

FILED

FEB 26 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 78193

Appellants Reply to Answer
to Petition for Review

ALFRED P. CENTOFANTI, III,

Appellant,

VS.

THE STATE OF NEVADA,

Respondent.

COMES NOW, Appellant, Alfred P. Centofanti, III, in Pro Per Character
"Centofanti") and hereby submits his Reply to the Respondent's Answer
Filed in the above-referenced matter by leave of this honorable Court.

This Reply is made and based upon all pleadings and paper on file,
the attached Memorandum of Points and Authorities, as well as any
additional facts, witnesses, law or evidence requested by this Court.

Respectfully submitted,

this 9th day of February, 2021.

APL

Alfred Centofanti # 85237

HDSP / P.O. BOX 650

Indian Springs, NV 89070

Appellant in Pro Per

Memorandum of Points and Authorities

Introduction

The common thread of the five issues raised in the Petition for Review is that
each individually and, collectively denied Centofanti his Right to Due Process
and Fundamental Fairness in the proceedings under the 5th Amendment which the
Respondent fails to address amounting to confession of error.

21-05792

1 I. Respondent's misstated and misapproached the disqualification issue.
2 The Respondent ("State") concedes Centofanti was unable to request disqualification
3 due to impossibility and lack of notice. The record reflects the appeal was originally
4 assigned to the Nevada Supreme Court. Centofanti could not have anticipated a transfer
5 to the Court of Appeals such as to object to an appellate panel not yet assigned.
6 Furthermore, where is the proof Centofanti was given notice of the full names and
7 identities of the appellate panel once assigned to allow him to seek disqualification?
8 As it stands, appellate justice Gibbons recused himself after participating in
9 the June 2020 3 judge panel decision denying Centofanti's habeas appeal, and,
10 therefore the state concedes the appeal was decided by a judge with a conflict,
11 or only a two judge panel, the same two judges who denied the COA rehearing.
12 Relief would be to vacate the decision Judge Gibbons participated in.
13 Here, without counsel, or internet access, Centofanti was not put on notice as to the
14 identity of the appellate panel, and, without law library access, access to the Rules as to
15 disqualification, and here, the ability to look up and respond to the plethora of case
16 law and treatises only available to the State in addressing this issue in its Answer.
17 Finally, if the passage of time eliminated the need for disqualification, which
18 Centofanti does not concede, why would the clerk still disqualify Supreme Court Justice
19 Gibbons? Why would appellate court Justice Gibbons recuse? Apperance of impropriety not time barred.
20 The failures here, multiple, to screen and provide adequate notice, should not
21 be allowed to prejudice Centofanti and act as a de facto forced waiver of
22 his right to seek disqualification. The state should also not be allowed
23 to both deny Centofanti access to the resources needed to respond and
24 then essentially 'sandbag' him with citations to authorities not available
25 to him, and cited to extensively and thoroughly in its Answer.
26 These issues would seem to fit into the criteria of NRS 40B(4), Answer pp. 23,
27 as ones of first impression, statewide significance and importance, and also
28 for per se litigants, capable of repetition, but otherwise evading review.

1 II The Remaining Claims were Decided by the COA and are Properly Raised
2 The State improperly takes the position that the "remaining claims were never
3 decide [sic] by the Court of Appeal." Answer, p. 7. The Court of Appeals in fact denied
4 Centofanti's renewed request for counsel. The Court of Appeals in fact found that good
5 cause was not properly found in the lower court. The Court of Appeals in fact raised the
6 issue of good cause *sera sponte*. And, finally, the Court of Appeals ^{in fact} denied Centofanti's requests
7 for an order giving him law library access.

8 A. Denial of counsel was improper.

9 Centofanti labored under two distinct disabilities. Both are undisputed. He
10 requested counsel as he was (1) diagnosed and being treated for Stage IV Hodgkin's
11 Lymphoma, and (2) being denied access to the resources needed to properly
12 litigate the proceedings by the State through the Department of Corrections.
13 A denial of counsel can amount to a denial of Due Process. Here Centofanti rightfully
14 questioned the decision to deny appointment of counsel and/or referral to the prison
15 program set forth in his informal brief, and raised to the Court of Appeal.

16 Since his medical condition and denial of access to the courts were both
17 out of his control and worked to his detriment, this Court, in review is
18 ideally situated to examine these issues as to Centofanti and as set forth
19 in NRAP 40B(a) as matters of first impression, statewide significance
20 and public importance.

21 The State also misleads as to material facts. The denial by the Supreme Court
22 for counsel was made July 31, 2019 as to a request made and supplemented months
23 prior, but nevertheless prior to the commencement of 24 weeks (12 treatments) of
24 chemotherapy during which Centofanti's ability to represent himself was severely diminished.
25 therefore the request to the COA was made on different facts and circumstances
26 which this Court can and should properly review, as to disabled inmates
27 further burdened with interference by the State's denying access
28 to the prison law library.

1 B. The COA Rejection of Good Cause was improper

2 The COA decided sua sponte to reject the finding of good cause made
3 by the district court. Therefore, this was an issue that was not briefed
4 by Certofanti who is not required to anticipate unappealed issues nor has
5 the gift of prophecy. No choice but to raise on rehearing.

6 It is undisputed that the district court appointed counsel with a conflict
7 due to the district court's error in failing to screen appointed counsel either
8 through the habeas petition, which revealed the conflict, or through a canvass
9 or waiver from Certofanti. Instead, conflicted counsel was allowed to
10 labor under the conflict resulting in prejudice and harm to Certofanti as if
11 prevented claims of conflicted counsel's ineffectiveness unappealed from being heard.

12 As a matter of 1st impression and importance with this Court per NRS 40.001
13 what is the proper method to seek review under these circumstances, an
14 unbrieffed issue forms the basis to deny the appeal, here good cause?

15 When the decision was reached in June 2020, to the present, Certofanti
16 has and continues to be denied access to the resources necessary to ensure
17 this issue (and related issues) are decided on the merits. Again, the
18 state denies access to case law and authority and then seeks to gain an
19 unfair advantage by using lack of case law and authority to deny Certofanti's claims.

20 See, Answer p. 11 "Appellant's responsibility to present relevant authority." "How?" HOSP
21 law library closed due to Covid-19. No one available to assist him at HOSP,
22 and COA and this Court refused to intervene, hold a hearing, or appoint counsel.

23 The result is a denial of Due Process as Certofanti is forced to seek relief
24 as to an issue raised sua sponte under the more difficult and stringent review
25 on a Petition for Review as to on Appeal. Fundamental Fairness would dictate
26 this issue be remanded for briefing on the merits and not dismissed on
27 misplaced procedural issues as Certofanti not provided the opportunity
28 to adequately research, draft and respond to the State's Answer.

1 Furthermore, since Good Cause was found in the lower court, Centofanti should be
2 allowed to develop the facts, witnesses, documents, and other evidence denied by the
3 lower court in the denial of an evidentiary hearing as to the habeas petition that was
4 denied and appealed. The issue of judicial interference and good cause deserves
5 to be briefed and decided on the merits.

6 C. Claims 4 and 5 properly before this Court

7 1. Sua sponte raised issue of lack of good cause requires additional litigation
8 Centofanti incorporates argument B, pp 4-5, supra, and to that adds the following:
9 Centofanti seeks relief and direction from the Court in the instance an
10 unbriefed, unappealed issue forms the basis for the denial of an appeal. The
11 disadvantages outlined in the Petition for Review at pp 8-9 are not disputed or
12 addressed in the state's answer, therefore relief is sought by way of confession
13 of error as to this issue.

14
15 2. This Court absolutely can address NDOC policies that deny Constitutional Rights.
16 It remains undisputed that the NDOC has denied Centofanti access to the
17 law library and that this Court could take measures to correct the situation.
18 As cited to in the Petition for Review, and unanswered by the state, the U.S.
19 Supreme Court's decision in Roman Catholic Diocese of New York, (Berkly) vs.
20 Andrew Cuomo, 592 U.S. ____ (2020) the Rights to Due Process should not be
21 compromised due to the ongoing pandemic.

22 Here, the NDOC, a political subdivision of the State of Nevada, is subject to the
23 authority of this Court, and, in this instance, is urged to act to address the
24 continuing violation of Centofanti's 5th Amendment Right to Due Process, without
25 this Court's intervention Centofanti cannot and should not be required to litigate
26 and meet deadlines without access to those resources needed to have the
27 issues raised decided on the merits and not, as the state urges, be decided
28 on procedural rules only in play due to the denial of access and Due Process.

1 Conclusion

2 The five issues raised by Centofanti are all matters of public policy that deserve
3 consideration on the merits and not summary denial as urged by the State. It should
4 trouble this Court that the state feels NARC's procedures are "above the law" and
5 "beyond reproach". The relief sought, to have the appeal of the denial of his writ
6 of habeas corpus (post-conviction) be heard on the merits, after access to
7 the resources to litigate and/or the assistance of counsel, and the other issues
8 raised is warranted under the facts and circumstances. The consequences to
9 Centofanti are severe as he is serving two consecutive sentences of Life
10 without the possibility of Parole. Litigating in Pro Per is tough enough, but
11 what this Court is asked to acknowledge is that trying to do so effectively
12 with stage IV cancer, locked down, and without law library access, impossible.
13 The State capitalizes on this in its Answer, a further denial of Due Process.
14 Please allow me the relief requested in the Request for Review and this
15 Reply, as well as the appeal of the writ which forms the basis of these issues,
16

17 Respectfully submitted this 9th day of February 2021.

18 APL II

19 Alfred Centofanti # 85237

20 HOSP / P.O. BOX 650

21 Indian Springs, NV 89070

22 Appellant in Pro Per

23

24 Certificate of Service

25 The Clerk is asked to please serve the motion and Reply electronically
26 on Respondent's counsel as previously ordered by the Court.

27 APL II

28 Alfred Centofanti # 85237