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Emily Wooten
Polk County Enterprise

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Fox 26 News

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RESPONSE TO PRESS RELEASE REGARDING BINNION SENTENCING

RE: Cause Nos. 26,265 and 26,266; *The State of Texas v. Eli Binnion*; In the 258th Judicial District Court of Polk County, Texas

Dear Mr. Openshaw, Ms. Wooten, and Ms. Hecker,

I was Mr. Eli Binnion's attorney in the above cases, which were finalized on June 3, 2021 at a sentencing hearing. I am issuing this statement to provide information that I believe will correct or clarify the public's understanding of what in fact occurred at my client's sentencing, including misrepresentations made to the media by the Polk County District Attorney. Actual court transcripts can demonstrate the points I will make here.

At the time of the incident in these cases, Mr. Binnion was 19 years old and the victim was 14. He has been jailed in Polk County since then and pled guilty to the charge on March 14, 2019. At that time, **the State—in writing—waived their right to a jury trial in this case.** This is significant because if the State had truly wished to prevent Mr. Binnion from receiving deferred adjudication, the State could have legally barred such an option by refusing to waive their right to a jury trial. The State understood this and waived.

On June 3, 2021, Judge Travis Kitchens presided over the sentencing hearing, where the State was legally entitled to call any number of witnesses (including the victim or the victim's family) that the State wanted Judge Kitchens to consider in rendering a sentence. Probation Officer Mary Beth Barker was the only witness that the State elected to call to testify for Mr. Binnion's sentencing.

Ms. Barker, the State's only witness, made recommendations to the Court regarding terms and conditions of deferred adjudication. **Polk County District Attorney, Lee Hon was present at the hearing and, as reflected in transcripts, at no time prior to the Judge pronouncing his ruling did the State ever recommend prison time—for 15 years or any other number—or**

oppose deferred adjudication. Only after the ruling was final, did Assistant District Attorney, Rachel Ellsworth state for the record that the State was opposed to deferred adjudication. Ms. Ellsworth further advised the victim’s family was notified of the hearing and did not wish to participate. First Assistant District Attorney, Beverly Armstrong stated to the Court that the victim and family were no longer responding to their office. **No Judge could ever legally bar a victim from being heard at a sentencing hearing and any suggestion that such occurred in this case is unequivocally FALSE. The State and the Defense were given the opportunity to present any witnesses they deemed appropriate.**

While Judge Kitchens has only been elected since 2019, District Attorney Lee Hon and his office have handled cases such as this since 2007. Since 2016 alone, some very brief research confirms at least 19 cases wherein a defendant charged with a sex-related offense received deferred adjudication from different judges over the years, including Former Judge Kacee Jones, and Former Judge Ernie McClendon. The Polk County District Attorney’s Office, led by LEE HON was at the helm of them all. In at least **17** of those cases, the **POLK COUNTY DISTRICT ATTORNEY recommended Deferred Adjudication Probation** to the Court as the desired sentence.

I make this point to say, in sum, that the sentence assessed Mr. Binnion, is by no means a “light sentence” and should not be construed as such. In addition, it has been my experience that in these types of cases, deferred adjudication is not uncommon, particularly when one considers the emotional toll that a public trial will have on any victim and especially, young and minor victims.

Mr. Binnion’s movements, decisions, and activities will be supervised and scrutinized closely by the judicial system for the next ten (10) years. Put another way—Mr. Binnion’s supervision will not end until he is 32 years old. Mr. Binnion’s probation in this case cannot be shortened for any reason and there are many terms and conditions recommended by probation, and Ordered by Judge Kitchens, with which he must comply for the next ten years. Some, but not all of those conditions include:

1. Lifetime registration as a sex offender;
2. Polygraph examinations on a regular basis;
3. Psychological examinations;
4. No internet access or usage without prior approval;
5. No contact with the victim or victim’s family;
6. Restrictions on where Mr. Binnion can reside;
7. Reporting to a probation officer twice a month; and,
8. \$5,000.00 fine.
9. Serve an additional term of 180 days in the Polk County Jail. (in addition to the 35 months he has been incarcerated awaiting disposition of the case.)

Any misstep or mistake by Mr. Binnon on the terms of probation can result in his arrest and being brought back to Court for a hearing by a judge—not a jury—for a potential prison sentence of up to 20 years.

Should you have any questions, I will be more than happy to sit down with either of you so as to clear up any confusion that may exist. Your cooperation and courtesies in this matter are

greatly appreciated. If you require further information, please do not hesitate to contact me.

Sincerely,

/s/ Michael L. Davis

Michael L. Davis

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