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ALFRED P. CENTOFANTI, III,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

Case No. 5856

COMES NOW the State of Nevada, by DAVID ROGER, Clark County District Attorney, through his Chief Deputy, STEVEN S. OWENS, and submits this Opposition To Appellant's Motion For Remand.

This opposition is based on the following memorandum and all papers and pleadings on file herein.

Dated this 2nd day of August, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar # 002781

BY */s/ Steven S. Owens*

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

Attorney for Respondent

1 **MEMORANDUM**

2 This is an appeal from the denial of a petition for post-conviction relief following a
3 verdict of guilty for First Degree Murder with Use of a Deadly Weapon. The Notice of
4 Entry of Order was filed on June 6, 2011, and a pro per Notice of Appeal on June 10, 2011.
5 Appellate counsel now seeks remand so the district court can entertain a conflict of interest
6 claim alleged in a motion for reconsideration. The State is opposed.

7 Appellate counsel claims that remand is necessary because the district court has not
8 “fully addressed” a conflict of interest claim - - namely, that attorney Colucci was conflicted
9 from representing Centofanti on post-conviction because he had previously represented
10 Centofanti at sentencing and on direct appeal and could not allege his own ineffectiveness.
11 However, the district court entertained this precise issue:

12 THE COURT: Did you discuss with Mr. Colucci potential conflicts of interest
13 he might have as having been your counsel on your direct appeal?

14 THE DEFENDANT: Yes.

15 THE COURT: And you – did you agree to waive those conflicts after having
16 that discussion?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. All right.

19 Transcript of Evidentiary Hearing, 7/30/10, 163:16-22. Furthermore, on June 1, 2011, the
20 district court took the Motion for Reconsideration off calendar and aside from appointing
21 counsel to “review” the motion and “proceed accordingly,” has given no indication of any
22 intent to reconsider any prior ruling in the case. In fact, the filing of a Notice of Entry of
23 Order just five days later would indicate to the contrary.

24 Although this Court may remand without decision in an appropriate case, the record
25 in this case is already complete for purposes of resolving the issues presented and justice
26 does not require any further proceedings below. See 5 C.J.S. Appeal and Error § 1017;
27 Carter v. California Dep’t. of Veterans Affairs, 38 Cal.4th 914, 44 Cal.Rptr.3d 223, 135 P.3d
28 637 (2006). To the extent the court below did not “fully” address the conflict issue to

1 appellate counsel's satisfaction, any such alleged error is fully capable of review on appeal
2 without need for remand.

3 Dated this 2nd day of August, 2011.

4 Respectfully submitted,
5 DAVID ROGER
6 District Attorney

7
8 BY /s/ Steven S. Owens
9 STEVEN S. OWENS
10 Chief Deputy District Attorney
11 Nevada Bar #004352
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Attorney for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 2, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attorney General

ROCHELLE T. NGUYEN, ESQ.
Counsel for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney

BY /s/ jennifer garcia
Employee, District Attorney's Office

SSO/jg