

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ALFRED P. CENTOFANTI III,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK,
STATE OF NEVADA, AND THE
HONORABLE DONALD M. MOSLEY,
DISTRICT COURT JUDGE,

Respondents.

CASE NO. 43895

FILED

FEB 16 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

MOTION FOR REHEARING AND FOR STAY PENDING DECISION

COMES NOW, Petitioner, ALFRED P. CENTOFANTI III, by and through his attorney CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., and moves this Court for a rehearing of his Petition for Writ of Mandamus/for Writ of Prohibition pursuant to NRAP 40 as set forth herein and

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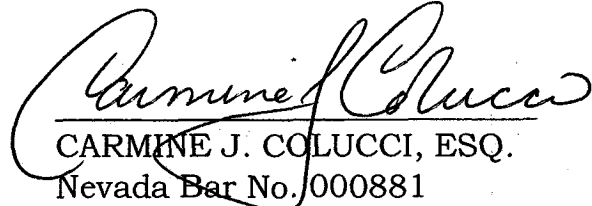
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JANETTE M. BLOOM
CLERK OF SUPREME COURT
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1 for a stay of the district court proceedings until this motion is decided.

2 This motion is based upon the points and authorities submitted herewith.

3 DATED this 15th day of February, 2005.

4
5 CARMINE J. COLUCCI CHTD.

6
7 
8 CARMINE J. COLUCCI, ESQ.
9 Nevada Bar No. 000881
10 629 South Sixth Street
11 Las Vegas, Nevada 89101
12 Attorney for Petitioner

13 **POINTS AND AUTHORITIES**

14 The issue to be decided by this panel is whether a rehearing should be
15 granted in this case for the reasons set forth herein. Rule 40 of the Nevada Rules
16 of Appellate Procedure states in pertinent part as follows:

17 **Rule 40. Petition for Rehearing.**

18 (a) Procedure and Limitations.

19 (1) Time for filing; content. A petition for rehearing may be filed
20 within eighteen (18) days after the filing of the court's decision
21 pursuant to Rule 36 unless the time is shortened or enlarged by
22 order. . . .

23 ...

24 (c) Scope of application; when rehearing considered.

25 ...

26 (2) The court may consider rehearings in the following
27 circumstances.

28 (i) When the court has overlooked or misapprehended a
material fact in the record or a material question of law in the case,
or

1 (ii) When the Court has overlooked, misapplied or failed to
2 consider a statute, procedural rule, regulation or decision directly
3 controlling a dispositive issue in the case.

4 ...

5 (e) Action by court if granted. If a petition for rehearing is granted,
6 the court may make a final disposition of the cause without
7 reargument or may restore it to the calendar for reargument or
8 resubmission or may make such other orders as are deemed
9 appropriate under the circumstances of the particular case. A
10 petition for rehearing of a panel decision shall be reviewed by the
11 panel that decided the matter. If the panel determines that rehearing
12 is warranted, rehearing before that panel will be held. The full court
13 shall consider a petition for rehearing of an en banc decision.

14 ...

15 The rehearing of a prior determination by a panel of this court is warranted
16 when the court has overlooked or misapprehended a material matter or "in such
17 circumstances as will promote substantial justice." In re Dunlevy, 104 Nev. 784,
18 769 P.2d 1271 (1988).

19 Petitioner contends that the issue raised in his Petition for Writ of
20 Mandamus/for Writ of Prohibition was so constitutionally significant that this
21 panel should consider revisiting that issue as petitioner asserts that
22 reconsideration is necessary in order to promote substantial justice and due
23 process of law.

24 Petitioner contended that he was denied a fair trial as he was not afforded
25 a panel of twelve (12) qualified jurors in his jury trial. All other criminal
26 defendants who go to trial are afforded this right. It is factually beyond dispute
27 from the record that "juror" Barrs was a convicted felon who concealed her
28

1 conviction from the district court, counsel for the parties and the Clark County
2 Jury Commissioner.

3
4 While petitioner is not going to reargue the points raised previously in his
5 original petition or in the record standing before this Court, yet to allow this
6 illegally obtained and invalid verdict to stand, would reward and encourage this
7 type of concealment as there would be no consequences. This concealment of a
8 felony conviction or even convictions has the potential to occur over and over
9 again due to the lack of safeguards in place. Letting this verdict stand until a full
10 appeal is considered by this Court, would serve to punish innocent persons who
11 have been "convicted" by less than twelve (12) qualified jurors. A defendant
12 should not be required to remain in prison until his appeal has run its course
13 when the record is clear that an unqualified person sat on his jury and deliberated
14 his fate. This was not a jury composed of the defendant's peers.
15

16
17 This was a blatant denial of the defendant's constitutional rights which are
18 guaranteed under the Constitution of the United States. Petitioner is also
19 requesting a stay of the district court proceedings until this motion is decided.
20
21 Petitioner is due to be sentenced March 4, 2005, and shortly thereafter will be
22 transported to the Nevada State Prison. To send Petitioner to prison without a fair
23 trial would be an extreme injustice. Since the Petitioner is in custody, there is no
24 prejudice to the state and no danger to the community to stay the district court
25 proceedings until this Court issues a decision on this motion.
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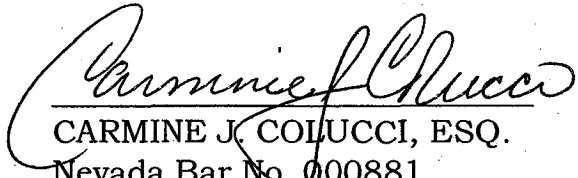
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CONCLUSION

For the above stated reasons, Petitioner requests that this court issue an order staying these proceedings and an order granting a rehearing on Petitioner's original petition.

DATED this 15th day of February, 2005.

CARMINE J. COLUCCI CHTD.



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Attorney for Petitioner

