.

7           MR. FREY: I think that's all the witness can  
8     say, Your Honor.

9     BY MS. DRUCKMAN:

10    Q.       Is it fair to say that if this conduct was  
11    conducted in front of you -- where you actually saw it  
12    occur -- your opinion would be different of Mr. Skinner?

13           MR. FREY: Your Honor, again, I don't think  
14    that's a fair question.

15           THE COURT: Overruled.

16           THE WITNESS: Yes.

17    BY MS. DRUCKMAN:

18    Q.       Yes?

19    A.       I would think he would not be a fit citizen to  
20    be around children.

21    Q.       As a lawyer in family court, and other types of  
22    actions, is it fair to say that when you call a  
23    character witness, you call somebody who is going to  
24    speak well of your client; correct?

1 A. Yes.

2 Q. And that people don't tend to commit crimes in  
3 front of their character witnesses, do they?

4 MR. FREY: Your Honor, I'd object to that  
5 question.

6 THE WITNESS: With respect -- I saw Rod last,  
7 and I presume --

8 THE COURT: Hold on, ma'am.

9 MR. FREY: We're talking about committing crimes  
10 in front of character witnesses. I think it's gone way  
11 far afield.

12 THE COURT: Ms. Druckman is attempting to  
13 impeach or explain the vigor of your client, and this  
14 witness's positive character opinion of your client. I  
15 think it's appropriate to examine the parameters.

16 MR. FREY: I think it's a hypothetical, because  
17 there's no crime committed in front of Ms. Wellner. I  
18 can ask her what she would feel if there was a murder  
19 committed in her presence, and I could anticipate what  
20 the answer would be.

21 I don't think that's a useful or constructive  
22 line of questioning at all.

23 THE COURT: It appears to me that -- well, the  
24 witness has traveled a great distance, at her expense

1 and somebody else's expense, to provide favorable  
2 perspective of your client. I think that's appropriate.

3 It's also appropriate for the Court to  
4 understand the source of that favorable opinion.

5 And it appears to me that this witness has  
6 provided favorable opinion testimony without fully  
7 knowing the allegations that exist in this case.

8 I don't really need to know more than that. We  
9 don't need to dredge up what the allegations were:  
10 they're not proven; they were negotiated away. But it's  
11 just important for me to know that the child pornography  
12 downloads that occurred to his computer, while he  
13 possessed the computer, was not known to the witness  
14 who, I presume, is an esteemed family-law lawyer in  
15 Australia. And she's, I think, answered the questions  
16 to my satisfaction.

17 MS. DRUCKMAN: Thank you.

18 THE COURT: Do you have any --

19 MR. FREY: Yes, I do I have follow-up questions.

20 REDIRECT EXAMINATION

21 BY MR. FREY:

22 Q. Thailand and Vietnam, both very common vacation  
23 destinations for those in Australia; correct?

24 A. Very much so.

1 Q. In fact, those two countries are in close  
2 proximity to one another?

3 A. They're not very far to fly to either one.

4 Q. So when you want a vacation, a holiday for any  
5 reason, Vietnam is on the list; correct?

6 A. A lot of people go to Vietnam, a lot of people  
7 go to Thailand, a lot of people go to Singapore. And  
8 those that wish to go further afield in the Asian  
9 sector, go to China and Japan.

10 Q. So southeast Asia, and Asia proper, both in  
11 close proximity to Australia; correct?

12 A. Yes.

13 Q. Very common to go there, for whatever reason?

14 A. Yes.

15 Q. All types of Australians go there?

16 A. Yes.

17 Q. Lawyers go there?

18 A. Yes.

19 Q. Doctors go there?

20 A. Yes.

21 Q. Dignitaries go there?

22 A. I think one of the conventions -- one of the  
23 legal conventions, was recently -- or is to be held in,  
24 I think, Singapore next year or the year after.

1 Q. Very close international ties with those  
2 countries that have been referenced here today --  
3 Vietnam and Thailand -- at least with respect to  
4 vacationing?

5 A. I don't think -- there's no visa requirements.  
6 I don't think you need to get a visa to go in there for  
7 more than three weeks. If you just go for a three-week  
8 holiday and have your return trip, you don't have to get  
9 a special visa.

10 Q. Is that Thailand, or Vietnam, or both?

11 A. Certainly the Philippines. I think it's the  
12 same in Thailand. I'm not a hundred percent certain on  
13 Vietnam, because I haven't traveled to Thailand or  
14 Vietnam.

15 Q. So your understanding of that visa waiver, would  
16 it be that because the travel is so frequent between  
17 Australia and those countries, that those countries have  
18 agreed to waive the visa requirement?

19 A. I couldn't comment. I can't say.

20 Q. A visa is required for, let's say, Australians  
21 to travel to the United States?

22 A. Yes.

23 Q. Or to Italy; correct?

24 A. I recently flew to Germany, in 2005 -- not so

1 recent -- and I didn't need a visa, because I was only  
2 staying for under three weeks. So I think you will find  
3 that the new countries might have sort of similar  
4 requirements.

5 When I was in Germany visiting family, I moved  
6 from Germany, to France, and back, without visas.

7 Q. Now, Ms. Wellner, if you learned that a  
8 credentialed, professional, seasoned, experienced  
9 psychosexual evaluator assessed Mr. Skinner and came to  
10 the conclusion that he was not a high risk to re-offend,  
11 and did not present a danger -- an active danger to  
12 others, would you tend to believe that that's consistent  
13 with who you know Mr. Skinner to be?

14 A. I would.

15 Q. Now in Australia, is it your understanding that  
16 there's a body of law that governs sex offenders in that  
17 country?

18 A. There is.

19 Q. And that that body of law requires registration?

20 A. If a person is charged in -- each state,  
21 probably much like you have here, Your Honor, each state  
22 has their own legislation, and then there's also some  
23 federal legislation that they tend to base their state  
24 legislation on.



1           In Queensland, it's not mandatory that someone  
2 who is charged and convicted of a sexual offense goes  
3 onto the sexual offenders' register.

4           If it's a Category II offense, which is what Rod  
5 is being charged with -- pornography, child  
6 pornography -- it's called a Category 2 offense; it's up  
7 to the Judge's discretion whether he also puts the  
8 accused on the register.

9           So if he's had no previous offenses, there's  
10 only been the one charge, it's a Category II, it's at  
11 the Judge's discretion as to whether he wants him to go  
12 onto the register.

13           Or if he's convicted -- if he's sentenced but no  
14 conviction is recorded, he won't go into the register on  
15 it.

16           The register is a national register. And the  
17 act -- the Queensland Act is: The Dangerous Prisoners  
18 of Sexual Offenders Act.

19           MR. FREY: Can I approach the witness, briefly?

20           THE COURT: Yes.

21 BY MR. FREY:

22 Q.       Now, Ms. Wellner, I'm handing you body materials  
23 there. And do you recognize that to be --

24           MS. DRUCKMAN: Your Honor, I'm going to object

1 on the grounds that this wasn't covered in counsel's  
2 Direct.

3 THE COURT: So it's on the Redirect.

4 What is it that you just handed to the witness?

5 MR. FREY: I have handed her, Your Honor,  
6 literature regarding sex-offender registration,  
7 notification requirements, as they apply in Australia.

8 THE COURT: Here's the Court's opinion: When we  
9 reconvene, it will be very difficult for me to even  
10 consider probation, unless I know exactly what it means  
11 between two countries.

12 I have experience with probation compacted into  
13 other states. Somebody is going to have to provide that  
14 information, either through P&P, or some international  
15 probation expert.

16 MR. FREY: We will have the Consulate appear.  
17 I'm serious. We will patch in to the Australian  
18 Consulate in San Francisco, and we'll talk with Meagan,  
19 the Consular officer working on this case, and we will  
20 verify to you that this is an international deportable  
21 offense.

22 THE COURT: So the information you're eliciting  
23 from this witnesses is critical for me. I don't know  
24 that this is the right witness to provide that.

1           MR. FREY: That's fine. We can do it through  
2 other means, and provide the verification to the Court.

3           I was just following up on the State's attempt  
4 to elicit from Ms. Wellner that somehow Mr. Skinner  
5 would be a danger to others.

6           And I wanted to establish that while evening  
7 assuming he presented a high risk -- and he doesn't --  
8 there are controls in place in Australia, such as  
9 supervision, notification, reporting requirements,  
10 etcetera, that really mirror our laws here.

11          So if we're worried about Mr. Skinner  
12 re-offending, I just wanted to give Your Honor piece of  
13 mind that there are controls in place in his home  
14 country.

15          THE COURT: As we anticipate the next hearing,  
16 one of the things -- whether it's through the Consulate  
17 over not -- one of the things I'm interested in is a  
18 comparison between the levels of supervision.

19          And I'm not foreshadowing that this is a  
20 probation case; I'm just open to all arguments.

21          Because you referred to Dr. Nielson's conclusion  
22 that he's low-to-moderate. But I think that Dr. Nielson  
23 also says: "If this gentleman has access to a computer,  
24 everybody's at risk."

1           And so I wouldn't send this gentleman to  
2   Australia, unless I knew that somebody was going to be  
3   in his back pocket, making sure he never had access to a  
4   computer.

5           I have to take Dr. Nielson's report in its  
6   entirety. And it's not as clean to me as -- You haven't  
7   had an opportunity to argue all of Dr. Nielson's report,  
8   but there are some components that are troubling to me.

9           MR. FREY: We are fully prepared to address  
10   those to the satisfaction of the Court.

11          THE COURT: Here's what I want to do today: I  
12   was told -- and there's no fault -- I was told this  
13   would be about a 20- to 30-minute sentencing.

14          I'm in the middle of a jury trial right now.  
15   I'm now an hour and three minutes late from my  
16   last-scheduled settling-of-jury-instructions meeting.

17          I have a work meeting that starts at 11:50, and  
18   I have a jury coming back at 1:30.

19          Recognizing the commitment -- this witness's  
20   need to be here, I wanted to hear from her. But  
21   everything else, I think I need to push off.

22          So if we're done with this witness, then we're  
23   done for the day with Mr. Skinner.

24          MR. FREY: I think that's appropriate. We have

1 Courtney ready to take a call. I can contact her and  
2 try to reschedule her.

3 THE COURT: You'll have to reschedule her.

4 MR. FREY: It's 2:00 a.m. in Brisbane, but she  
5 can repeat that experience, unfortunately, in the  
6 future, at the next setting.

7 THE COURT: Express the Court's regret at her  
8 inconvenience, but it is what it is.

9 MR. FREY: I think we're concluded, then.

10 THE COURT: All right. Let's set a date.

11 How much time will you need, Ms. Druckman?

12 MS. DRUCKMAN: I think it would be appropriate,  
13 Your Honor, for me to have at least a week, given that  
14 we're going to be subpoenaing the Parole & Probation  
15 Officer who wrote the report, and to look into the  
16 questions about Australia supervision.

17 THE COURT: So I have just obtained a senior  
18 judge to try Schoner. And I'm trying a five-day civil  
19 case that's scheduled the entire week.

20 There will be a time next week when I can fit  
21 two hours in, or two and a half to three hours in. I  
22 just don't know exactly when. So let me just look at  
23 the calendar.

24 I know at some point there will be

1 deliberations, and lawyers will be out preparing  
2 instructions --

3 MS. DRUCKMAN: Judge, I would indicate that I'm  
4 going to be gone starting Wednesday of next week, and  
5 returning the -- I will be back in town the 2nd of  
6 September, and back in at work on the 3rd of September.

7 THE COURT: It's either before Wednesday, or the  
8 week after Labor Day.

9 MS. DRUCKMAN: Correct.

10 MR. FREY: We prefer next Tuesday.

11 MS. DRUCKMAN: I believe I will be here on  
12 Wednesday.

13 THE COURT: Do I have a criminal calendar next  
14 Tuesday?

15 THE CLERK: Yes.

16 THE COURT: How big is it?

17 THE CLERK: There's 11 matters, most of which  
18 are arraignments.

19 THE COURT: You and I will talk privately about  
20 whether there are any sentencings that capture my  
21 attention. If there are not, I want to move the entire  
22 criminal calendar.

23 How early are you prepared to begin, counsel?  
24 Can you go at 8:15?

1           MR. FREY: I would be in trial in another  
2 department, so I think that's probably appropriate,  
3 assuming it's a 9:00 start time.

4           THE COURT: Oh, you have a senior judge with  
5 Schoner. And I can coordinate. It's Senior Judge  
6 Manoukian.

7           MR. FREY: I haven't had the pleasure, but I'm  
8 looking forward to it.

9           THE COURT: It will be a pleasure.  
10 Let's set this at 8:20, Tuesday morning.

11 All right. Ms. Lukl?

12          THE DIVISION: I was going to state that I'll  
13 make sure the supervisor and the writer knows. I don't  
14 know how long that takes, but I will relay that  
15 information.

16          THE COURT: Thank you, ma'am, for your  
17 testimony, and for being here.

18                       (The witness was excused.)

19          THE COURT: All right, we'll be in recess.

20

21

22 ///

23 ///

24 ///

1 STATE OF NEVADA )

2 COUNTY OF WASHOE )

3  
4  
5 I, RANDI LEE WALKER, Certified Shorthand  
6 Reporter of the Second Judicial District Court of the  
7 State of Nevada, in and for the County of Washoe, do  
8 hereby certify:

9 That I was present in Department No. 15 of  
10 the above-entitled Court and took stenotype notes of the  
11 proceedings entitled herein, and thereafter transcribed  
12 the same into typewriting as herein appears;

13 That the foregoing transcript is a full,  
14 true and correct transcription of my stenotype notes of  
15 said proceedings.

16 DATED: At Reno, Nevada, this 16th day of  
17 September, 2014.

18  
19 /s/ Randi Lee Walker  
20 RANDI LEE WALKER, CCR #137  
21  
22  
23  
24



**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-03-15 09:34:23.317.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-03-15 09:34:24.083.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-03-15 09:34:23.692.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-03-15 09:34:24.458.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-03-15 09:34:22.583.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-03-15 09:34:24.833.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***

**PROOF OF SERVICE OF ELECTRONIC FILING**

-

**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-15-2024:09:28:40

**Clerk Accepted:**

03-15-2024:09:34:06

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Response

**Filed By:**

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

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JENNIFER P. NOBLE, ESQ. for STATE OF  
NEVADA

CHRISTOPHER FREY, ESQ. for RODERICK  
STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
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KARLA BUTKO, ESQ. for RODERICK STEPHEN  
SKINNER

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

1 Code 1350  
2  
3  
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE  
7

8 **RODERICK STEPHEN SKINNER,**

**Case No. CR14-0644**

9 **Petitioner,**

**Dept. No. 8**

10 **Vs,**

**SCN: 86846, 86893**

11 **WARDEN OLSEN, NNCC,**  
12 **NEVADA ATTORNEY GENERAL, ETAL,**

13 **Respondents.**  
14 \_\_\_\_\_ /

15 **CERTIFICATE OF CLERK AND TRANSMITTAL**  
16

17 I certify that I am an employee of the Second Judicial District Court of the State of  
18 Nevada, County of Washoe. On the 15th day of March, 2024, I electronically filed to the  
19 Supreme Court the Response to Order filed March 15<sup>th</sup>, 2024. The response is transmitted  
20 pursuant to the Supreme Court's Order filed March 1, 2024.

21 I further certify that the transmitted record is a copy of the original pleadings on file  
22 with the Second Judicial District Court.

23 Dated this 15th day of March, 2024.

24 Alicia L. Lerud  
25 Clerk of the Court  
26 By /s/Y.Viloria  
27 Y.Viloria  
28 Deputy Clerk

## Return Of NEF

### Recipients

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-03-15 09:39:15.3.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-03-15 09:39:18.394.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-03-15 09:39:16.566.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-03-15 09:39:19.534.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-03-15 09:39:12.55.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-03-15 09:39:20.081.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***

**PROOF OF SERVICE OF ELECTRONIC FILING**

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-15-2024:09:37:14

**Clerk Accepted:**

03-15-2024:09:38:43

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Certificate of Clerk

**Filed By:**

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

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SKINNER

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
WARDEN OLSEN; NNCC; NEVADA  
ATTORNEY GENERAL; AND THE STATE OF  
NEVADA,  
Respondents.

**Supreme Court No. 88296**  
District Court Case No. CR140644

DS

**RECEIPT FOR DOCUMENTS**

TO: Alicia L. Lerud, Washoe District Court Clerk  
Roderick Stephen Skinner  
Washoe County District Attorney \ Jennifer P. Noble

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/14/2024 Appeal Filing Fee Waived. Criminal. (SC)

03/14/2024 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day. (SC)

DATE: March 14, 2024

Elizabeth A. Brown, Clerk of Court  
bc



**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-03-18 14:36:48.968.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-03-18 14:36:50.295.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-03-18 14:36:49.795.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-03-18 14:36:51.077.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-03-18 14:36:48.155.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-03-18 14:36:52.405.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***

**PROOF OF SERVICE OF ELECTRONIC FILING**

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-18-2024:14:36:03

**Clerk Accepted:**

03-18-2024:14:36:18

**Court:**

Second Judicial District Court - State of Nevada

Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Supreme Court Receipt for Doc

**Filed By:**

Deputy Clerk YViloria

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DIV. OF PAROLE & PROBATION

JENNIFER P. NOBLE, ESQ. for STATE OF  
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STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

KARLA BUTKO, ESQ. for RODERICK STEPHEN  
SKINNER

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

## IN THE SUPREME COURT OF THE STATE OF NEVADA


CR14-0644  
D8

RODERICK STEPHEN SKINNER,  
Appellant,  
vs.  
WARDEN OLSEN; NNCC; NEVADA  
ATTORNEY GENERAL; AND THE  
STATE OF NEVADA,  
Respondents.

No. 88296

FILED

MAR 19 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DIRECTING TRANSMISSION OF  
RECORD AND REGARDING BRIEFING*

This court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court

clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

Colin, C.J.

cc: Roderick Stephen Skinner  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

**Return Of NEF****Recipients**

**JENNIFER NOBLE, ESQ.** - Notification received on 2024-03-21 15:01:12.259.  
**KEVIN NAUGHTON, ESQ.** - Notification received on 2024-03-21 15:01:15.353.  
**KARLA BUTKO, ESQ.** - Notification received on 2024-03-21 15:01:13.806.  
**DIV. OF PAROLE & PROBATION** - Notification received on 2024-03-21 15:01:17.321.  
**CHRISTOPHER FREY, ESQ.** - Notification received on 2024-03-21 15:01:10.556.  
**CHRISTINE BRADY, ESQ.** - Notification received on 2024-03-21 15:01:19.431.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***

**PROOF OF SERVICE OF ELECTRONIC FILING**

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**A filing has been submitted to the court RE:** CR14-0644

**Judge:**

HONORABLE BARRY L. BRESLOW

**Official File Stamp:**

03-21-2024:15:00:08

**Clerk Accepted:**

03-21-2024:15:00:41

**Court:**

Second Judicial District Court - State of Nevada  
Criminal

**Case Title:**

STATE VS. RODERICK STEPHEN SKINNER  
(D8)

**Document(s) Submitted:**

Supreme Ct Order Directing

**Filed By:**

Deputy Clerk YViloria

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STEPHEN SKINNER

CHRISTINE BRADY, ESQ. for RODERICK  
STEPHEN SKINNER

KARLA BUTKO, ESQ. for RODERICK STEPHEN  
SKINNER

**V11. 1900**

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