

IN THE SUPREME COURT OF NORTH DAKOTA

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The State of North Dakota,

Petitioner Appellee,

v.

K.J.A., a Minor Child;

Respondent and Appellant;

and

R.A., mother; B.S., father,

Respondents and Appellees;

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Supreme Court File No.

20220286

Billings County File No.

04-2020-JV-00001

**APPELLANT BRIEF**

Appeal from the Final Judgment/Order in Billings County Juvenile Court

Southwest Judicial District, North Dakota,

August 29, 2022, the Honorable Dann Greenwood presiding

ORAL ARGUMENT REQUESTED

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RESPONDENT/APPELLANT’S BRIEF  
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**Oral Argument:**

Oral argument has been requested to emphasize and clarify the Appellant’s written arguments on their merits.

## STATEMENT OF THE ISSUES

**[¶1] ISSUE I: Does Rule 19 (e) of the North Dakota Rules of Juvenile Procedure give the Juvenile Court authority to destroy any of the Court’s Juvenile Records?**

**ISSUE II: Is the destruction of juvenile records that include sexual actions under N.D.C.C. § 12.1-20 and 12.3.1-27.2 controlled by N.D.C.C. § 25-03.3-04 or Rule 19 (e) of the North Dakota Rules of Juvenile Procedure?**

## NATURE OF THE CASE

[¶2] The underlying case to the destruction of K.J.A.’s juvenile records was a juvenile case that concluded on November 4, 2020 with K.J.A. admitting he was delinquent to the offense of Gross Sexual Imposition and deviant sexual act.

[¶3] On June 7, 2022, K.J.A petitioned the Juvenile Court in Billings County, North Dakota to destroy all of his juvenile records in the County (R70).

[¶4] The State filed a Response to K.J.A.’s Petition to Destroy Records on June 13, 2022 (R82).

[¶5] The hearing on K.J.A.’s Petition to destroy records was heard by Zoom on August 9, 2022.

[¶6] The State filed its Brief opposing the destruction of records of August 9, 2022 (R99).

[¶7] K.J.A. filed his Brief on August 17, 2022 (R101).

[¶8] The Court issued its Memorandum Decision and Order on August 29, 2022 (R103). It denied K.J.A.’s Petition to Destroy his Juvenile Records.

[¶9] The Notice of Appeal (R105) and Order for Transcript (R106) were filed on October 4, 2022.

[¶10] This case was remanded by Supreme Court Order (R109) to get counsel for K.J.A. on October 4, 2022.

[¶11] Benjamin C. Pulkrabek was assigned to be K.J.A.'s attorney on October 7, 2022 (R112).

[¶12] The Clerk's Certificate of Appeal was filed on October 24, 2022 (R113).

[¶13] The Clerk's Supplemental Certificate of Appeal were filed on December 8, 2022 (R117) and December 12, 2022 (R118).

[¶14] This matter is now before the North Dakota Supreme Court.

#### STATEMENT OF FACTS

[¶15] This case involves the juvenile records of respondent K.J.A. in Billings County, North Dakota. These records were entered on November 5, 2020. K.J.A. has petitioned the Juvenile Court to destroy these records. The rule of procedure he cites for their destruction is Rule 19(e) of the North Dakota Rules of Juvenile Procedure. Rule 19(e) states:

“(e) Early Destruction of Records. A party who is the subject of a delinquency or unruly proceeding may petition the court for early destruction of records. The state's attorney of the county in which the records are held must be notified of the request. The judge may order the early destruction upon a showing of good cause to destroy the records by the party. The records may not be destroyed if it is known that the subject of the motion has criminal charges pending before any other court.”

[¶16] The State opposed the destruction of K.J.A.'s juvenile records and based its refusal on N.D.C.C. § 25-03.3-04. The juvenile judge decided that the N.D.C.C. § 25-03.3-04 was the law that applied to the destruction of K.J.A.'s juvenile records and denied K.J.A.'s petition to destroy his juvenile records. N.D.C.C. § 25-03.3-04 states:

“Retention of records. Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for twenty-five years and made available

to any state's attorney for purposes of investigation or proceedings pursuant to this chapter. If the subject of a case file or court record has died before the expiration of the twenty-five-year period, the official, department, or agency possessing the case files and records shall maintain the case files and records in accordance with the case file and records retention policies of that official, department, or agency. For purposes of this section, "adult and juvenile case files" mean the subject's medical, psychological, and treatment clinical assessments, evaluations, and progress reports; offenses in custody records; case notes; and criminal investigation reports and records.”

[¶17] K.J.A. filed on June 7, 2022, his Petition for the Destruction of his Juvenile Records in Billings County, North Dakota.

[¶18] Oral Arguments on K.J.A.’s Petition to Destroy his Juvenile Records was heard on August 9, 2022. K.J.A. appeared pre se and he presented his Oral Argument for the Destruction of his Juvenile Records. His Oral Argument made it clear he had turned his life around since 2020 when he was found to be delinquent. He turned his life around by moving to Texas and taking and completing the required treatments. His school grades in Billings County, North Dakota were D’s and F’s. His grades in Texas were mostly A’s and he is now taking part in extra curricular activities at the school. His plans for the future are to join the Marines.

[¶19] To get into the Marines he had to sign a waiver of information form. Therefore, the Marines have been able to get his juvenile records. Once the Marines got his juvenile records, he was told he wasn’t acceptable.

[¶20] The Juvenile Court after records are destroyed it is as if they never existed. Therefore K.J.A.’s juvenile records have to be destroyed or he will never be able to get into the Marines.

[¶21] K.J.A. believes the Rule 19 (e) applies to his case and it permits the destruction of his juvenile records in Billings County North Dakota. Rule 19 (e) requires good cause for

the destruction of juvenile records. K.J.A. believes his turning around of this life and his wanting to get in the Marines are the good cause he needs.

[¶22] Rule 19 (e) also requires he have no criminal proceeding pending. He has none pending.

[¶23] K.J.A. doesn't believe N.D.C.C. § 25-03.3-04 applies to his case. Therefore, he is appealing the juvenile judge's ruling that it does.

**ISSUE I: Does Rule 19 (e) of the North Dakota Rules of Juvenile Procedure give a juvenile the authority to destroy any of the Court's juvenile records?**

**ISSUE II: Is the destruction of juvenile records that include sexual actions under chapter 12.1-20 and 12.3.1-27.2 controlled by N.D.C.C. § 25-03.3-04 or Rule 19 (e) of the North Dakota Rules of Juvenile Procedure?**

### ARGUMENT

#### I. Standard of Review.

[¶24] The issue in this case involved separation of powers between the legislative and judicial branch of government. Therefore, this case is fully reviewable.

[¶25] In this case the Juvenile Court under the separation of powers between the different branches of government should be able to control the destruction of its records. The legislative branch has no right to tell the judicial branch when the judicial branch is allowed to destroy its records.

[¶26] The Juvenile Court gets its authority to destroy its own records from Rule 19 (e) of the North Dakota Rules of Juvenile Procedure which states:

“Early Destruction of Records. A party who is the subject of a delinquency or unruly proceeding may petition the court for early destruction of records. The state's attorney of the county in which the records are held must be notified of the request. The judge may order the early destruction upon a showing of good cause to destroy the records by the party. The records may not be destroyed if it is

known that the subject of the motion has criminal charges pending before any other court.”

[¶27] The North Dakota legislature passed N.D.C.C. § 25-03.3-04 which states:

“Retention of records. Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for twenty-five years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter. If the subject of a case file or court record has died before the expiration of the twenty-five-year period, the official, department, or agency possessing the case files and records shall maintain the case files and records in accordance with the case file and records retention policies of that official, department, or agency. For purposes of this section, "adult and juvenile case files" mean the subject's medical, psychological, and treatment clinical assessments, evaluations, and progress reports; offenses in custody records; case notes; and criminal investigation reports and records.”

[¶28] The first six words of the N.D.C.C. § 25-03.3-04 are “notwithstanding any other provisions of the **law** (emphasis added).

[¶29] Rule 19 (e) is a Rule, it is not a statute or a law. Therefore, the following language of N.D.C.C. § 1-02-07 shouldn't apply, as it states:

“Particular controls general. Whenever a general provision in a **statute** is in conflict with a special provision in the same or in another **statute**, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.” (emphasis added)

[¶30] If N.D.C.C. § 01-02-07 does apply then the following facts should be considered:

- a. N.D.C.C. § 25-03.3-04 was last amended in 2019.
- b. Rule 19 was last amended in 2021.
- c. Rule 1 North Dakota Rules of Juvenile Procedure states:

“These rules govern the procedure in all actions conducted under the Uniform Juvenile Court Act, N.D.C.C. ch 27-20. They must be construed and administered to protect the best interests of children and to address the unique characteristics and needs of children.”



d. Rule 1 of North Dakota Rules of Juvenile Procedure refers to all actions conducted under the Uniform Juvenile Court Act. That language sure sounds as if it is revoking N.D.C.C. § 25-03.3-04.

CONCLUSION

[¶31] For the above and foregoing reasons this case should be remanded to the Juvenile Court in Billings County with an Order requiring the Juvenile Court Judge to issue an Order to Destroy all of K.J.A.'s juvenile records.

Dated this 22<sup>nd</sup> day of December 2022.

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**CERTIFICATE OF COMPLIANCE  
AND  
CERTIFICATE OF SERVICE**

¶1 The undersigned certifies that the Appellant Brief contains 9 pages consisting of the cover page through the conclusion and signature block and complies with the page limits outlined in North Dakota Rules of Appellate Procedure Rule 32(a)(8)(A).

¶2 True and correct copies of BRIEF OF APPELLANT were emailed via the Supreme Court E-filing portal and mailed to the following on this 22<sup>nd</sup> day of December 2022:

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K.J.A.  
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Dated this 22<sup>nd</sup> day of December 2022

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