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We reject Qualls' contentions that his waiver was not knowing. As noted above, this court has previously held, with respect to constitutional rights, that "a formalistic litany is not required" to establish waiver, but instead that waiver is shown under the totality of the circumstances. And we decline to require a more "formalistic litany" for the waiver of a statutory right than for the waiver of a constitutional one.

A review of the totality of these circumstances shows that Qualls was informed of his right to a presentence investigation, was informed as to what information the judge would be considering, was provided the opportunity to present any additional information to the court, was questioned as to whether he had been threatened or promised anything for his decision to waive this right, and was expressly asked if his waiver was made freely and voluntarily. The district court did not clearly err in finding that Qualls' waiver was made "voluntarily, knowingly, and intelligently."

CONCLUSION

The decision of the district court is affirmed.

AFFIRMED.

IN RE INTEREST OF CANDICE H., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLANT, V. CANDICE H., APPELLEE.

824 N.W.2d 34

Filed December 21, 2012. No. S-12-424.

1. **Juvenile Courts: Appeal and Error.** An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.
2. ____: ____. In reviewing questions of law arising under the Nebraska Juvenile Code, an appellate court reaches conclusions independent of the lower court's rulings.
3. **Juvenile Courts: Probation and Parole: Sentences: Records.** Satisfactory completion of a juvenile's probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or satisfactory

completion of a juvenile's diversion or sentence in county court is a condition precedent to sealing a record pursuant to Neb. Rev. Stat. § 43-2,108.03(5) (Cum. Supp. 2012).

Appeal from the Separate Juvenile Court of Douglas County: WADIE THOMAS, Judge. Order vacated.

Donald W. Kleine, Douglas County Attorney, and Sarah M. Moore for appellant.

No appearance for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

STEPHAN, J.

The State appeals from an order of the separate juvenile court of Douglas County ordering that the record in this juvenile proceeding be sealed. The State contends that the statutory requirements for sealing the record were not met. We agree and therefore vacate the order.

BACKGROUND

On May 20, 2011, an amended petition was filed in the juvenile court for Douglas County alleging that Candice H. was a child within Neb. Rev. Stat. § 43-247(1) (Reissue 2008) because she had possessed 1 ounce or less of marijuana and drug paraphernalia. Candice admitted the allegations, and after a disposition hearing on August 18, the juvenile court found that it was in Candice's best interests to be placed under the supervision of a probation officer. The court ordered that Candice be placed on probation "for an **open-ended period of time** and at that time [her] records will be sealed if [she] has successfully completed probation unless sooner extended or revoked for cause by the Court, or unless a capias has been issued herein during the term of this probation."

At a December 19, 2011, disposition hearing, the juvenile court entered an order requiring that Candice remain on "probation contract" and under the supervision of a probation officer. Candice was also ordered to enroll in an outpatient substance abuse program and to follow any and all aftercare

recommendations. Finally, the court ordered that the matter "shall be scheduled for an **internal check for the purpose of the Court entering an order terminating jurisdiction when said child reaches the age of majority**."

On May 1, 2012, the juvenile court entered an order finding that its jurisdiction should be terminated because Candice had reached the age of majority. On the same date, the court entered a separate order on its own motion which stated:

> No objections having been received, all records relating to the arrest, adjudication and disposition of this matter are ordered sealed. Information or other data concerning any proceedings relating to the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal or disposition are deemed never to have occurred.

The order stated that the sealed record was still accessible to certain parties and could be inspected under certain conditions. The Douglas County Attorney perfected a timely appeal from the order pursuant to Neb. Rev. Stat. § 43-2,106.01 (Cum. Supp. 2012).

ASSIGNMENTS OF ERROR

The State asserts that the juvenile court erred in ordering that the record be sealed without giving prior notice to the county attorney and without determining that Candice had satisfactorily completed her probation.

STANDARD OF REVIEW

[1] An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings.[1]

[2] In reviewing questions of law arising under the Nebraska Juvenile Code, an appellate court reaches conclusions independent of the lower court's rulings.[2]

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[1] *In re Interest of Elizabeth S.*, 282 Neb. 1015, 809 N.W.2d 495 (2012); *In re Interest of Lakota Z. & Jacob H.*, 282 Neb. 584, 804 N.W.2d 174 (2011).

[2] *In re Interest of Charlicia H.*, 283 Neb. 362, 809 N.W.2d 274 (2012).

ANALYSIS

The procedures for sealing records of juvenile cases are set forth in Neb. Rev. Stat. §§ 43-2,108.01 to 43-2,108.05 (Cum. Supp. 2012), enacted by the Nebraska Legislature in 2010[3] and amended in 2011.[4] These statutes apply here because Candice was under the age of 18 when the alleged offenses occurred and a juvenile petition was filed against her.[5] The effect of having a record sealed under these statutes is that "the person whose record was sealed can respond to any public inquiry as if the offense resulting in the record never occurred."[6] However, a sealed record is accessible to law enforcement officials, prosecutors, and judges under certain circumstances.[7] It is also accessible to any attorney representing the subject of the sealed record.[8] In addition, sealed records may be inspected by other persons for certain limited purposes specified in the statute.[9]

On the date of the order which is the subject of this appeal, § 43-2,108.03 provided the following procedures whereby a court could initiate proceedings to seal a juvenile's record on its own motion:

> (5) If a juvenile described in section 43-2,108.01 has satisfactorily completed such juvenile's probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed such juvenile's diversion or sentence in county court:
>
> (a) The court may initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or sentence of the county court; and

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[3] 2010 Neb. Laws, L.B. 800.

[4] 2011 Neb. Laws, L.B. 463.

[5] See § 43-2,108.01.

[6] § 43-2,108.05(2).

[7] See § 43-2,108.05(3).

[8] *Id.*

[9] *Id.*

> (b) If the juvenile has attained the age of seventeen years, the court shall initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or diversion or sentence of the county court, except that the court is not required to initiate proceedings to seal a record pertaining to a misdemeanor or infraction not described in subdivision (4) of section 43-2,108.01 under a city or village ordinance that has no possible jail sentence. Such a record may be sealed under subsection (6) of this section.

[3] Although subsection (5)(a) describes the circumstance in which a court may initiate such proceedings and subsection (5)(b) specifies when it must do so, both are subject to the condition precedent of satisfactory completion of the "juvenile's probation, supervision, or other treatment or rehabilitation program" in proceedings such as this which are governed by the Nebraska Juvenile Code.[10] This requirement is reflected in the juvenile court's order of August 19, 2011, in which it placed Candice on probation and indicated that her records would be sealed "if the child has successfully completed probation." But the court's subsequent orders terminating jurisdiction and sealing the record do not reflect that Candice had satisfactorily completed her probation by the time she reached the age of majority, and we find nothing in the record indicating that she had done so. Nor do we find any principled basis for concluding that a juvenile satisfactorily completes probation merely by reaching the age of majority.

When proceedings to seal juvenile court records are initiated, the applicable statutes require the court to "promptly notify the county attorney or city attorney involved in the case," who may then "file a response with the court within thirty days after receiving such notice."[11] If no objections are filed, the court may either order the records sealed or conduct a hearing.[12] But if objections are filed, the court must conduct

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[10] § 43-2,108.03(5).

[11] § 43-2,108.04(1) and (2).

[12] § 43-2,108.04(3).

a hearing and may order the record sealed if it makes findings that the juvenile has been "rehabilitated to a satisfactory degree."[13] In this case, the juvenile court's order requiring the record to be sealed recites that no objections were received, but there is no indication in the order or elsewhere in the record that the county attorney was ever given the required notice of the proceeding to seal the record.

Accordingly, we conclude that the juvenile court erred in ordering that the record be sealed, because (1) the order did not include a finding that the juvenile had satisfactorily completed her probation and (2) the county attorney was not given the required notice of the proceeding to seal the record. We therefore vacate the order sealing Candice's juvenile record.

ORDER VACATED.

[13] § 43-2,108.04(4) and (5).

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. JOEL W. PHILLIPS, RESPONDENT.

824 N.W.2d 376

Filed December 21, 2012. No. S-12-481.

Original action. Judgment of public reprimand.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

PER CURIAM.

INTRODUCTION

Respondent, Joel W. Phillips, was admitted to the practice of law in the State of Nebraska on September 28, 1995. At all relevant times, he was engaged in the private practice of law in Wallace, Nebraska. On May 31, 2012, the Counsel for Discipline of the Nebraska Supreme Court filed formal charges consisting of one count against respondent. In the one count, it was alleged that by his conduct, respondent had violated his