IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG THOMAS TIFFEE, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 79871

RESPONDENT'S ANSWERING BRIEF

Appeal From Order Denying Petition to Seal Records
Eighth Judicial District Court, Clark County

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STATEMENT OF THE ISSUE

Whether the District Court did not abuse its discretion by denying Appellant's Petition to Seal Records, when the Court determined that the offense Appellant pled guilty to and the offense in the Amended Judgment of Convictions are sexual offenses and crimes against a child.

STATEMENT OF THE CASE

On February 8, 2019, Craig Thomas Tiffee ("Appellant") filed a "Motion to Place on Calendar" in his criminal case: 10C264460 ("C264460"). Appellant's Appendix ("AA") 27-34. The purpose of this Motion was to request that his record be sealed. Id. On February 19, 2019, the State filed its Opposition to Appellant's Motion to Seal Records, which noted that Appellant improperly was requesting the

ability to seal his record, as the normal procedure required a random reassignment to a judicial department. Respondent's Appendix ("RA") 02. On February 20, 2019, Appellant's counsel advised that he would properly file a civil petition, and the State advised that the matter could be taken off calendar; the district court ordered accordingly. RA 16.

On June 13, 2019, Appellant filed his Petition to Seal Records; the case was randomly assigned and given the following case number: A-19-796636-S. AA 02-04, 06. On July 24, 2019, the State filed its Opposition. RA 17-25. Appellant filed his Reply on July 29, 2019. AA 07. On July 30, 2019, the district court heard argument regarding the matter and denied the Petition to Seal Records. AA 12-25. On September 26, 2019, the District Court entered its Findings of Fact, Conclusions of Law and Order. AA 06-10.

On April 2, 2020, Appellant filed his Opening Brief.

STATEMENT OF THE FACTS

The following facts were obtained from the Findings of Fact, Conclusions of Law and Order as filed on September 26, 2019[1]:

[1] The district court noted that the summary of facts were drawn from the police report as attached as Exhibit 1 to the State's Opposition. AA 06. The court stated:

> This summary of facts is drawn from the police report identified as Exhibit 1 attached to the State's Opposition to the Petition to Seal. The Court recognizes that the Petitioner disputed some of the facts in the report during the hearing regarding his petition to seal. The Court

Craig Thomas Tiffee (hereinafter Petitioner) sought to seal a June 30, 2009 arrest, charging him with Using Technology to Lure Children (Case No. 10C264460). Petitioner was arrested following an undercover operation conducted by the Henderson Police Department (HPD). During the course of that operation, a HPD Detective posed as a 15-year old female and engaged in several communications with the Petitioner in an undercover capacity.1 During some of those communications, the Detective made numerous statements alluding to the fact that the Petitioner was communicating with a minor. After a number of communications and at the request of Petitioner, the Detective agreed to meet Petitioner at a designated location. Petitioner was arrested upon his arrival at the designated location, where he was in possession of a condom and lubricant. After his arrest, Petitioner admitted to being at the designated location to meet a person for sex, but claimed ignorance as to the age of the person he intended to meet. Petitioner was approximately 34 years old at the time of the offense.

Pursuant to a guilty plea agreement, Petitioner was convicted of Luring Children or Mentally Ill Persons with Use of Technology with the Intent to Engage in Sexual Conduct (Category B felony - NRS 201.560) in case C264460, and pursuant to negotiations, Petitioner was sentenced to three years probation with a number of conditions. Petitioner's guilty plea agreement included the option to withdraw his felony plea and instead plead guilty to Unlawful Contact with a Child, a gross misdemeanor, if he successfully completed all conditions of probation and received an Honorable Discharge. The plea agreement was silent regarding Petitioner's ability to apply to seal his record at some future date.

Petitioner successfully completed his term of probation and was honorably discharged. As a result, his prior plea to the Category B felony offense was withdrawn. On July 23, 2012, he was subsequently adjudicated guilty of Unlawful Contact with a Child, a misdemeanor offense.

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considered his disputes in reaching its conclusion to deny the Petition. Making no credibility determination, even if the Court accepted Petitioner's disputes as true, the Court would nonetheless reach the same conclusion.

Id.

AA 06-07.

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion by denying the Petition to Seal Record because Appellant was not entitled to have the underlying criminal charge sealed pursuant to the relevant statute. Appellant initially pled guilty to a sexual offense, which cannot be sealed pursuant to NRS 179.245. Moreover, the Court properly exercised its discretion in denying the Petition after evaluating the underlying factual basis for the crime.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT'S PETITION TO SEAL HIS RECORD

A. Standard of Appellate Review.

This court generally reviews a district court's decision whether to seal criminal records for an abuse of discretion. See State v. Cavaricci, 108 Nev. 411, 412, 834 P.2d 406, 407 (1992). However, a district court's interpretation of statutes is reviewed de novo. State, Dep't of Motor Vehicles & Pub. Safety v. Frangul, 110 Nev. 46, 48-51, 867 P.2d 397, 398-400 (1994) (interpreting criminal record sealing statutes). When interpreting a statute, this Court will not look beyond its plain language if it is "clear on its face." Pawlik v. Deng, 134 Nev. 83, 85, 412 P.3d 68, 71 (2018) (quotation marks omitted). Moreover, when possible, this Court must interpret a statute in harmony with other statutes "to avoid unreasonable or absurd

results." We the People Nev. v. Miller, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008). "If a statute is ambiguous, meaning that it is susceptible to differing reasonable interpretations, [it] should be construed consistently with what reason and public policy would indicate the Legislature intended." Star Ins. Co. v. Neighbors, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006) (quotation marks omitted).

B. Standard for Sealing a Criminal Record.

As an initial matter, there is no constitutional right to have a criminal record sealed. The power to do so is strictly a legislative grant of authority allowing courts to exercise discretion when all statutory criteria have been met. Sang Man Shin v. State (In re Sang Man Shin), 125 Nev. 100, 206 P.3d 91 (2009). Criminal records of an individual's arrests and/or convictions may be sealed if the restrictions imposed by the Nevada Revised Statutes are met. To seal criminal convictions, NRS 179.245 provides that:

> 1. Except as otherwise provided in subsection 6 and NRS 176A.265, 176A.295, 179.247, 179.259, 201.354, 453.3365 and 458.330, a person may petition the court in which the person was convicted for the sealing of all records relating to a conviction of:
>
> (a) A category A felony, a crime of violence pursuant to NRS 200.408 or burglary pursuant to NRS 205.060 after 10 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;
>
> (b) Except as otherwise provided in paragraphs (a) and (e), a category B, C or D felony after 5 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(c) A category E felony after 2 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(d) Except as otherwise provided in paragraph (e), any gross misdemeanor after 2 years from the date of release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of NRS 422.540 to 422.570, inclusive, a violation of NRS 484C.110 or 484C.120 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later;

(f) Except as otherwise provided in paragraph (e), if the offense is punished as a misdemeanor, a battery pursuant to NRS 200.481, harassment pursuant to NRS 200.571, stalking pursuant to NRS 200.575 or a violation of a temporary or extended order for protection, after 2 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later; or

(g) Any other misdemeanor after 1 year from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later.

…

4. If the prosecuting attorney who prosecuted the petitioner for the crime stipulates to the sealing of the records after receiving notification pursuant to subsection 3 and the court makes the findings set forth in subsection 5, the court may order the sealing of the records in accordance with subsection 5 without a hearing. If the prosecuting attorney does not stipulate to the sealing of the records, a hearing on the petition must be conducted.

5. If the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or

> standing traffic violations, the court may order sealed all records of the conviction which are in the custody of any agency of criminal justice or any public or private agency, company, official or other custodian of records in the State of Nevada, and may also order all such records of the petitioner returned to the file of the court where the proceeding was commenced from, including, without limitation, the Federal Bureau of Investigation and all other agencies of criminal justice which maintain such records and which are reasonably known by either the petitioner or the court to have possession of such records.
>
> To seal criminal arrests, NRS 179.255 (1) provides that:
>
> 1. If a person has been arrested for alleged criminal conduct and the charges are dismissed, the prosecuting attorney having jurisdiction declined prosecution of the charges or such person is acquitted of the charges, the person may petition:
>
> (a) The court in which the charges were dismissed, at any time after the date the charges were dismissed;
>
> (b) The court having jurisdiction in which the charges were declined for prosecution:
>
> (1) Any time after the applicable statute of limitations has run;
> (2) Any time 8 years after the arrest; or
> (3) Pursuant to a stipulation between the parties; or
>
> (c) The court in which the acquittal was entered, at any time after the date of the acquittal, for the sealing of all records relating to the arrest and the proceedings leading to the dismissal, declination or acquittal.

Both of these statutes must be considered in conjunction as evidenced in State v. Cavaricci, 108 Nev. 411, 834 P.2d 406 (1992). In Cavaricci, the petitioner sought to seal "three 1984 convictions and several subsequent arrests during 1987-90 which did not result in convictions." The Nevada Supreme Court found that the district court abused its discretion pursuant to NRS 179.245(3) since NRS 179.245(1)(d)

requires that the petitioner be arrested for nothing greater than minor traffic violations during the mandatory time periods. The Court Stated:

> a review of respondent's criminal record reveals at least seven incidents since 1984 resulting in numerous charges, including multiple DUI arrests, resisting arrest, resisting a police officer, battery with use of a deadly weapon and possession of a controlled substance. These do not qualify as "minor traffic violations" under the statute.

Cavaricci, 834 P.2d at 407. The Court further stated that it was an error to seal portions of the record in which charges were dismissed pursuant to NRS 179.255. The Court examined the frequency and the type of arrests and held that "as revealed by his record of arrests and convictions, respondent is simply not the type of person upon whom the judiciary will confer such a substantial benefit as the sealing of his criminal records." Id. at 408.

Cavarricci makes it clear that a court must review a petitioner's criminal record as a whole. Criminal records of an individual's arrests and convictions may be sealed only if the restrictions imposed by the Nevada Revised Statutes are met. NRS 179.245(6) states that: "A person may not petition the court to seal records relating to a conviction of…[a] sexual offense…." (Emphasis added). NRS 179.245(8)(b) defines a sex offense as:

> (1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.
>
> (2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a felony.

(4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

(6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.

(7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

(8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(9) Incest pursuant to NRS 201.180.

(10) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony.

(11) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony.

(12) Lewdness with a child pursuant to NRS 201.230.

(13) Sexual penetration of a dead human body pursuant to NRS 201.450.

(14) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

(15) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

(16) Luring a child or a person with mental illness pursuant to NRS 201.560, if punishable as a felony.

(17) An attempt to commit an offense listed in this paragraph.

(Emphasis added). "Not all convictions are eligible to be sealed—for example, sex offenses and crimes against children are never eligible to be sealed no matter how old the convictions." Matter of Finley, 135 Nev. 474, 474, 457 P.3d 263, 264 (Nev. App. 2019).

C. Appellant was not Entitled to have his Underlying Criminal Charge Sealed Pursuant to NRS 179.245.

The district court properly found that Appellant's original offense and the offense he plead guilty to, Luring Children or Mentally Ill Persons with Use of Technology, was a sexual offense under NRS 179.245. AA 08-09. Moreover, the court determined that the offense Appellant plead to, and the offense now reflected in his Amended Judgment of Conviction were sexual offenses and crimes against a child. AA 09. The court made this finding based upon a plain reading of the statute. Id. Appellant claims that this finding is incorrect, even though he admits that the crime of Luring Children is a sexual offense and a crime against a child. AOB 7.

Appellant further states that the charge that he plead to after withdrawing his plea was Unlawful Contact with a Minor, which is a misdemeanor[2] under NRS

[2] This was incorrectly stated as the charge of Unlawful Contact with a Minor is a gross misdemeanor.

207.260. AOB 7. According to Appellant, this is not listed as a sex offense and the district court erred in concluding that "both charges" are not crimes relating to a sexual offense. AOB 8. Finally, Appellant claims the district court erred in concluding that both the felony charge of NRS 201.560 and the gross misdemeanor under NRS 207.260 are sexual offenses. AOB 8.

Appellant was originally charged with and entered a guilty plea to one (1) count of Luring Children or Mentally Ill Persons with Use of Technology with the Intent to Engage in Sexual Conduct, which is a Category B Felony under NRS 201.560. AA 07. According to the negotiations of his guilty plea, both parties agreed to recommend probation not to exceed a three (3) year term, provided Appellant was not a high risk to re-offend pursuant to a psychosexual evaluation. RA 21-22. If Appellant successfully completed all conditions of probation and received an Honorable Discharge, he would be allowed to withdraw his plea to the felony conviction and enter a plea to one (1) count of Unlawful Contact with a Child (gross misdemeanor). AA 07; RA 21-22. On September 27, 2010, Appellant was adjudicated guilty of Luring Children or Mentally Ill Persons with Use of Technology with the Intent to Engage in Sexual Conduct and placed on probation. RA 21-22. Appellant completed probation and was subsequently adjudicated guilty of Unlawful Contact with a Child on July 23, 2012. AA 07; RA 21-22.

Appellant cannot escape the fact that he was adjudicated guilty of the charge of Luring Children or Mentally Ill Persons with Use of Technology with the Intent to Engage in Sexual Conduct, as charged in the Information. Moreover, he cannot escape the fact that the factual basis for his adjudicated crime involved a sexual offense and a child. These will always be historical facts that cannot be changed, even though the charge was later reduced. Based on his plea and adjudication, Appellant did not qualify to have his record sealed. Luring Children or Mentally Ill Persons with Use of Technology with the Intent to Engage in Sexual Conduct is one of the enumerated crimes that cannot be sealed under NRS 179.245(8)(b). Accordingly, the district court did not err in its determination that both the charge that Appellant pled guilty to and the charge reflected in the Amended Judgment of Conviction were both convictions involving a sexual offense and crimes against a child. As such, Appellant was not eligible to seal his case.

Such determination is true even though Appellant was later allowed to withdraw his plea and plead guilty to another offense. This being that the record sealing statutes contemplate charges that are related to the initial charge. Moreover, Appellant was adjudicated of the offense of Unlawful Conduct with a Child, which clearly is a crime relating to the crime of Luring Children or Mentally Ill Persons with Use of Technology with the Intent to Engage in Sexual Conduct. Appellant understandably must accept all consequences from the nature of his plea and the

offense charged. As such, pursuant to NRS 179.245(6) Appellant's record could not be sealed, and the district court did not err.

D. The District Court Properly Exercised its Discretion.

Within its Findings, the district court made the following conclusion:

> Further, based upon the facts presented to the Court, it finds that the Petitioner is 'simply not the type of person upon whom the judiciary will confer such a substantial benefit as the sealing of his criminal records.' State v. Cavaricci, 108 Nev. 411,413, 834 P.2d 406, 408 (1992). In particular, the Court finds that Luring Children with Use of Technology with the Intent to Engage in Sexual Conduct is a serious crime with strong public policy concerns, and that public records of these charges and convictions are necessary to protect the public-and, importantly, children-from harm.

AA 09. "In no instance does the statute ever require any court to seal any conviction; under the statute, a court always possesses the discretion to refuse to seal any conviction even when it is eligible to be sealed." Matter of Finley, 135 Nev. 474, 478, 457 P.3d 263, 267 (Nev. App. 2019).

As the State argued below before the district court, even if the district court found that Appellant's convictions were eligible to be sealed, the district court should not have exercised its discretion on behalf of Appellant. The relevance being that Appellant cannot evade the underlying factual basis for the crime that he plea guilty to, and the crime that is reflected in the Amended Judgment of Conviction.

At the time of the crime, Appellant was thirty-four (34) years old. AA 07. He posted an ad on craigslist.com to seek out a sexual relationship with a young gay

male. RA 10. A Henderson Police Department Detective ("HPD") posed as fifteen (15) year old minor and engaged in several communications with Appellant. AA 06.[3] During the course of this communication, over the course of multiple days, the Detective made numerous statements that alluded to the fact that he was a minor. AA 06; RA 10-11. Specifically, the Detective told Appellant that he was fifteen (15) years old. RA 10. Still, Appellant persisted and continued to attempt to initiate sexual contact. RA 10-11.

Ultimately, after multiple requests by Appellant, the detective arranged to have an undercover officer meet Appellant. AA 06-07, RA 11-12. Upon the detective's arrival at the designated location, Appellant was subsequently arrested; at the time of arrest, Appellant had a condom and lubricant in his possession. AA 07. Even though Appellant admitted to being in the location to meet a person for sex, he claimed ignorance regarding the person's age. AA 07.

Appellant's clear intent was to lure a child to him for the purpose of engaging in sexual acts with that child. This act alone should keep him from sealing his record. The fact is, the public should be on notice about predators such as Appellant. Despite the report of the conversations, indicating that the target was a minor, Appellant still claimed ignorance.

[3] While the order says that the HPD Officer was posing as a young female, the record should reflect that the Officer was posing as a young male. RA 10.

Furthermore, Appellant failed to demonstrate that he was rehabilitated such that the public has no need to worry about his future behavior. The simple fact that he completed probation does not mean that he is rehabilitated, it simply means that he did was he needed to in order to stay out of prison. Appellant again asserted that he built his own business, but this is a business for his own personal gain that also relies on the same internet that gave rise to his crime. Besides this personal business and some charity work, Appellant failed to demonstrate to the district court that he is not a threat.

The district court properly used its discretion in denying Appellant's petition to seal his record. It was incumbent on a reviewing court to look at each case individually, and if this is not what the legislature intended, then it would have made the sealing of records automatic. However, when the court looked at this individual, the district court clearly determined that this was someone who was "simply not the type of person upon whom the judiciary will confer such a substantial benefit as the sealing of his criminal records." Cavaricci at 411, 834 P.2d at 408. Therefore, even if this Court concludes that Appellant's record was eligible for sealing, the district court ultimately used its discretion in denying the Petition based upon the circumstances of this case.

/ / /

/ / /

CONCLUSION

For the foregoing reasons, the State respectfully requests that the District Court's denial of the Petition to Seal Records be AFFIRMED.

Dated this 24th day of July, 2020.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 3,821 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 24th day of July, 2020.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 24, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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