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EIGHTH JUDICIAL DISTRICT COURT

RONALD J. ISRAEL  
DISTRICT COURT JUDGE

REGIONAL JUSTICE CENTER  
800 LEVY AVENUE  
LAS VEGAS, NEVADA 89155  
(702) 671-0888

DEPARTMENT XXVII  
JUDY CHAPPELL  
Court Recorder

## TRANSCRIPT ORDER FORM

CASE #: A-19-796636-5

NAME OF CASE: Craig Thomas Tiffie

DATE OF HEARING: 07/30/2019

Would you like a transcript e-mailed to you?  Yes  No

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\*DEADLINE FOR TRANSCRIPT: As Soon As Possible

NAME OF ATTORNEY: Thomas C. Micherelides Esq.

TELEPHONE NUMBER: 702-462-1111

\*Please be advised that 30 days is allowed to complete all transcripts.

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DISTRICT COURT JUDGE

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**TRANSCRIPT ORDER FORM**

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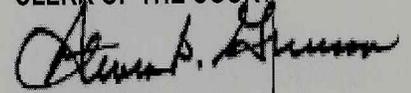
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NAME OF ATTORNEY: Thomas C. Michelides Esq.

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**TRAN**

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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In the Matter of the Petition of:

CASE NO. A-19-796636-S

9

CRAIG THOMAS TIFFEE

DEPT. IX

10

11

12

13

14

BEFORE THE HONORABLE CRISTINA D. SILVA,  
DISTRICT COURT JUDGE

15

16

TUESDAY, JULY 30, 2019

17

***TRANSCRIPT OF HEARING***  
**PETITION TO SEAL RECORDS**

18

19

APPEARANCES:

20

For the Petitioner:

THOMAS C. MICHAELIDES, ESQ.

21

For the DA's Office:

DANNY A. SILVERSTEIN, ESQ.

22

1

Las Vegas, Nevada, Tuesday, July 30, 2019

2

3

[Case called at 8:45 a.m.]

4

THE COURT: Calling Case Number A-19-796636-S. In the  
5 Matter of the Petition of Craig Thomas, is it Tiffée? Tiffée?

6

MR. MICHAELIDES: Tiffée, Judge.

7

THE COURT: Tiffée. Good morning. How are you?

8

MR. MICHAELIDES: Good morning, Judge, good to see  
9 you again.

10

THE COURT: Good to see you too.

11

Good morning.

12

MR. SILVERSTEIN: Good morning, Your Honor. Dan  
13 Silverstein on behalf of the Clark County District Attorney's Office.

14

THE COURT: All right. Good morning.

15

MR. MICHAELIDES: Tom Michaelidas, 5425 on behalf of  
16 Craig Tiffée, the Petitioner, who is present.

17

THE COURT: Good morning.

18

MR. TIFFEE: Good morning.

19

THE COURT: All right. I have read the Petition to Seal  
20 Records, as well as the State's Opposition to the Petition to Seal  
21 Records.

22

So I'm going to start with the Petitioner Mr. Michaelides

1 a Reply together. So with it being late, I believe we got it done  
2 yesterday and filed.

3 THE COURT: Hmm.

4 MR. MICHAELIDES: Because for a long time there was no  
5 Opposition. I got nothing against the Counselor, but we just got it, I  
6 think it was Tuesday or Wednesday. I sent a courtesy copy over, it  
7 was shown Glen O'Brien as the DA handling the case and we  
8 courtesy copied Your Honor's Chambers. And it's a brief reply.

9 THE COURT: Okay.

10 MR. MICHAELIDES: Two pages.

11 THE COURT: All right.

12 So it's your position that the felony was not reduced, it  
13 was withdrawn, even though the negotiations were to plead to a  
14 felony and if he complied, it would be reduced.

15 MR. MICHAELIDES: Correct, Judge.

16 THE COURT: Okay.

17 MR. MICHAELIDES: That we're not looking to seal two  
18 cases, two convictions, just one; not the felony, that was  
19 withdrawn. In its place was the gross misdemeanor and that's the  
20 only conviction we're looking to seal, so there's one not two.

21 And under the new statutory scheme maybe, I think it's

22 226 the reduced holding time, of course that gets everyone's

1 has, the presumption is now on the State -- of the probation office  
2 and the DA's office to show by clear and convincing evidence that it  
3 should not be sealed.

4 So I think that presumption now puts the burden on the  
5 State and reading the Opposition, I don't think they've met the clear  
6 and convincing standard. I don't think you can use, as the State did  
7 in their Opposition, the nature of the charge, because we've already  
8 passed through that door with the statutory timelines. They said  
9 this charge can be sealed after this time, so there must other  
10 evidence to rebut that presumption of sealing it for the Petitioner.

11 The gross misdemeanor, we've met the time periods. He  
12 completed 22 months of probation, and successfully built his career  
13 since then, so I haven't seen the evidence to rebut the presumption  
14 created by the new statutory scheme.

15 THE COURT: Talk to me about the public policy aspect of  
16 sealing versus not sealing. I didn't see that addressed in your  
17 Reply.

18 MR. MICHAELIDES: And again, from the public policy  
19 standpoint, the State would have to argue a clear and convincing  
20 evidence why you shouldn't seal Tiffie's for public policy reasons.  
21 Here we have a conviction that after he completed the probation, it  
22 was reduced. It was reduced for a reason. The State got a little bit

1 facts that were left out was this, and it's important, in between that  
2 e-mail string that led to the meeting, there was a second e-mail  
3 string about a little bit less than month, a little bit over three weeks.

4           And what happened was the detective was e-mailing  
5 Tiffiee at that first e-mail string the detective clearly said I'm a  
6 minor. Tiffiee's response was thank you, no thank you, and ceased  
7 all communication, for that very reason, he doesn't do that kind of  
8 stuff. He never contacted the detective again and he's going --  
9 lying, talking to dozens, hundreds of other people he's meeting.

10           It was over three weeks later the detective reengaged in a  
11 second e-mail string with Tiffiee and at that point set up the  
12 meeting. Never mentioned his age. He eluded to living next to a  
13 school and living with his grandmother, which a lot of college  
14 people do, but never said his age. It was only in the first e-mail  
15 string.

16           So there would be no reason for the Petitioner to put  
17 those two individuals together and say hey, this is the same person  
18 because this is in 2007 or 8. And back then on Craigslist, the e-mail  
19 never came -- there was no e-mail address that would come up if it  
20 goes through Craigslist, so there's no way -- oh and when the  
21 detective said in the first e-mail string he's a minor, Tiffiee deleted  
22 all those so there's nothing there for him to say hey, this is the

1 When you're looking at a possible decades in prison as a sexual  
2 offender, especially with a minor, versus probation, I mean, the  
3 choice is pretty easy. I'd have to have a client go through  
4 competency testing if they chose to go to trial and risk life in  
5 prison -- potentially can be a life in prison sentence, given the age,  
6 versus take a guarantee of probation. So that's why he made that  
7 choice.

8 So the dropdown -- not the dropdown, excuse me. The  
9 allowing to withdraw and replacing it with a gross demeanor was  
10 for a very good reason and that reason was the strength of the case  
11 was not that overwhelming.

12 Given what he's done since then, Judge, started his own  
13 business in realty, he employs -- the last time I asked him it was  
14 over ten different employees every day that base their living,  
15 paying their bills and their mortgage on Mr. Tiffie's company. He's  
16 involved in numerous other community activities. In fact, he was  
17 just on the -- didn't -- wasn't selected for the jury, but he's appeared  
18 and was in the final selection process.

19 So he's back into the community, he's producing in the  
20 community as an employer, and as a citizen. He has moved his  
21 immediate family -- his father was a sheriff in California, he had an  
22 injury. He's moved his father, his mother, and two siblings from

1           And again, Judge, it's with that backdrop -- you know,  
2 we're -- this is a different argument than 2016. But in 2017, with the  
3 State now having the burden by clear and convincing to show why  
4 we shouldn't seal this record -- there are nine standard reasons for  
5 denying the request to seal, ranging from the time periods to the  
6 convictions, to picking up new charges, none of those apply in this  
7 case.

8           THE COURT: So --

9           MR. MICHAELIDES: So I think the State will have a hard  
10 time.

11           THE COURT: The police report indicates that on 06/18 of  
12 2009, the undercover replied to a Gmail -- an e-mail account strictly  
13 for the purposes of an undercover operations. Then after the  
14 undercover advised he was only 15 years -- or he was posing as a  
15 15-year old and then two days later there was correspondence with  
16 the Defendant.

17           So are you saying there was an initial contact and then  
18 there was subsequent contact?

19           MR. MICHAELIDES: And I'm going to check with Mr.  
20 Tiffie. There was initial contact, he stated he was a minor and then  
21 my understanding was three weeks -- Court's indulgence.

22           THE COURT: Sure

1 hired Mr. Draskovich who was in the -- and I talked to him, Your  
2 Honor -- was in the process of subpoenaing the records to show the  
3 length of time. He is adamant it was three weeks. I don't think he  
4 would have based his defense on something that could have been  
5 so easily disproven.

6 The detective at the time was very busy and this was a  
7 sting where he had dozens and dozens of people involved in that.  
8 So we believe that's incorrect and we would probably be able to  
9 prove that if that was the crux of the Court, needing to get that  
10 information. But he's adamant it was three weeks, Your Honor.

11 THE COURT: Okay. Yeah, there is communication that I --  
12 that the undercover resided near Foothills High, but this appears to  
13 be an ongoing conversation because there's conversations in  
14 between. One on 6/20, one on 06/21, one on 06/26, then on 06/30 is  
15 the conversation regarding Foothills High. Okay. All right.

16 MR. MICHAELIDES: Yeah, and I just -- and one more  
17 point, Judge. And after that breakoff and the reengagement of the  
18 second e-mail string, the detective never said his age. I believe the  
19 two most damning pieces of quotes were one, about I live near a  
20 school and two, living with the grandma. It would have been that  
21 that he would have had to deduce well, is this a minor.

22 THE COURT: Okay. Thank you very much.

1 felony that we all agree is not sealable pursuant to the statute that  
2 because under the negotiation that crime was later reduced to a  
3 lesser offense that now it is sealable.

4 The State's position is that, as Counsel pointed out, there  
5 are statutory guidelines to certain offenses that are not sealable  
6 under Nevada law. That's NRS 179.245 and one of those offenses  
7 specifically mentioned in subsection (8)(b) of that statute is the  
8 luring offense that Mr. Tiffiee was originally charged with.

9 Now, I understand that that's not the charge that  
10 eventually made it to his record and it's not the charge of which he  
11 was eventually convicted; however, the statutes contemplate  
12 charges that are related to the initial charge, as being unsealable if  
13 they were initially related to an offense in subsection (8)(b).

14 So even though the negotiation contemplated a much  
15 better outcome for Mr. Tiffiee, one of the negative consequences of  
16 being charged with that offense is that even the subsequently  
17 negotiated charge will not be sealable. So that was a collateral  
18 consequence of being charged under the luring statute.

19 Now, all of the arguments about Mr. Tiffiee's conduct since  
20 and being a good citizen, I am sympathetic to those arguments and  
21 the Court certainly has the authority in its discretion to seal this -- to  
22 seal the record; however, as far as stipulating, we believe that the

1 elapsed between the contact with the undercover officer and the  
2 details of those communications, I don't find those to be relevant at  
3 all to the legal question before the Court.

4 So if Mr. Tiffie had some kind of valid defense to the  
5 charges, I think that he should have taken the case to trial. By  
6 negotiating the case, he was on notice that it would not be sealable  
7 and he was on notice at the time of the negotiations.

8 THE COURT: Okay. All right.

9 Would you like to respond?

10 MR. MICHAELIDES: Briefly, Judge.

11 Again, the argument that at -- first in the Opposition it's  
12 two cases -- convictions he's trying to get sealed, the first with a  
13 felony, the second with gross, it doesn't work because it's only one.

14 The argument then -- well then it relates to it, again, I think  
15 it is unsupported because when I read that in there, I thought I was  
16 going to see some citations to case law or in the statute where we  
17 talk about it but if it relates back to something. There were no  
18 citations after that argument about relating to it, so we're back to  
19 the exact words of the sealing statute; that if it is this gross  
20 misdemeanor, it can be sealed after this time period, which he's  
21 met all of those requirements.

22 So in response to the very significant burden of having to

1 case law that backs that up, so I'd submit based upon that, Judge.

2 THE COURT: Thank you.

3 Having reviewed the Petition and the Response, and the  
4 Reply and hearing the arguments of Counsel, you know, this is an  
5 interesting question. I don't think there's any citations because  
6 there are no cases that actually address this specific issue. We  
7 spent -- myself and chambers spent a significant amount of time  
8 looking to see what we could find and we couldn't find anything. I  
9 have to say candidly I'm surprised this hasn't come up before,  
10 given the way that sometimes cases are negotiated.

11 So I then look to the legislative intent regarding the  
12 underlying offense to which Mr. Tiffie pled, understanding that the  
13 agreement with the State at the time he pled would be a dropdown  
14 should he successfully complete probation, which he did, so I  
15 congratulate you on that. I congratulate you on getting your life in  
16 order, and kind of getting things back on track.

17 But I think I have to rely on the legislative intent and the  
18 underlying conviction and that's pursuant to NRS 179.245,  
19 subsection (6) and that I may not seal records based on sexual  
20 offense. I'm going to deny the Petition based on that statute for a  
21 number of reasons. One, it explicitly says that, but two, when I  
22 went back and checked the history of the case, as part of the

1 underlying statute and the underlying basis why the legislator  
2 created these exceptions to sealing; one of them being the inability  
3 to seal sexually-based offenses. And so for that reason, I'm going  
4 to deny the Petition.

5 I'm going to ask that the State prepare a draft Findings of  
6 Facts and Conclusions of Law. If you could send that to chambers  
7 electronically, I'd like to take a look at them and amend them  
8 accordingly, so you'll have something to --

9 MR. MICHAELIDES: Just one point, Your Honor.

10 THE COURT: Yes.

11 MR. MICHAELIDES: This was -- the Court referred to  
12 dropdown. This was a withdrawal plea; in other words, the felony  
13 conviction that Your Honor's correct can't be sealed, it was  
14 withdrawn and then he entered a brand new plea to gross  
15 misdemeanor, so there is no more felony around. We're not asking  
16 to seal that.

17 The sexual statute -- or the statute relating to sexual  
18 offense for the gross misdemeanor says you can seal it and it's  
19 presumed that it should be sealed. I would just point that out. It  
20 was not a dropdown.

21 THE COURT: I appreciate that.

22 MR. MICHAELIDES: Okay.

1 discharged, and I withdraw my plea and plead guilty to unlawful  
2 contact with a child, which is a gross misdemeanor.

3 So I appreciate that and I understand it's not a dropdown  
4 in the, he applied and he got a dropdown, that was part of the  
5 negotiations but with the initial plea agreement to the plea that it  
6 was, I think it still relates back to the 179.245, subsection (6) --

7 MR. MICHAELIDES: Okay.

8 THE COURT: -- prohibition on sealing sexually based  
9 offenses.

10 Thank you very much.

11 MR. MICHAELIDES: Thank you, Judge.

12 MR. SILVERSTEIN: Thank you, Your Honor.

13 [Proceeding concluded at 9:02 a.m.]

14 \* \* \* \* \*

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21 ATTEST: I do hereby certify that I have truly and correctly  
22 transcribed the audio/video proceedings in the above-entitled case