IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. D.D.-H., Petitioner.	Supreme Court No. 94037-1 COA No. 74053-9-I MOTION TO CHANGE CASE TITLE AND REDACT FULL NAME OF JUVENILE

I. IDENTITY OF MOVING PARTY

Petitioner, D.D.-H., by and through counsel of record, Nielsen, Broman & Koch, requests the relief stated in part II.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 3.4, the juvenile petitioner, D.D.-H., requests this Court change the title of the case to use his initials rather than his full name. Petitioner additionally requests that his initials be used in the body of the Court's opinion.

III. FACTS RELEVANT TO MOTION AND GROUNDS FOR RELIEF

D.D.-H.'s appeal follows from a juvenile disposition for one count each of third degree theft and minor in possession of alcohol. CP 1-2. D.D.-H. will turn 18 on March 29, 2017. Accordingly, at that time he is entitled to have his case administratively sealed. RCW 13.50.260(1)(a) ("[T]he court shall administratively seal an individual's juvenile court record pursuant to the requirements of this subsection . . . ." (Emphasis added.)); see also State v. S.J.C., 183 Wn.2d 408, 422, 352 P.3d 749 (2015) ("[W]e have always given effect to the statutory procedures and requirements for sealing juvenile records.").

The briefs and opinion filed in the Court of Appeals, as well as, the petition for review filed in this Court, used D.D.-H.'s initials in the case caption and throughout the body of the document. This is necessary because this Court publishes each party's briefing online, making them readily accessible to the public. If D.D.-H.'s full name is used in the case caption, or in this Court's decision, then his name and offense will remain public record even after his case is sealed. This defeats the purpose of the subsequent administrative sealing and denies D.D.-H. the privacy juveniles are guaranteed under RCW 13.50.260. Using D.D.-H.'s full name because his case is not yet sealed also penalizes him for exercising his constitutional right to appeal by making his juvenile offense public record for all time. WASH. CONST. art. I, § 22. This essentially renders RCW 13.50.260 a dead letter for juveniles who exercise their right to appeal.

Such a result is at odds with clear legislative intent to prevent stigmatizing juvenile as criminals: "When juvenile court records are publicly available, former juvenile offenders face substantial barriers to reintegration, as they are denied housing, employment, and education opportunities on the basis of these records." Laws of 2014, ch. 175, § 1; accord S.J.C., 183 Wn.2d at 432-34 (recognizing the numerous negative consequences that result from making juvenile court records open to the public). It is therefore the legislature's policy "that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records." Laws of 2014, ch. 175, § 1.

Using D.D.-H.'s full name is further contrary to this Court's recent decision in S.J.C. There, the Court concluded that juvenile court records meeting the statutory sealing requirements have historically not been open to the press or general public.

S.J.C., 183 Wn.2d at 430. This Court recognized the "legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records." Id. at 417. Courts must accordingly "give[] effect to the legislature's judgment in the unique setting of juvenile court records." Id. at 422. The legislature's intent is to facilitate juveniles' rehabilitation by sealing and destroying their criminal records upon their eighteenth birthday. Id. at 432 (citing Laws of 2014, ch. 175, § 1). This intent is defeated if a juvenile's full name is made public record by virtue of appealing his conviction.

The S.J.C. court emphasized the constitutional presumption of openness does not apply to juvenile court proceedings and juvenile court records. 183 Wn.2d at 422. This is so, the court explained, "because of the fundamental differences between a juvenile offender proceeding, which seeks to rehabilitate the juvenile, and an adult criminal proceeding, which seeks to deter and punish criminal behavior." Id.

D.D.-H. will face numerous hardships that flow from having a public juvenile offense record if this Court does not redact his name from the opinion. A quick Google search of D.D.-H.'s name will reveal he was convicted of third degree theft and minor in possession of alcohol as a juvenile. The dissemination of that information will be irreversible; even if the briefing, or opinion, were later modified to substitute D.D.-H.'s initials following administrative sealing of his juvenile court file, the original case caption containing his full name would likely remain publicly available due to website caching services. This will hinder D.D.-H.'s education, employment, and housing prospects, contrary to the policy of this state and this Court's decision in S.J.C. D.D.-H. is entitled to the privacy the legislature has guaranteed him and the corresponding chance

for rehabilitation. He should not be stigmatized because of his decision to appeal the juvenile disposition order.

Under RAP 3.4, this Court has discretion to "change the title of a case by order in said case." Courts routinely do so to protect juveniles' privacy. See, e.g., State v. A.N.J., 168 Wn.2d 91, 96 n.1, 225 P.3d 956 (2010) ("Under RAP 3.4, we direct the clerks' offices of the superior and appellate courts to replace the [juvenile defendant's] name with his initials in the caption and other publically available sources associated with this opinion."); State v. C.A.E., 148 Wn. App. 720, 201 P.3d 361 (2009) ("It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion to identify the parties and other juveniles involved, except for governmental agencies."); State v. A.S., 116 Wn. App. 309, 309 n.1, 65 P.3d 676 (2003) ("Petitioner herein is a juvenile and will be referred to by his initials 'A.S.'"); State v. A.M., 109 Wn. App. 325, 325 n.1, 36 P.3d 552 (2001) (same).[1]

Counsel recognizes this Court's desire for openness. A workable line for this Court to draw is to initialize a juvenile offender's name in a decision when he or she is entitled to administrative sealing.[2] This will be easily discernible from the record

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[1] In numerous recent cases, the Washington Supreme Court has used only the juvenile offender's initials. See, e.g., State v. Z.U.E., 183 Wn.2d 610, 352 P.3d 796 (2015); State v. E.J.J., 183 Wn.2d 497, 354 P.3d 815 (2015); State v. W.R., Jr., 181 Wn.2d 757, 336 P.3d 1134 (2014).

[2] GR 15 does not compel this Court to use a juvenile's full name. GR 15 specifies that where a criminal conviction has been vacated or sealed, the public record "shall be limited to the case number, case type with the notification 'DV' if the case involved domestic violence, the adult or juvenile's name, and the notation 'vacated.'" A decision from this Court will reveal far more information than the case type and the juvenile's

because "[a]t the disposition hearing of a juvenile offender, the court shall schedule an administrative sealing hearing to take place during the first regularly scheduled sealing hearing" after the juvenile turns 18, so long as the juvenile is entitled to sealing. RCW 13.50.260(1)(b). Juveniles who have committed a "most serious offense," a sex offense, or a drug offense are not entitled to sealing. RCW 13.50.260(1)(c)(i).

Because the presumption of openness does not apply to juvenile court records, S.J.C., 183 Wn.2d at 422, this Court is not required to use D.D.-H.'s full name simply because his case is not yet sealed. Instead this Court should exercise its discretion to protect D.D.-H.'s privacy and "give effect" to the legislature's intent. Id.

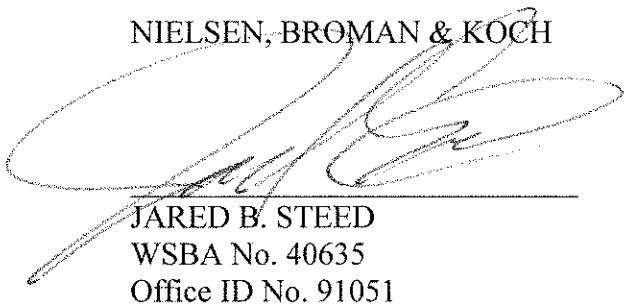
IV. CONCLUSION

Counsel respectfully requests that this Court grant this motion and use only D.D.-H.'s initials in the case caption of the briefing, court issued orders, and throughout the opinion.

DATED this 20th day of January, 2017.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



JARED B. STEED
WSBA No. 40635
Office ID No. 91051
Attorneys for Petitioner

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name. It will include the crime itself and details of the crime, as in D.D.-H.'s case. This, again, defeats the purpose of GR 15.

NIELSEN, BROMAN & KOCH P.L.L.C.

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