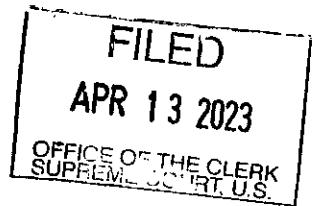


22-7315 NO. ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY D. BARREN, SR. - PETITIONER

vs.

THE STATE OF NEVADA - RESPONDENT(S)

ON PETITION FOR A WRIT OF

CERTIORARI TO

THE SUPREME COURT OF THE STATE OF NEVADA

PETITION FOR WRIT OF CERTIORARI

GREGORY D. BARREN, SR.
2977 JUNIPER HILLS BLVD #101
LAS VEGAS NV 89142
702-626-1497

QUESTION(S) PRESENTED

Did the State of Nevada violate the Juvenile Court Act announced in Kent v. United States by denying Petitioner's Motion to Transfer back to juvenile jurisdiction after the majority of the charges that Petitioner was certified on were adjudicated unlawful and accordingly dismissed?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

None.

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CASES	PAGE NUMBER
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STATUTES AND RULES

28 U.S.C. § 1257

NRS 62.080

OTHER

United States Constitution, Amendment IV

United States Constitution, Amendment V

United States Constitution, Amendment VI

United States Constitution, Amendment XIV

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix

to

the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or, [] is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or, [] is unpublished.

[x] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix O to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the _____ court

appears at Appendix ___ to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date)
in Application No. A _____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was January 17, 2023. A copy of that decision appears at Appendix O _____

A timely petition for rehearing was thereafter denied on the following date: January 17, 2023, and a copy of the order denying rehearing appears at Appendix O _____

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment XIV:

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of

the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Over 55 years ago, this Court held in *Kent v. United States* that the juvenile court order waiving jurisdiction and remitting Petitioner for trial in the District Court was invalid. 38 U.S. at 552-564.

(a) The Juvenile Court's latitude in determining whether to waive jurisdiction is not complete. It "assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a full investigation.

383 U.S. at 552-554.

In *In re Gault*, this Court held that: when proceedings may result in incarceration in an institution of confinement, "*it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase due process.*" 387 U.S. at 12-13.

Although Petitioner's case may differ in the waiver hearing process from that in *Kent v. United States*, where in the case of Mr. Kent, the Court did not rule on his pertinent motions, which appears to have violated Mr. Kent's rights to due process, and invalidated the Court's waiver order, the same constitutional principles apply. In the case of Petitioner, the certification order (waiver) was based upon criminal charges that were adjudicated to be unlawful, and were accordingly dismissed warranting an action to amend the criminal complaint that had been used to certify Petitioner as an adult. The amendment of the criminal complaint voided the criminal charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, which were the predominant criminal charges that were used to certify Petitioner as an adult prior to the criminal charges being dismissed on the request of the State.

This case presents the question of whether the certification of Petitioner to an adult was lawful and valid after the majority of the consolidated criminal charges that were used in the certification process of Petitioner were dismissed. It also presents the second question of whether the denial of Petitioner Barren's Motion to Transfer back to juvenile jurisdiction violated his rights to due process after the dismissal of the charges that Petitioner Barren was certified on. Lastly, it presents the question whether the State of Nevada, by and through the District Attorney's office, violated Petitioner Barren's Sixth Amendment rights to a fair and impartial hearing after the State of Nevada's principal and sole witness during preliminary hearing, voluntarily admitted to having blank outs before, and during, an alleged sexual assault, and was allowed to continue to testify, even after displaying and admitting his cognitive deficiencies.

REASONS FOR GRANTING THE PETITION

The Unlawful Arrest of Petitioner Barren and the Following Defective Certification Process

On September 19, 1979, Petitioner Gregory Barren, Sr. was unlawfully arrested and detained at Juvenile Hall on charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon. *See Appendix A, Decision on Motion to Suppress, page 3, lines 23-30; see also Appendix B, Information.* On October 24, 1979, as a result of being unlawfully arrested and detained at Juvenile Hall, Petitioner was thereby subjected to an accusation from a fellow inmate alleging that Petitioner Barren participated in a sexual assault against him, i.e. that the Petitioner coerced the alleged male victim into the performance of fellatio on Petitioner Barren. *See Appendix C, Amended Information; see also Appendix D, Transcript of Hearing, page 94, lines 6-26.* Before the alleged incident of sexual assault at Juvenile Hall, it had been a recommendation of the State of Nevada, by and through the District Attorney's office, that the Petitioner be certified as an adult due to the nature of the original charges that were filed against Petitioner. While that determination was being made to certify Petitioner as an adult, the alleged additional charge of sexual assault was added to that, and while that determination was pending, the District Attorney amended the petition to certify to include the additional charge of sexual assault. The court then did order Petitioner Barren to stand trial as an adult on charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, and on the consolidated charge of sexual assault alleged while being unlawfully arrested and detained at Juvenile Hall. *See Appendix E, Setting of Evidentiary Hearing, page 3, lines 25-32, and page 4, lines 1-4.*

After the November 8, 1979, certification to adult status of Petitioner Barren, on January 28, 1980, a preliminary hearing was conducted before the Honorable Judge Charles Thompson, who

concluded that Petitioner Barren's September 19, 1979, arrest on charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon was unlawful. Accordingly, on February 28, 1980, the court dialogued its adjudication of the January 28, 1979, and January 29, 1979, preliminary hearing, and concluded that Petitioner was unlawfully arrested on the charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon. *See Appendix F, Initial Arraignment at page 8, lines 7-11; and throughout Appendix A, Decision on Defendant's Motion to Suppress; and Appendix G, Order Dismissing original Information.* After the dismissal of the September 19, 1979, charges of kidnap, robbery, and sexual assault, all with the use of deadly weapon, which was the predominant information that was used to certify Petitioner was voided and the information was amended to the one (1) charge of sexual assault involving that of fellatio only, that was alleged while being unlawfully detained at Juvenile Hall. *See Appendix C, Amended Information.*

After the February 29, 1980 order dismissing the original Information (*see Appendix G, Order Dismissing Information*), on March 11, 1980, Petitioner submitted his Motion to Transfer back to the Juvenile division of the court on the grounds that, since the time of Petitioner being certified to stand trial as an adult, the charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, were all dismissed on the State's motion. *See Appendix G, Order Dismissing Information.*

Under Nevada Revised Statute 62.080, any person who has been certified to stand trial as an adult, may thereafter Petition the Court to be transferred back to the Juvenile Division, upon the showing of exceptional circumstances. Petitioner Barren showed those exceptional circumstances, because Petitioner has shown that the underlying basis for the certification order included predominant criminal charges that had since been dismissed. *See Appendix H, Motion to Transfer; Appendix*

J, Juvenile Court Act, Nevada Revised Statute 62.080. On March 19, 1980, Petitioner's Motion to Transfer was denied solely on the basis of "once certified, always certified." *See Appendix I*, Defendant Gregory Dean Barren's Motion to Transfer; Appendix J, Juvenile Court Act, Nevada Revised Statute 62.080.

Petitioner contends that by denying his Motion to Transfer back to Juvenile Court, the denial effectively violated Petitioner's rights to due process, where not only the criminal Information that was considered by the Juvenile Court to certify Petitioner had been dismissed, but also the Juvenile Court was interposed of its responsibility to properly assume procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a full investigation. *Kent v. United States*, 383 U.S. 541 (1966).

Petitioner Barren's Motion of Writ of Error Coram Nobis

On March 24, 2022, Petitioner Barren submitted to the Clark County District Court, State of Nevada, his Motion for Writ of Error Coram Nobis displaying the evidence that there were egregious errors in the process of his conviction that resulted in Petitioner's unlawful confinement at the Nevada State Prison, in violation of Petitioner's Fifth Amendment Due Process, Fourteenth Amendment and Fourth Amendment rights.

Petitioner Barren argued:

Did the District Court err in denying Petitioner's Motion for Writ of Error Coram Nobis on the issue of whether the alleged victim, Barry Burgher, was competent to testify during the preliminary hearing after displaying cognitive issues and voluntarily admitting to having mental blank outs before, and during, an alleged sexual assault where the parties who were conducting the preliminary hearing failed to stop the proceedings in order to evaluate through

psychiatry the mental state of the sole witness, Barry Burgher, after he voluntarily admitted to having blank outs during the alleged assault, in violation of Petitioner's Sixth Amendment rights to a fair and impartial trial that resulted in Petitioner being unlawfully convicted and sentenced to 10 years in the Nevada State Prison by the testimony of a witness who admitted and explained that he suffers from cognitive deficiencies in the form of mental blank outs?

While being questioned concerning his blank outs during the preliminary hearing, Mr. Burgher, the alleged victim, admitted he had cognitive issues in the form of blank outs, and he so testified to the same.

Q Barry, earlier, when Mr. Paine was asking you questions, you hesitated for a few minutes and you said that you kept getting blank for a second, did you mean that your mind kind of went blank for a second there while you were trying to think what was happening?

A Yes.

Q Does that happen to you often?

A Sometimes. It's happened before like when I'm trying to think of something very fast to say, like, if someone is talking to me and for a second I just forget, like, what am I supposed to say. Like for instance, a lady came over to our house a few days ago and she wanted to look at our animals and I knew all the names and what's wrong and what's good about them, but when she asked me for a second I was blank, I forgot their names and I forgot everything. It took me a second to think, yeah, that's her name, that's what I was going like.

Q At those periods of time, do you kind of forget what the question was that was asked you?

A No, I understand the questions, it's just that it was hard for me to think of what happened at that time because that was like a month ago.

Q During those periods of time, does the answers you're looking for seem confused to you?

A yes, because like I'm trying to get the right words out instead of keeping on repeating myself.

Q How often do you have trouble with that when that occurs?

A I don't know like when I'm scared or when I'm nervous or when I'm happy or like that.

Q Did that occur to you at all on that night that you have just testified to?

A Yes.

See Appendix D, Transcript of Preliminary Hearing, page 61, lines 18-21.

The alleged victim, Barry Burgher, voluntary statement of his own mental deficiencies should have been the red-flag that prompted at least a court ordered evaluation of his mental condition before allowing the continuation of the preliminary hearing proceedings by a young child who voluntarily warned of his cognitive disabilities after pausing involuntarily for approximately three minutes during his testimony, after being asked a question, and by not rendering help to the afflicted witness, Barry Burgher, I believe his testimony was flawed by his mental affliction and was expressed by his inability to understand what occurred on October 24, 1979, when Mr. Burgher's whole testimony against Petitioner was contradicted by the security guard who witnessed red-handed that it was co-defendant Kevin Walker who was caught in the act of the alleged sexual assault, and not Petitioner Barren.

The testimonial evidence to Mr. Burgher's cognitive issues are sure, and were witnessed by, and expounded on to the presiding Judge, where, on page 106 of Appendix D, Transcript of Preliminary Hearing, lines 17-24:

The Court observed this young boy to testify just as I did and I think it was quite obvious that this boy has some problems. Certainly, one of them which I didn't see as a minor problem is the fact that he has blank spots from time to time and I suggest that he had several black spots that night. He so testified that he did, in fact, have and now it would appear he wasn't even accurate as to who he was orally copulating at the time the corrections officer came in.

Did the Nevada Supreme Court err in denying Petitioner's appeal from denial of the Motion for Write of Error Coram Nobis on the issue of whether Petitioner was lawfully certified as an adult on the charges stemming from the September 19, 1979 unlawful arrest? In particular:

- 1) The evidence on the record provides information that on September 19, 1979, Petitioner was unlawfully arrested on charges of kidnap, robbery, and sexual assault, all with use of a deadly weapon. *See Appendix B, Original Information; Appendix A, Decision on Defendant's Motion to*

Suppress; and Appendix G, Order dismissing original Information.

- 2) The evidence on the record provides information that on October 24, 1979, Petitioner was accused, and charged with an additional sexual assault involving fellatio only while being unlawfully detained at juvenile hall. Appendix C, Amended Information.
- 3) The evidence on the record provides information that on November 28, 1979, the original charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, were all consolidated with the additional charge of sexual assault involving that of fellatio only. See Appendix K, Information of consolidation.
- 4) The evidence on the record provides information that on November 8, 1979, Petitioner was certified as an adult on the combination of charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, and on the charge of sexual assault involving that of fellatio only. See Appendix F, Initial Arraignment, page 8, liens 7-11.
- 5) The evidence on the record provides information that on January 28, 1980, a preliminary hearing was conducted before the Honorable Judge Charles Thompson, who concluded that Petitioner was unlawfully arrested. Accordingly, on February 28, 1980, the Court dialogued its adjudication of the January 28, 1979, and January 29, 1979, preliminary hearing, and concluded that Petitioner was in fact unlawfully arrested on the charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon. See Appendix A, Decision on Defendants Motion to Suppress; *see also* Appendix G, Order Dismissing original Information.
- 6) The evidence on the record is incontrovertible that Petitioner was certified as an adult on the charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, that were determined by the Honorable Judge Charles Thompson to be the same charges that he had determined to be unlawful prior to the November 8, 1979, certification of Petitioner.
- 7) The evidence on the record is incontrovertible that on October 24, 1979, the alleged charge of sexual assault involving that of fellatio only, was

consolidated with the charges that were determined by Judge Thomson to be unlawful, thereby causing the certification process to be unlawful, because, together, the charges of kidnap, robbery, and sexual assault all with the use of a deadly weapon, and the additional charge of sexual assault, involving that of fellatio only, that was used to certify Petitioner, became legally void after the dismissal of the counterpart charges that were used to certify Petitioner, because Judge Guy, who certified Petitioner as an adult, made the decision to certify Petitioner, based on all the charges presented to him by the District Attorney's office for consideration to certify Petitioner, not just for the October 24, 1979 allegation of sexual assault involving that of fellatio only, that became legally void after the dismissal of the counterpart charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon. *See Appendix H, Motion to Transfer*, referencing that Judge Guy's decision to certify Petitioner was predicated, in part, on the alleged charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, that were all dismissed, but not before those charges were used in combination with the additional charge of sexual assault involving that of fellatio only to certify Petitioner as an adult, which caused the error, and resulted in the defect of the certification process of Petitioner, because the criminal charges that were used to certify Petitioner as an adult were all dismissed warranting an action to amend the criminal complaint that had been used to certify Petitioner as an adult. The amendment of the criminal complaint voided the criminal charges of kidnap, robbery, and sexual assault, all with use of a deadly weapon, which were the predominant criminal charges that were used to certify Petitioner as an adult prior to the criminal charges being dismissed, but not before the charges were used in combination with the additional charge of sexual assault involving that of fellatio only to certify Petitioner.

The record shows that Judge Guy made the decision to certify Petitioner on both cases consolidated, not just the one case of sexual assault involving that of fellatio only. The certification of Petitioner can only legally stand on

charges legitimized by the law, but not on charges that were determined to be unlawful, by the act of an unlawful arrest of Petitioner. Noting:

As a matter of law, Judge Guy should have been given the opportunity to decide again whether Petitioner should remain certified as an adult on the sole remaining charge of sexual assault involving that of fellatio.

After the dismissal of the more serious charges against Petitioner, that Judge Guy considered when he decided to certify Petitioner as an adult, but because the District Court denied Petitioner's Motion to Transfer back to juvenile court, Judge Guy was interposed of his responsibility to properly assume procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a full investigation. *See Kent v. United States*, 383 U.S. 541 (1966), thus Petitioner's rights to due process were violated, in violation of both the Fifth Amendment and Fourth Amendment of the Constitution. Due to the dismissal of Petitioner's Motion to Transfer back to Juvenile Court, precluded Petitioner's ability to seek relief through the Juvenile Court that was necessary, because the juvenile court made the decision to certify Petitioner on charges that were dismissed, and should have been allowed to hear the case again after serious charges that were considered by the Juvenile Court was dismissed which resulted in an unlawful certification process on Petitioner. (When proceedings may result in incarceration in an institution of confinement, "it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase due process." *In re Gault*, 387 U.S. 1 (1967). Moreover, the charge of sexual assault involving that of fellatio only, was the charge negotiated through a plea agreement and was replaced by the charge of battery with intent to commit sexual assault, without regard of proper certification on the charge of battery with intent to commit sexual assault, in violation of the Nevada Supreme Court's ruling in the case of *Robert E. v. Justice Court*, and in violation of Petitioners rights to due process in accordance with the Fifth and

Fourteenth Amendment of the Constitution, where the Supreme Court of Nevada determined that:

Reason and public policy dictate that certification to an adult court under NRS 62.080 affects only the specific offenses alleged and considered by the juvenile division at the transfer proceeding. Thus, a juvenile must be recertified by the juvenile division under NRS 62.080 on each and every subsequent and independent criminal charge.

Did the District Court err in denying Petitioners Motion to transfer back to Juvenile Jurisdiction on the issue of whether the denial of the motion to transfer back to Juvenile Jurisdiction violated the Fifth Amendment? In particular:

Petitioner was entitled to due process after the dismissal of charges that were used to certify Petitioner to adult status. On February 29, 1980, an order dismissing information in case No. C47383, kidnap, robbery, and sexual assault, all with the use of a deadly weapon, which were the alleged crimes committed that gave consideration to the Juvenile Court to certify Petitioner to adult status were all dismissed. *See Appendix L, Motion to Dismiss of Defendants Barren and Walker, page 6, lines 9-32; page 7, lines 1-5. See also Appendix G, Order Dismissing Information.*

The petitioner then submitted a motion to transfer back to Juvenile Jurisdiction considering the exceptional circumstances that the underlying basis for the certification of Petitioner were all dismissed. *See Appendix H, Motion to Transfer.* Petitioner's Motion to Transfer was denied solely on the basis of, *once certified, always certified*, an adjudication gleaned from a repealed ambiguous statute, NRS 62.080. *See Appendix I, Defendant Gregory Dean Barren's Motion to Transfer; Appendix J, Juvenile Court Act, NRS 62.080.*

The Petitioner submits that, by denying Petitioners motion to transfer back to the Juvenile Court, the denial effectively violated Petitioners rights to due process. Where not only the criminal information that was considered by the Juvenile Court to certify Petitioner had been amended to void the criminal

information that was used to certify Petitioner as an adult, but also the Juvenile Court was interposed of its responsibility to properly assume procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a full investigation, which violated the Juvenile Court Act requiring a "full investigation". *See Kent v. United States*, 383 U.S. 541 (1966).

Within the Finding of Fact, Conclusions of Law and Order, the District Court did not conduct an evidentiary hearing in the case, nor did the District Court adjudicate the State's opposition to the Petitioners motion for Writ of Error Coram Nobis, assigned it the name: Findings of Fact, Conclusions of Law and Order, and rubber-stamped the denial of Petitioner's motion for Writ of Error Coram Nobis.

DIRECT APPEAL

Not Competent to Testify

Petitioner Barren renewed his argument that his 6th Amendment rights to a fair and impartial trial was violated as a result of the sole witness, Barry Burgher, being allowed to testify against Petitioner after voluntarily admitting to having mental blank outs, before and during an alleged assault, who explained in detail that he suffers from cognitive deficiencies, in the form of mental blank outs.

Unlawfully Certified as An Adult

Petitioner Barren renewed his argument that he was not lawfully certified as an adult because the September 19, 1979 arrest of Petitioner on charges of kidnap, robbery, and sexual assault, all with the use of a deadly weapon, were all adjudicated as an unlawful arrest and accordingly dismissed, but not before the charges were prematurely used in the certification of Petitioner to an adult, resulting in the defective certification process of Petitioner; because the criminal charges that were used in the certification process were dismissed and adjudicated to be unlawful.

Petitioner Barren claimed that the District Court was wrong by using the State's

opposition to Defendant's motion for Writ of Error Coram Nobis in the stead of the District Court's Finding of Fact, Conclusion of Law and Order, where the adverse judgment against Petitioner within the State's opposition to Defendant's motion for Writ of Error Coram Nobis had been predetermined and was rubber stamped by the court, denying Petitioner's Writ of Error Coram Nobis.

On November 23, 2022, the Court of Appeals of the State of Nevada filed its order of Affirmance of the Denial of Petitioners Motion for Writ of Error Coram Nobis, reasoning that Barren's claims were outside the scope of a petition for a Writ of Error Coram Nobis.

On December 06, 2022, Petitioner's motion for reconsideration of Order of Affirmance of the District Court's Denial of Appellants Motion for Writ of Error Coram Nobis was filed, where Petitioner informed the court that it overlooked 3 unresolved constitutional issues, resulting in the denial of Petitioners Writ of Error Coram Nobis, on the issues of:

- 1 Did the District Court err in denying Appellants Motion for Writ of Error Coram Nobis on the issue of whether the alleged victim, Barry Burgher was competent to testify during preliminary hearing after displaying cognitive issues, and voluntarily admitting to having mental blank outs, before, and during an alleged assault?
- 2 Did the District Court err in denying Appellants Motion for Writ of Error Coram Nobis on the issue of whether Appellant was lawfully certified as an adult on the charges stemming from the September 19, 1979 unlawful arrest?
- 3 Did the District Court err in denying Appellants Motion to transfer back to Juvenile Jurisdiction on the issue of whether the denial of the motion to transfer back to Juvenile Jurisdiction violated the Fifth Amendment?

Motion To Transfer

Petitioner Barren renewed his argument that his due process rights had been violated when he was denied his motion to transfer back to Juvenile Court after the predominant criminal charges that were used to certify Petitioner to an adult were dismissed, warranting re-evaluation of the Juvenile Courts determination to certify Petitioner as a result of the original information charging Petitioner with kidnap, robbery, and sexual assault, all with the use of a deadly weapon being voided, and the information being amended to only the one charge of sexual assault that was alleged while being unlawfully detained at Juvenile Hall..

Pursuant to NRAP Rule 40 (c)(2) the Supreme Court of Nevada considers Rehearing when it has overlooked or misapprehended a material fact or question of law. *Bahena v. Goodyear Tire & Rubber Co.* 126 Nev. ___. 245 P.3d 1182.1184 (Nev. 2010). Accord. *McConnell v. State.* 121 Nev. 25.26. 107 P.3d 1287.1288 (2005). Additionally, rehearing is warranted where the court has overlooked, misapplied, or failed to consider directly controlling legal authority. (*Bahena.* 126 Nev. At 245. P.3d at 1184)

On December 21, 2022, the Court of Appeal of the State of Nevada filed its Order Denying Rehearing: *Rehearing denied, NRAP 40 (c).*

On January 4, 2023, Petitioners petition for review of the Court of Appeals of the State of Nevada Order Denying Rehearing was filed in the Supreme Court of the State of Nevada, respectfully reiterating that the court of Appeals of the State of Nevada overlooked, and did not adjudicate three (3) constitutional issues that were raised by the Petitioner in his motion for a Writ of Error Coram Nobis, and alerted the Supreme Court of Nevada that although the Petitioner raised the 3 unadjudicated issues from the beginning, within his motion for Writ of Error Coram Nobis.

The State's opposition to Defendant's Motion for Writ of Error Coram Nobis filed on July 1, 2022, and the District Courts Findings of Fact, Conclusions of Law and Order filed on August 23, 2022. None of which opposed, indicated, or adjudicated Petitioners claims of Constitutional violations; even on Appeal before the Court of Appeals of the State of Nevada. On September 2, 2022, Petitioner addressed those constitutional issues within the Petitioners Informal Brief on appeal.

On November 23, 2022, the Court of Appeals of the State of Nevada filed its Order of Affirmance of the District Court's Order Denying Petitioners Writ of Error Coram Nobis, without any adjudication of the above-mentioned constitutional issues, and the State of Nevada was not required to even answer Petitioner's Informal Brief on Appeal, which cited the above constitutional claims adjudicated by the Court of Appeals for the State of Nevada. Nor were the constitutional claims adjudicated by the Court of Appeals for the State of Nevada which prompted Petitioner to request a Petition for Rehearing to adjudicate the three (3) remaining Constitutional issues that were overlooked and unadjudicated by the Court of Appeals of the State of

Nevada.

On January 17, 2023, the Supreme Court of the State of Nevada filed its Order Denying Petition for review, concluding: *Review denied. NRAP 40B.*

REASONS FOR GRANTING THE WRIT

To avoid erroneous deprivation of the right to due process, this court should review whether the Juvenile Court Act under the criterion of *Kent v. United States* was observed after the information that was used to certify Petitioner was amended, and the charges that were used to certify Petitioner was dismissed.

In *Kent v. United States*, 383 U.S. 541 (1966), this court adopted a set of precautionary measures to protect a Juveniles Constitutional right to due process under the Fourteenth Amendment, where this court ruled that the Juvenile Court's latitude in determining whether to waive jurisdiction is not complete. It assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a full investigation Pp 383 U.S. 552-554.

Approximately one year after, in *In re Gault*, 387 U.S. 1(1967), this Court announced:

When proceedings may result in incarceration in an institution of confinement, it would be extraordinary if our constitution did not require the procedural regularity and exercise of care implied in the phrase due process, Pp. 387 U.S. 12-31.

The Court of Appeals accepted the District Courts adoption of the State's opposition to Defendant's motion for Writ of Error Coram Nobis in the stead of the District Court's Finding of Fact, Conclusion of Law and Order, where the District Court used verbatim the State's opposition to Defendant's motion for Writ of Error Coram Nobis and rubber-stamped the month long requested denial of Petitioners Writ of Error Coram Nobis, that had already been decided in the State's opposition by the District Court Judge.

On December 6, 2022, Petitioners motion for reconsideration of Order of Affirmance for the District Court's denial of Petitioners petition for Writ of Error

Coram Nobis was filed in the Court of Appeals of the State of Nevada. Petitioner reiterated that three (3) main Constitutional issues were overlooked and unadjudicated.

On December 21, 2022, the Court of Appeals of the State of Nevada filed its Order Denying Rehearing, concluding *Rehearing denied*. NRAP 40 (c).

On January 4, 2023, Petitioner petitioned for review of the Court of Appeals of the State of Nevada Order Denying Rehearing was filed in the Supreme Court of the State of Nevada, again, reiterating the lack of adjudication of Petitioners Constitutional claims.

On January 17, 2023, the Nevada Supreme Court filed its order Denying Petition for Review, concluding *Review Denied*. NRAP 40B.

CONCLUSION

For the foregoing reasons, Petitioner respectfully request that this Court issue a writ of certiorari to review the judgment of the Nevada Supreme Court, to determine the legitimacy of a certification order that was based upon criminal charges that were determined to be unlawful.

Respectfully submitted,



Date: 4/13/2023