

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED P. CENTOFANTI III, )  
)  
)  
Appellant, )  
)  
vs. )  
)  
E.K. McDANIEL, WARDEN, )  
ELY STATE PRISON )  
)  
Respondent. )  
\_\_\_\_\_ )

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**APPELLANT'S APPENDIX, VOLUME XIV**

ROCHELLE T. NGYUYEN, ESQ.  
NGUYEN & LAY  
Nevada Bar Identification No. 8205  
324 South Third Street  
Las Vegas, Nevada 89101  
(702) 383-3200

Clark County District Attorney  
Regional Justice Center  
200 Lewis Avenue, Third Floor  
P.O. Box 552511  
Las Vegas, Nevada 89155-2211

CATHERINE CORTEZ MASTO  
Nevada Bar Identification No. 3926  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

Attorney for Appellant  
ALFRED P. CENTOFANTI III

Attorney for Respondent  
E.K. McDANIEL, WARDEN  
NEVADA STATE PRISON

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*Arthur J. Schuman*  
CLERK OF THE COURT

1 MOT  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar No. 000881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274 telephone  
8 (702) 384-4453 facsimile  
9 Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

10 ALFRED P. CENTOFANTI III,

CASE NO. 01C172534  
DEPT NO. 6

11 Petitioner,

12 vs.

13 E.K. McDANIEL, WARDEN,  
14 ELY STATE PRISON,

15 Respondent.

01C172534  
MWCN  
Motion to Withdraw As Counsel  
1403602



16 MOTION TO WITHDRAW AS ATTORNEY OF RECORD  
17 AND APPOINTMENT OF COUNSEL

18 COMES NOW, CARMINE J. COLUCCI, of the law firm of CARMINE J.  
19 COLUCCI, CHTD., and moves this Honorable Court for its Order allowing him to  
20 withdraw as Attorney of Record for the above-named Petitioner, ALFRED P.  
21 CENTOFANTI, III, and for appointment of counsel.

22 This motion is made and based upon the Affidavit of CARMINE J. COLUCCI,  
23 and the papers and pleadings on file herein.

24 / / / / /

25 / / / / /

26 / / / / /

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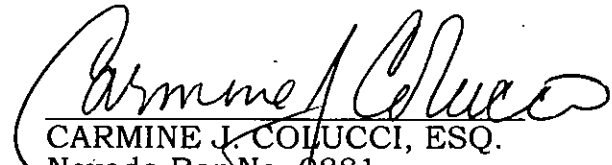
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CLERK OF THE COURT

1 DATED this 10<sup>th</sup> day of May, 2011.

2 CARMINE J. COLUCCI, CHTD.

3   
4 CARMINE J. COLUCCI, ESQ.  
5 Nevada Bar No. 0881  
6 629 South Sixth Street  
7 Las Vegas, Nevada 89101

8 **NOTICE OF MOTION**

9 TO: THE STATE OF NEVADA; Respondent;

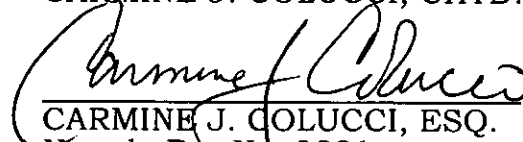
10 TO: DAVID ROGER, DISTRICT ATTORNEY, its Attorney and

11 TO: ALFRED P. CENTOFANTI, Petitioner.

12 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned  
13 will bring the above and foregoing MOTION TO WITHDRAW AS ATTORNEY OF  
14 RECORD on for hearing before this Court at the Courtroom of the above-entitled  
15 Court on the 23 day of May, 2011, at the hour of 8:30 a.m. of said day, or as  
16 soon thereafter as Counsel can be heard.

17 DATED this 10<sup>th</sup> day of May, 2011.

18 CARMINE J. COLUCCI, CHTD.

19   
20 CARMINE J. COLUCCI, ESQ.  
21 Nevada Bar No. 0881  
22 629 South Sixth Street  
23 Las Vegas, Nevada 89101

24 **POINTS AND AUTHORITIES**

25 This Court has the discretion to allow counsel to withdraw. Eighth Judicial  
26 District Court Rule 7.40(b) provides in pertinent part as follows:

27 (b) Counsel in any case may be changed only:

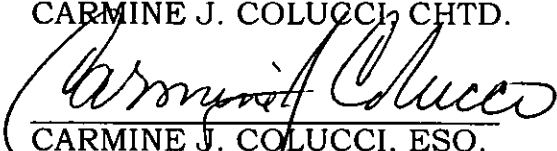
28 ... (2) When no attorney has been retained to replace the attorney  
withdrawing, by order of the court, granted upon written motion,  
and,

1 (i) If the application is made by the attorney, the attorney must  
2 include in an affidavit the address, or last known address, at which  
3 the client may be served with notice of further proceedings taken in  
4 the case in the event the application for withdrawal is granted, and  
5 the telephone number, or last known telephone number, at which  
6 the client may be reached and the attorney must serve a copy of the  
7 application upon the client and all other parties to the action or  
8 their attorneys, . . . .  
9 ...

6 Pursuant to EDCR 7.40 and based upon the Affidavit of Carmine J. Colucci  
7 attached hereto and incorporated herein by reference, Carmine J. Colucci, Esq.,  
8 respectfully requests that he be allowed to withdraw as counsel of record for  
9 petitioner herein and that substitute counsel be appointed to represent petitioner  
10 in any further proceedings.

11 DATED this 10<sup>th</sup> day of May, 2011.

12 CARMINE J. COLUCCI, CHTD.

13   
14 CARMINE J. COLUCCI, ESQ.

15 Nevada Bar No. 0881  
16 629 South Sixth Street  
17 Las Vegas, Nevada 89101  
18 Attorney for Petitioner

19 **AFFIDAVIT OF CARMINE J. COLUCCI**

18 STATE OF NEVADA )  
19 ) ss:  
20 COUNTY OF CLARK )

21 CARMINE J. COLUCCI, being first duly sworn upon his oath, deposes and  
22 says:

23 1. That Affiant is an attorney duly licensed to practice law in the State of  
24 Nevada; that he is the attorney of record for Petitioner, ALFRED P. CENTOFANTI,  
25 III, and that he has personal knowledge of the matters stated herein in this  
26 Affidavit, except for those matters stated on information belief, and is competent  
27 to testify thereon.

28 2. That Affiant was appellate counsel for petitioner, ALFRED P.  
CENTOFANTI III, in his direct appeal.

1           3. That Affiant was counsel for petitioner, ALFRED P. CENTOFANTI, III,  
2 on his Writ of Habeas Corpus and at the evidentiary hearing which was  
3 conducted on July 30, 2010.

4           4. That on May 9, 2011, an Order Denying Petition for Writ of Habeas  
5 Corpus was filed.

6           5. That Affiant has forwarded a letter to petitioner with a copy of this  
7 Court's Order Denying Petition for Writ of Habeas Corpus and a copy of this  
8 motion.

9           6. That Affiant requests this Court to allow him to withdraw as Attorney  
10 of Record in the above-entitled action in order to avoid a potential conflict of  
11 interest in the event that petitioner seeks to question the effectiveness of affiant's  
12 representation.

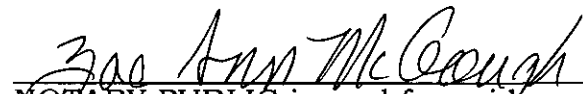
13           7. That Affiant requests that this Court appoint new counsel for the  
14 petitioner for any further proceedings that petitioner chooses to pursue.

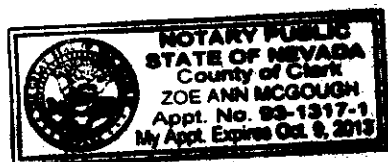
15           8. That Affiant is informed and believes that petitioner may be served with  
16 notice of further proceedings at:

17           Alfred P. Centofanti, III #85237  
18           P.O. Box 650  
19           Indian Springs, NV 89070

20             
CARMINE J. COLUCCI

21 SUBSCRIBED and SWORN to before  
22 me this 10 day of May, 2011.

23             
24 NOTARY PUBLIC in and for said  
25 County and State



ORIGINAL

FILED

MAY 19 3 35 PM '11

*Alfred P. Centofanti III*  
CLERK OF THE COURT

MOT  
CARMINE J. COLUCCI, ESQ.  
Carmine J. Colucci Chtd.  
Nevada Bar No. 000881  
629 South Sixth Street  
Las Vegas, Nevada 89101  
(702) 384-1274  
Attorney for Petitioner,  
ALFRED P. CENTOFANTI III

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF CLARK

ALFRED P. CENTOFANTI III,	)	CASE NO. C172534
	)	DEPT NO. VII
Petitioner,	)	
	)	
vs.	)	
	)	
E.K. McDANIEL, WARDEN	)	
ELY STATE PRISON,	)	
	)	
Respondent.	)	

NOTICE OF MOTION AND  
MOTION FOR CONSOLIDATION AND OTHER RELIEF

DATED this 19<sup>th</sup> day of May, 2011.

CARMINE J. COLUCCI, CHTD.

*Carmine J. Colucci*  
CARMINE J. COLUCCI, ESQ.  
Nevada Bar No. 0881  
629 South Sixth Street  
Las Vegas, NV 89101  
Attorney for Petitioner

01C172534  
MOT  
Motion  
1422601



Case No. C-172534

Dept. No. 6

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Clark

Alfred P. Centofanti III  
Petitioner

vs.

E.K. McDaniel, Warden, ESP  
Respondent

Case No. \_\_\_\_\_

Dept No. \_\_\_\_\_

Docket \_\_\_\_\_

**NOTICE OF MOTION**

YOU WILL PLEASE TAKE NOTICE, that Petitioner's motion for  
Consolidation and Other Relief  
will come on for hearing before the above-entitled Court on the 1st day of June, 2011.  
at the hour of 8<sup>30</sup> o'clock A. M. In Department 6, of said Court.

CC:FILE

DATED: this 12<sup>th</sup> day of May, 2011.

BY: [Signature]  
Alfred Centofanti # 95237  
Petitioner /In Propria Personam

1 Alfred Centofanti ID NO. 85237

2 HIGH DESERT STATE PRISON  
3 22010 COLD CREEK ROAD  
4 P.O. BOX 650  
5 INDIAN SPRINGS, NEVADA 89018

6 District Court  
7 Clark County, Nevada

8 ALFRED P. CENTOFANTI III  
9 Petitioner

10 v.

11 E.K. McDaniel, Warden  
12 ESP Respondent

CASE NO.: C-172534

DEPT. NO.: 6

DOCKET: \_\_\_\_\_

13 Petitioner's Notice of non-opposition to motion to withdraw  
14 and appointment of counsel & motion to consolidate all  
15 pending motions & matters for May 23, 2011 telephonically  
16 on an order shortening time

17 COMES NOW, Petitioner ALFRED CENTOFANTI, herein above respectfully  
18 moves this Honorable Court for an order consolidating the motions to  
19 withdraw (filed 5/10/11) and motion for reconsideration  
20 (mailed 5/12/11 for filing) to each be heard 5/23/11 telephonically  
21 on an order shortening time.

22 This Motion is made and based upon the accompanying Memorandum of Points and  
23 Authorities,

24 DATED: this 12<sup>th</sup> day of May, 2011

25 BY: \_\_\_\_\_

Alfred Centofanti # 85237

26 Defendant/In Proper Personam  
27 Petitioner  
28

1 I. Introduction

2 Petitioner seeks to have this Court hear the motion to  
3 withdraw & motion for reconsideration on the date already  
4 set for the motion to withdraw, May 23, 2011 at 8:30 a.m.  
5 and that Petitioner be allowed to appear telephonically.  
6

7 II. Statement of Relevant Facts

8 On Monday, May 9, 2011 this Court issued its  
9 Order denying Petitioner's writ of Habeas Corpus (Post-Conviction)

10 On Wednesday, May 11, 2011, Petitioner's counsel's letter  
11 and copy of decision was delivered to Petitioner.

12 On Thursday, May 12, 2011, Petitioner prepared &  
13 served a motion for reconsideration and spoke to Petitioner's  
14 counsel re: same & his motion to withdraw.

15 On Thursday May 12 2011 Petitioner received his counsel's  
16 motion to withdraw and Appointment of Counsel filed May 10, 2011  
17 and set for hearing on May 23, 2011 at 8:30 a.m.  
18

19 III Relevant Legal Authority & Argument.

20  
21 Under both the District Court Rules (applicable to  
22 all district courts in Nevada) and the 8th Judicial District  
23 Court Rules, this Court has the authority to regulate its  
24 calendar & to hear matters in a time frame it feels is  
25 justified under the facts & circumstances of a particular  
26 case.

27 Here, Petitioner is respectfully requesting this Court  
28 hear this motion on an order shortening time & rule as it before 5/23 &



1 allow the motion to withdraw & motion for Recconsideration to  
2 be heard together on May 23, 2011 at 8:30 a.m. & that  
3 Petitioner be allowed to appear telephonically.

4 As to the first request, it would be in the interest of  
5 judicial economy & not prejudicial to any party to  
6 have the matter heard together, and, additionally each  
7 motion seeks the exact same relief, the withdrawal  
8 of Carmine Colucci, Esq. & the appointment of alternative  
9 counsel.

10 Petitioner has served MR. Colucci with the motion  
11 for Recconsideration & has filed an Amended Certificate of  
12 Service indicating same with the clerk's office.

13 The only additional relief sought by Petitioner is an  
14 order requesting MR. Colucci turn over his files, records &  
15 other materials pertaining to his representation of Petitioner  
16 to Petitioner upon his withdrawal.

### 17 Request to Appear Telephonically

18  
19 Petitioner repeats his request from the motion for  
20 Recconsideration that he be allowed to appear telephonically  
21 at any hearing conducted in this case. As much as  
22 Petitioner would like to be woken up at 3:00 a.m. &  
23 spend the entire day in a jump suit & restraints, among  
24 other things, Petitioner respectfully requests his presence  
25 be allowed telephonically and the matter be heard in  
26 chambers if possible.  
27

1 This request is being made in good faith and also to  
2 allow Petitioner the ability to properly prepare to be allowed  
3 to have those materials with him at the phone to respond  
4 to any inquiries from the Court and/or argument in  
5 opposition by the State, if any.

6 The prison requires inmates to 'roll up' all of their  
7 property at 3:00 am & to vacate their housing assignment  
8 as a condition to going to Court. The risk of losing  
9 one's property & housing assignment are unfortunately  
10 real & puts undue stress on those asserting their rights  
11 to access the Courts. A telephonic appearance, which  
12 is encouraged by the applicable Nevada Supreme Court  
13 Rules, avoids all this & saves the state & taxpayers  
14 the cost of transport back & forth from the prison to  
15 the Courthouse.

### 16 III. Conclusion & Prayer for Relief

17 Based upon the foregoing Petitioner respectfully requests:  
18 1) An order granting the Request to have all pending  
19 matters heard on May 23, 2011 at 8:30 am;  
20 2) An order that instructs HQSP to have Petitioner  
21 available by phone on May 23, 2011 at 8:30 am; and  
22 3) Any further & necessary relief the Court deems proper.  
23

24 Respectfully Submitted  
25

26   
27 Alfred Centofanti #05037

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion to Consolidate Proceedings + Related Relief  
(Title of Document)

filed in District Court Case number C - 172534

☒ Does not contain the social security number of any person.

-OR-


☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

  
Signature

5-12-11  
Date

Alfred Castofanti  
Print Name

Petitioner W Proper Person  
Title

**CERTIFICATE OF SERVICE BY MAILING**


I, Alfred Cantofari, hereby certify, pursuant to NRCP 5(b), that on this 12<sup>th</sup>  
day of May, 2011, I mailed a true and correct copy of the foregoing, "Motion to Consolidate All pending matters & related Relief"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Carmine J. Colucci, Esq.  
629 South Sixth St.  
Las Vegas, NV 89101

District Attorney's Office  
200 Canal Avenue  
Las Vegas, NV 89155

CC: FILE

DATED: this 12<sup>th</sup> day of May, 2011.


  
Alfred Cantofari # 85237  
Petitioner /In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

**CERTIFICATE OF SERVICE BY MAILING**

David Rogers, DA  
200 Lewis Avenue  
Las Vegas, Nv 89155

Carmine J. Colucci  
629 S. Sixth Street  
Las Vegas, NV 89101

DATED: this 12<sup>th</sup> day of May, 2011. *gr*

  
 Alfred Conditante # 65237  
 Delivered /In Propria Personam  
 Post Office box 650 [HDSP]  
 Indian Springs, Nevada 89018  
 IN FORMA PAUPERIS:

ORIGINAL

22

MOT  
CARMINE J. COLUCCI, ESQ.  
Carmine J. Colucci Chtd.  
Nevada Bar No. 000881  
629 South Sixth Street  
Las Vegas, Nevada 89101  
(702) 384-1274  
Attorney for Petitioner,  
ALFRED P. CENTOFANTI III

FILED

MAY 19 3 39 PM '11

*Ann L. Shuman*  
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF CLARK

ALFRED P. CENTOFANTI III,	)	CASE NO. C172534
	)	DEPT NO. VII
Petitioner,	)	
	)	
vs.	)	
	)	
E.K. McDANIEL, WARDEN	)	
ELY STATE PRISON,	)	
	)	
Respondent.	)	

**NOTICE OF MOTION AND**  
**MOTION FOR CONSIDERATION, WITHDRAWAL AND APPOINTMENT OF**  
**ALTERNATIVE COUNSEL, STAY OF PROCEEDINGS AND OTHER RELIEF**

DATED this 19<sup>th</sup> day of May, 2011.

CARMINE J. COLUCCI, CHTD.

*Carmine J. Colucci*  
CARMINE J. COLUCCI, ESQ.  
Nevada Bar No. 0881  
629 South Sixth Street  
Las Vegas, NV 89101  
Attorney for Petitioner

01C172534  
MOT  
Motion  
1422626



RECEIVED

MAY 19 2011

CLERK OF THE COURT

13

1 Case No. G-172534

2 Dept. No. 6

3  
4  
5 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6  
7 IN AND FOR THE COUNTY OF CLARK

8 THE STATE OF NEVADA

9 Plaintiff

10 vs.

11 ALFRED P. CENTOFANTI III

12 Defendant

Case No. G-172534

Dept No. 6

Docket \_\_\_\_\_

13  
14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE**, that Defendant, Alfred Centofanti

16  
17 will come on for hearing before the above-entitled Court on the 1st day of June, 20 11.  
18 at the hour of 830 o'clock A. M. In Department 6, of said Court.

19  
20 CC:FILE

21  
22 DATED: this 12th day of May, 20 11.

23  
24 BY: [Signature]  
25 Alfred Centofanti # 85237  
26 Defendant /In Propria Personam  
27  
28

1 ALFRED CENTOFANTI # 85237

2 Defendant/ In Propria Personam

3 Post Office Box 650 [HDSP]

4 Indian Springs, Nevada 89018

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA

8 )  
9 Plaintiff,

10 vs.

11 ALFRED CENTOFANTI

12 Defendant.

Case No. C-172534

Dept. No. 6

Docket

13  
14 PETITIONER'S MOTION FOR RECONSIDERATION, WITHDRAWAL AND APPOINTMENT OF ALTERNATIVE  
15 COUNSEL, STAY OF PROCEEDINGS AND OTHER RELIEF

16  
17  
18  
19 COMES NOW, Petitioner Alfred Centofanti,  
20 moves this Honorable Court for an Order Granting his Motion for Reconsideration,  
21 Withdrawal and Appointment of Alternative Counsel, Stay of Proceedings and Other  
22 Relief, telephonically, on an Order Shortening Time.

23 This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

24  
25 DATED: this 12<sup>th</sup> day of May, 2011.

26 BY:

27 Alfred Centofanti

# 85237

28 Defendant/In Propria Personam



1 I. INTRODUCTION

2 Petitioner is filing this Motion for Reconsideration based upon his review  
3 of the Court's May 9, 2011 Order Denying Denying his Petition for Writ of Habeas  
4 Corpus. The basis for the reconsideration is based upon the failure of the Court  
5 to properly apply the law and the facts per the Strickland standard, the failure  
6 to consider controlling U.S. Supreme Court law on other issues, and the appoint-  
7 ment of counsel to assist Petitioner who had an actual and unwaivable conflict.  
8 Petitioner is therefore asking the Court to appoint him alternative counsel, to  
9 Amend his Petition, and to stay the proceedings until the Motion to Appoint  
10 Counsel is ruled upon, and to have this matter heard telephonically on an Order  
11 Shortening Time.

12  
13 II. STATEMENT OF RELEVANT FACTS

14 On or about February 29, 2008, Petitioner filed his Petition for Writ of  
15 Habeas Corpus (Post-Conviction).

16 On or about 2009 Or 2010 this Court appointed attorney Carmine Colucci to  
17 represent Petitioner to assist him in discovery and the prosecution of the Writ.

18 On July 30, 2010 this Court held an evidentiary hearing.

19 On September 24, 2010, this Court allowed the parties to present closing  
20 arguments through counsel.

21 On May 9, 2011, this Court issued it's Order Denying the Petition for Writ  
22 of Habeas Corpus.

23  
24 III. LEGAL AUTHORITY AND ARGUMENT

25 A. Motion for Reconsideration

26 Eighth Judicial District Court Local Rule 2.24 provides, as follows:

27 (b) A party seeking reconsideration of a ruling of the court, other than  
any order which may be addressed by motion pursuant to NRCP 50(b),

1 52(b), 59 or 60, must file a motion for such relief within 10 days  
2 ~~after service of written notice of the order or judgment unless the~~  
time is shortened or enlarged by order.

3 See, also District Court Rule 13(7)(Rehearing by leave of court only upon  
4 a noticed motion). While the District Court and Local Rules are silent as to the  
5 basis for a Motion of Reconsideration, the Court should look to the NRAP which  
6 provide that a Motion for Reconsideration under Rule 40 may be considered:

- 7 (i) When the court has overlooked or misapprehended a material fact  
8 in the record or a material fact in the record or a material  
question of law in the case, or  
9 (ii) When the court has overlooked, misapplied or failed to consider a  
statute, procedural rule, regulation or decision directly controlling  
10 a dispositive issue in the case.

11 Here, this Court should grant Petitioner's Motion for Reconsideration based  
12 upon the following:

13 1. The failure of the Court to consider the controlling United States  
14 Supreme Court case law with regards to the following issues:

15 A. The disqualification of Dan Albregts

16 The United States Supreme Court in the case of United States v. Gonzales-  
17 Lopez stated unequivocally that the erroneous disqualification of a defendant's  
18 counsel of choice is a structural error that requires reversal of conviction  
19 regardless of the effectiveness of alternative counsel. See, citations and case  
20 law in Ground One of the Petition and Points and Authorities.

21 Petitioner provided the Court the factual and legal basis to consider this  
22 issue in his Petition, and the fact of the erroneous disqualification was never  
23 disputed or refuted by the State at the evidentiary hearing.

24 Therefore, it was an error by the Court in contradiction to Petitioner's  
25 6th Amendment Rights to the U.S. Constitution to Counsel, and Due Process under  
26 the 5th and 14th Amendments, and the Court's holding in Gonzales-Lopez to not  
27 have considered and granted Petitioner relief on this issue.

1 See, Petition P&A's at pp. 15-30, Petitioner's Reply and U.S. v. Gonzales-  
2 Lopes, 126 S.Ct. 2557 (2006).

3 B. The Issue of the Unconstitutional Canvass re: Self-Defense.

4 The Court incorrectly claimed at Page 3 of the Order denying the Writ that  
5 the matter of the canvass was not raised in the instant petition the fact that  
6 it was not included in the appeal. The issue of this being plain error and it  
7 being reversible error was addressed in the Petition P&A's at pages 30-33 and  
8 was specifically addressed at the evidentiary hearing of this matter (believed  
9 to be during the July 30, 2010 hearing). Petitioner is informed and believes  
10 (since he is still awaiting the complete record of the proceedings from counsel)  
11 that the Court addressed the issue of the failure to raise on appeal with counsel  
12 directly on the record, but did not chose to address if the Court was to apply  
13 the plain efror and reversible error U.S. Supreme Court cases cited to in the  
14 briefs (both the Petition and Reply).

15 It was error for this Court not to address this issue as plain error as it  
16 resulted in the issue not being decided on the merits but simply on IAC claims.  
17 Factually, there is no indication the Court considered the subsequent requests  
18 for a canvass (in 2004 vs. 2001) and the IAC regarding the failure to object to  
19 those. While the Court did inquire and seemed concerned that counsel had the  
20 Petitioner admit being the alleged shooter in a situation where Petitioner  
21 steadyfast maintained he did not recall the event, but counsel failed to reveal  
22 the forensic evidence or lack thereof tying Petitioner to having been the shooter  
23 that being the absolute lack of blood on Petitioner and his clothing and person  
24 (which absolutely contradicted the State's theory of the case and shooting) and  
25 no testing of Petitioner's hands for the presence of gunpowder residue.

26 A decision to have Petitioner admit his involvement as the alleged shooter  
27 was ineffective, a plain error and should have resulted in a new trial.

1 C. The Issue of Appointing Counsel with a conflict of interest.

2 One of the issues that arose at the hearing (July?) was the failure of  
3 counsel to have raised the canvass issue on direct appeal. The Court specifically  
4 addressed counsel regarding the failure. This was an issue not unknown to the  
5 Court prior to the appointment of counsel to represent Petitioner. It was clear  
6 part of the record that the issue was not raised on direct appeal and was made  
7 an issue as a self-standing claim in the Petition (Issue Two, pages 30-43 and in  
8 the Reply).

9 At the point the Court realized the conflict between Petitioner and his  
10 court appointed counsel, it was an error for the Court under U.S. v. Gonzales-  
11 Lopez, supra, not to have appointed Petitioner alternative counsel, no matter the  
12 point the conflict arose. In Gonzales-Lopez, the U.S. Supreme Court stated that  
13 while one does not have the right to counsel of choice when counsel is appointed  
14 they still retain the right to conflict-free counsel.

15 The prejudice from this error is apparent and plain from the record. Counsel  
16 failed to present all of the available evidence in the form of deposition testi-  
17 mony and other discovery on this issue, see Section B, supra. Petitioner should  
18 be appointed alternative counsel and be allowed to file an Amended Petition  
19 and conduct limited discovery on this issue as there was not an "off the record  
20 discussion in chambers" regarding this and the canvassing of both counsel and  
21 the Petitioner during the evidentiary hearing created an unwaivable and actual  
22 conflict as Petitioner was under the belief that the issue was not waived as is  
23 reflected in the record.

24 The handling of this issue violated Petitioner's rights under the 5th, 6th,  
25 and 14th Amendments (Due Process, Remain Silent, Right to Counsel and others)  
26 and it was an error for the Court to not properly address the situation as  
27 outlined above.

1 D. The Court erred in relying on the Order of Affirmance.

2 This Court denied the Writ citing extensively to the Nevada Supreme Court's  
3 2006 Order of Affirmance. The error in doing this is that the U.S. Supreme Court  
4 has issued two decisions which greatly impact the correctness of the NSC's opinion

5 1. United States v. Gonzales-Lopez

6 As stated above, and incorporated by this reference, the disqualification of  
7 counsel opinion by the U.S. Supreme Court was not issued until after the matter  
8 was submitted but before the remittitur. Therefore, this issue, which is not  
9 dependent at all on the strength of the case against a defendant since it involves  
10 structural error was not considered by this court either as an independent ground  
11 (Ground One) or as part of the IAC claims (Ground Six) and therefore the failure  
12 to properly apply Gonzales-Lopez is in error and should be reconsidered.

13 2. Giles v. California, 128 S.Ct. 2678 (2008)

14 While Crawford v. Washington came out just before trial commenced in 2004,  
15 and was commented upon in the Order of Affirmance, the failure of this Court to  
16 consider Giles v. California and its impact on the hearsay used to convict the  
17 Petitioner was error. At the September 24, 2010 hearing counsel asked the Court  
18 to review the Giles opinion in response to the claims of the weight of the alleged  
19 evidence against Petitioner. The fact pattern in Giles is eerily similar to what  
20 is alleged to have occurred in the instant matter. In Sum, police and others  
21 were allowed to testify as to statements made to them in response to a domestic  
22 violence incident occurring weeks prior to Giles stabbing to death his estranged  
23 girlfriend. In reversing the decision of the California Supreme Court, the U.S  
24 Supreme Court stated unequivocally that the admission of these statements, the  
25 same statements allowed at trial and ruled to be harmless were not ruled harmless  
26 by the U.S. supreme court in interpreting Crawford. Since this is not a new  
27 rule of law but simply interpreting same, it should have been used by this Court

1 in making a determination based upon the facts and evidence presented to it in  
2 the pleadings, records, hearing and other documents as viewed through Giles and  
3 not rely upon the outdated and incorrect analysis of the NSC.

4 3. There was not overwhelming evidence to support the conviction.

5 This court erred in finding that there was overwhelming evidence as was  
6 presented to it to justify the affirmance of the conviction. Factually, as stated  
7 previously and part of the record, there was no blood found on the person and clothes  
8 of Petitioner consistent with the state's theory of the case. There are  
9 no witnesses to the alleged incident. The majority of the evidence involved matters  
10 that were hearsay and should have not been allowed or the product of IAC.

11 The main pieces of evidence as against Petitioner were the canvass (supra),  
12 the defendant's own expert, discussed below, and Petitioner's testimony.

13 The canvass provided the state with an improper and unconstitutional glimpse  
14 into the defense before trial which lessened the burden of prosecution, supra.

15 What the Court did not discuss in its Denial was the role of Dr. Eisel had  
16 in the state's case. In the Motion for New Trial, part of the AA, and reviewed  
17 by this Court in connection with reaching its decision was the following:

18 Josh Wheeler interview of June 21, 2004

19 Q. What's the best/worst the defense showed you?

20 A. The defense? The Worst? Claiming self defense.

21 Q. So the defense experts were not that good?

22 A. The defense expert didn't prove that it was self defense in any way,  
23 shape or form for me.

24 A. I just think he would have been better off not going up there.

25 A. No. His expert witnesses came in from around the world but didn't  
26 know about this thing happening when they came to the stand.  
27 (PPS 10, 13, and 20).

28 Alan Miller interview of May 15, 2004

Q. . . . Why didn't you believe the self defense issues . . .

A. The defense attorney . . . didn't seem like he did much to disprove  
what the prosecution was saying . . . it didn't seem like he did  
anything to try to change your mind, or to prove they were wrong and  
he was right.

1 Q. Best and worst for the defense?

2 A. [Their] so called experts were not very helpful to them.

3 A. ]It[ went more along with helping the prosecution than it did the  
4 defense.

5 A. I would have thought the defense attorney would have been more prepared.  
6 he was the one who wasn't prepared.

7 A. It came up in deliberations that everyone though the defendant was lying.

8 Q/ Why do you say that?

9 A. The prosecutions witness of the plastic surgeon from San Diego.

10 A. So that kind of threw everything out the window for him (defendant)

11 A. Jury instruction 0- discount entire testimony because he lied.  
12 (Id. at pps 6,8, 9, 12,,and 13).

13 These interviews, not used to impeach the verdict but to show the extent of  
14 the seriousness of the failures of counsel and his presentation of the case, show  
15 the Court unreasonably applied the facts of the issues implicated (use of self  
16 defense, experts, preparation and testimony of Petitioner) in denying the writ  
17 and should be reconsidered. If the Supreme Court considered the affidavits of  
18 the jurors they are properly before this court to consider as well, and on the  
19 issues not presented to the NSC (IAC).

20 4. The Court erred in not making a factual and legal finding re:experts.

21 The court chose only to address the issue of Lt. Franks but did nothing to  
22 address the issue of Dr. Eisel. As Petitioner's own expert testified it was  
23 both IAC and prejudicial to proceed to trial on self defense after your forensic  
24 pathologist agrees with the state and then to call that very same witness to  
25 eviserate the sole defense you presented at trial.

26 In addition, the court misapprehended the facts and law as to how the failure  
27 to prepare and advise the defendant of the experts opinions (or in the case of  
28 Franks the "ghost" expert) and how this impacted his decision to testify as to  
a non-existent defense. In light of the impact this had on the trial and the  
jury it cannot be said under Strickland not to be prejudicial and not to have  
effected the outcome of the trial. Simply making an unsupported argument in  
closing to lesser included offenses does not render counsel effective.

1 B. Motion for Withdrawal of Counsel and Appointment of Alternative Counsel  
2 Petitioner is not waiving the additional issues in the Petition (such as  
3 the4 Court not ruling on Ground 3-5 and 7 on the merits) but is simply out of  
4 time to do so. Petitioner requests the appointment of counsel pursuant to  
5 NRS 34.750 to assist him in these proceedings and on appeal. The issue that are  
6 presented are complex, and the resources available to Petitioner scant, and due  
7 to the length of sentence Petitioner is facing, the appointment of counsel to  
8 assist him is warranted in this case.

9  
10 C. This matter should be heard on an Order Shortening Time

11 8th Judicial District Court Rule 10 provides that a matter be heard on an  
12 Order Shortening Time "upon five (5) days notice to all parties and to the judge  
13 who shall set the motions for early hearing . . . and upon a showing of good  
14 cause." Here, Petitioner is requesting this matter be heard on an Order  
15 Shortening Time in Order that the Court can retain jurisdiction to hear this  
16 within the 30 days Petitioner has to file the Notice of Appeal and so that these  
17 issues can be heard on the merits.

18  
19 D. Request to Have this Matter Heard Telephonically and Stay

20 Finally, Petitioner requests that this matter be stayed pending the Court  
21 ruling on the request to appoint alternative counsel and other issues and asks  
22 this matter be heard telephonically or if the appointment of counsel is granted  
23 without the Petitioner's physical presence at the hearing since the prison is  
24 well equipped for a telephonic appearance and it is in the supreme court rules  
25 of Nevada favoring same.

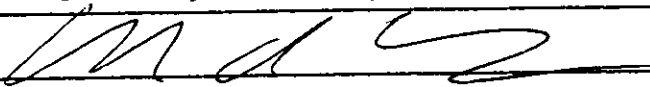


1 III. CONCLUSION AND PRAYER FOR RELIEF

2 Therefore, based upon the foregoing, Petitioner respectfully requests this  
3 Court issue an Order:

- 4 1. Granting his Motion for Reconsideration, Appointment of Counsel, Stay  
and Telephonic Appearance;  
5 2. Granting his Request that this matter be heard on an Order Shortening  
Time; and  
6 3. Any further and other relief the Court deems appropriate under the facts  
and circumstances of this case.

7  
8 Respectfully Submitted,

9   
10 Alfred Centofanti # 85237  
11 HDSP7 P.O. Box 650  
Indian Springs, NV 89070

12 Petitioner in Proper Person  
13  
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AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion for Reconsideration and Other Relief  
(Title of Document)

filed in District Court Case number C-172534

☒ Does not contain the social security number of any person.

**-OR-**

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

**-or-**

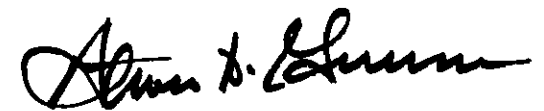
B. For the administration of a public program or for an application  
for a federal or state grant.

  
Signature

5-18-11  
Date

Alfred Centofanti # 85237  
Print Name

Petitioner in Proper Person  
Title



CLERK OF THE COURT

1 **OPP**  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 JAMES R. SWEETIN  
6 Chief Deputy District Attorney  
7 Nevada Bar #005144  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 **DISTRICT COURT**  
8  
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 -vs- )

13 ALFRED P. CENTOFANTI, III  
14 #1730535 )

15 Defendant. )

CASE NO: 01-C-172534-1

DEPT NO: VI

16 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR RECONSIDERATION,**

17 **WITHDRAWAL AND APPOINTMENT OF ALTERNATIVE COUNSEL,**

18 **AND STAY OF PROCEEDINGS**

19 DATE OF HEARING: JUNE 1, 2011

TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
21 JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits the attached  
22 Points and Authorities in Opposition to Defendant's Motion for Reconsideration,  
23 Withdrawal and Appointment of Alternative Counsel, and Stay of Proceedings.

24 This Opposition is made and based upon all the papers and pleadings on file herein,  
25 the attached points and authorities in support hereof, and oral argument at the time of  
26 hearing, if deemed necessary by this Honorable Court.

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 9, 2001, a grand jury returned a true bill of indictment charging  
4 Defendant Alfred P. Centofanti, III (Defendant) with Murder with Use of a Deadly Weapon  
5 (Open Murder) (Felony – NRS 200.010, 200.030, 193.165). On March 15, 2004, Defendant  
6 proceeded to trial, and, on April 16, 2004, his jury returned a verdict finding him guilty of  
7 Murder with Use of a Deadly Weapon. On April 23, 2004, Defendant and the State filed a  
8 stipulation waiving the penalty phase of Defendant's trial. On June 28, 2004, Defendant  
9 moved for a new trial, which the State opposed on August 10, 2004. The Court denied that  
10 motion on August 26, 2004. In response to the Court's decision, Defendant filed a Writ of  
11 Mandamus/Prohibition with the Nevada Supreme Court, which, on September 8, 2004,  
12 issued an Order Directing Answer and Granting Temporary Stay. On January 31, 2005, the  
13 Nevada Supreme Court denied Defendant's petition. On February 16, 2005, Defendant filed  
14 a Motion for Rehearing and Request for Stay Pending Decision, which was also denied. On  
15 March 4, 2005, the Court sentenced Defendant to Life in the Nevada Department of  
16 Corrections (NDOC) without the possibility of parole, plus an equal and consecutive term of  
17 Life without the possibility of parole for the deadly weapon enhancement. The Court filed its  
18 Judgment of Conviction on March 11, 2005.

19 Defendant filed a Notice of Appeal on March 24, 2005. On December 27, 2006, the  
20 Nevada Supreme Court affirmed Defendant's conviction, with remittitur issuing on March  
21 27, 2007. On February 29, 2008, Defendant filed a Petition for Writ of Habeas Corpus (Post-  
22 Conviction). On April 8, 2008, the State filed its opposition to the petition. At a December 2,  
23 2009 hearing, the Court denied all claims except for Defendant's allegation of ineffective  
24 assistance of counsel. On January 8, 2010, Defendant filed a motion seeking leave to  
25 conduct discovery. On January 20, 2010, the Court granted Defendant leave to conduct a  
26 deposition of his former trial counsel, Mr. Allen Bloom, Esq. At an April 28, 2010 status  
27 check, Defendant's counsel, Mr. Carmine Colucci, Esq. indicated to the Court that Mr.  
28 Bloom's deposition had been completed.

1 On July 30, 2010, the Court held an evidentiary hearing at which Defendant,  
2 Defendant's expert witness, one of Defendant's former trial attorneys, and other witnesses  
3 testified. The Court continued the matter for argument on the petition so that it could review  
4 the extensive deposition transcript of Mr. Bloom. The Court heard argument at a September  
5 24, 2010 hearing and then took the matter under advisement. On May 9, 2011, the Court  
6 entered its written order denying Defendant's petition. On May 10, 2011, Mr. Colucci filed a  
7 motion to withdraw as counsel, which the Court heard on May 23, 2011. On May 19, 2011,  
8 Defendant filed a Notice of Non-Opposition to Mr. Colucci's Motion to Withdraw and a  
9 "Motion to Consolidate All Pending Motions and Matters for May 23, 2011 Telephonically  
10 and on an Order Shortening Time." The State's appellate unit never received a copy of this  
11 latter motion although it appears to have been validly served. Also on May 19, 2011,  
12 Defendant filed the instant Motion for Reconsideration, Withdrawal and Appointment of  
13 Alternative Counsel, Stay of Proceedings, and Other Relief. The State's opposition follows.

14 **I. DEFENDANT'S MOTION FOR RECONSIDERATION IS NOT**  
15 **COGNIZABLE**

16 Defendant's Motion for Reconsideration is not properly before the Court and should  
17 be denied. The Eighth Judicial District Court Rules (EDCR) provide that "[n]o motion once  
18 heard and disposed of may be renewed in the same cause, nor may the same matters therein  
19 embraced be reheard, unless by leave of the court granted upon motion therefore, after such  
20 notice of such motion to the adverse parties." EJDRCR 2.24(a). Defendant failed to obtain  
21 leave of the court to file this motion, therefore, his motion should be denied.

22 **II. DEFENDANT IS NOT ENTITLED TO RECONSIDERATION**

23 Defendant is not entitled to reconsideration because he fails to demonstrate that, in  
24 denying his habeas petition, the Court overlooked a material issue of fact or law. See Nevada  
25 Rule of Appellate Procedure 40(a). Defendant alleges the following Court errors as a basis  
26 for reconsideration: (1) the Court failed to apply Gonzalez-Lopez, 548 U.S. 140, 126 S.Ct.  
27 2557 (2006), and determine disqualification of his prior attorney, Mr. Daniel Albregts, Esq.,  
28 was a structural error entitling him to a new trial; (2) the Court erroneously concluded the

petition did not allege ineffective assistance of appellate counsel based on a failure to challenge the self-defense canvas; (3) there was a conflict inherent in Mr. Colucci representing Defendant on post-conviction because Mr. Colucci could not litigate his own appellate ineffectiveness in failing to raise the inadequate self-defense canvas, thus the Court erred by failing to sua sponte appoint alternate counsel; (4) the Court erred in determining there was overwhelming evidence of Defendant's guilt; (5) the Court erred in failing to apply U.S. v. Gonzalez-Lopez, 548 U.S. 140, 126 S.Ct. 2557 (2006), and Giles v. California, 554 U.S. 353, 128 S.Ct. 2678 (2008), and instead relying on the Nevada Supreme Court's direct appeal order affirming Defendant's conviction; (6) the Court erred by failing to render findings of fact and conclusions of law regarding Defendant's claims relating to expert witness Dr. Eisel. Defendant clearly fails to appreciate the distinction between an opening brief on direct appeal and a motion for reconsideration. All six of Defendant's bases for reconsideration fail to demonstrate the Court overlooked any material issue of fact or law.

Defendant claims that the Court committed an error in deciding that he failed to allege ineffective assistance of appellate counsel relating to the allegedly defective self-defense canvas. He points to the petition's supporting memorandum of points and authorities at pages 30-33. Defendant fails to comprehend the distinction between claims proper for direct appeal and claims cognizable on post-conviction. As the Court has already noted in its order denying Defendant's petition, the petition is utterly devoid of an allegation that appellate counsel was ineffective in failing to raise as a ground of appeal the self-defense canvas. Order Denying Petition for Writ of Habeas Corpus, 05/09/11, 3:21-22. Defendant wrongly believes he is entitled to have the Court conduct appellate review on the issue for the first time. See NRS 34.810(1)(b)(2).

Next, in faulting the Court for not applying Gonzalez-Lopez, Defendant overlooks that the Court did not deny this claim based on a harmless error or Strickland prejudice analysis. Rather, the Court found: (1) the record belied any claim of ineffective assistance of trial counsel because Defendant's attorney objected at trial to the canvassing process; and (2) to the extent, Defendant sought to assert an error by the district court, that claim was not

1 cognizable on post-conviction because it should have been raised on direct appeal, and  
2 Defendant's habeas petition did not allege ineffectiveness of appellate counsel in failing to  
3 pursue the issue on appeal. Order Denying Petition for Writ of Habeas Corpus, 05/09/11,  
4 3:13-22. Thus, Gonzalez-Lopez's application of structural error analysis to choice-of-  
5 counsel claims was irrelevant to the proceedings.

6 Defendant faults the Court for failing to sua sponte disqualify Mr. Colucci as counsel  
7 due to an apparent conflict of interest. Defendant is conveniently forgetting the Court's  
8 inquiry during the evidentiary hearing as to whether he had discussed potential conflicts of  
9 interest relating to Mr. Colucci's representation of him on direct appeal. Defendant will  
10 recall he responded affirmatively and assured the Court he was waiving any potential  
11 conflicts:

12 The Court: Did you discuss with Mr. Colucci potential conflicts  
13 of interest 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  
16 after having that discussion?

17 The Defendant: Yes.

18 The Court: Okay. All right.

19 Transcript of Evidentiary Hearing, 07/30/10 (EHT 07/30/10), 163:16-22.

20 Thus, Defendant can hardly claim the Court overlooked the fact of a conflict in  
21 representation when Defendant affirmatively waived any conflicts. Further, Defendant's use  
22 of Gonzalez-Lopez as a purported supporting authority is truly specious. At one point he  
23 claims the case as demonstrating a structural error because he was denied his choice of Mr.  
24 Albregts as a trial attorney, but out of the other side of his mouth, he invokes it for the  
25 diametrically opposed proposition that the Court should have overridden his express waiver  
26 of a conflict of interest and disqualified his post-conviction counsel. There is no supporting  
27 authority in Gonzalez-Lopez—or any other case—for the proposition that a defendant has a  
28 constitutional right to have his post-conviction counsel scrutinized for conflicts of interest

1 and replaced sua sponte. Indeed, Defendant will discover he is not entitled to conflict-free or  
2 effective post-conviction counsel. See Bonin v. Calderon, 77 F.3d 1155, 1159 (9th Cir.  
3 1996).

4 Defendant next claims he is entitled to reconsideration based on the Court  
5 overlooking Giles v. California. This claim fails initially because the record indicates the  
6 Court agreed to consider Giles while the petition was under advisement. Transcript of  
7 Evidentiary Hearing and Petition for Writ of Habeas Corpus, 09/24/10, 37:9-16. Thus, there  
8 is no basis for Defendant to assume the Court overlooked Giles. Additionally, Defendant is  
9 obviously unaware that Giles does not apply retroactively to him. Ponce v. Felker, 606 F.3d  
10 596, 604 (9th Cir. 2010) (“If Crawford was not a watershed rule, then Giles cannot have  
11 been one either. We hold that Giles does not apply retroactively to state court convictions  
12 that became final before the Supreme Court issued Giles.”), cert. denied, 131 S.Ct. 521  
13 (2010). Remittitur in his direct appeal issued on March 27, 2007, which rendered his  
14 conviction final approximately fifteen months prior to Giles being decided. Thus, although  
15 the Court went out of its way to consider Mr. Colucci’s proffer of the case, it has no bearing  
16 on Defendant’s entitlement to post-conviction relief.

17 The residue of Defendant’s asserted grounds for reconsideration clearly constitute  
18 appellate claims of error. They do not fall within the narrow substantive contours of a motion  
19 for reconsideration.

### 20 **III. DEFENDANT IS NOT ENTITLED TO APPOINTED COUNSEL**

21 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in  
22 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991).  
23 In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court  
24 similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in  
25 post-conviction proceedings, as we interpret the Nevada Constitution’s right to counsel  
26 provision as being coextensive with the Sixth Amendment to the United States  
27 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)  
28 (entitling appointed counsel when petitioner is under a sentence of death), one does not have



1 “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings. Id.  
2 at 164, 912 P.2d at 258.

3 However, the Nevada Legislature has given courts the discretion to appoint post-  
4 conviction counsel so long as “the court is satisfied that the allegation of indigency is true  
5 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

6 A petition may allege that the Defendant is unable to pay the  
7 costs of the proceedings or employ counsel. If the court is  
8 satisfied that the allegation of indigency is true and the petition  
9 *is not dismissed summarily*, the court may appoint counsel at the  
time the court orders the filing of an answer and a return. In  
making its determination, the court may consider whether:

10 (a) The issues are difficult;

11 (b) The Defendant is unable to comprehend the  
proceedings; or

12 (c) Counsel is necessary to proceed with discovery.

13 (emphasis added).

14 Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint  
15 counsel. To have an attorney appointed the defendant “must show that the requested review  
16 is not frivolous.” Peterson v. Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204  
17 (1971) (citing former statute NRS 177.345(2)).

18 The State takes no position as to whether Mr. Colucci should be granted leave to  
19 withdraw. Defendant is not, however, entitled to appointed counsel. As the Court has already  
20 noted, Defendant cannot demonstrate any entitlement to post-conviction relief and he fails in  
21 his motion to identify even a colorable claim of appellate error. Moreover, as a former  
22 attorney now disbarred, Defendant can hardly claim to not understand these proceedings.

23 **IV. APPELLANT IS NOT ENTITLED TO APPEAR TELEPHONICALLY**  
24 **OR BE GRANTED A STAY**

25 In his companion motion to consolidate, Defendant notes that “[a]s much as Petitioner  
26 would like to be woken up at 3:00 AM and spend the entire day in a jump suit and restraints,  
27 among other things...,” he would like this matter to be heard in chambers telephonically.  
28 With the exception of his written pleadings, he has no right to appear for or participate in the

1 hearing. A Defendant is entitled to be present for an evidentiary hearing on a petition where  
2 his presence is required to expand the record. Gebbers v. State, 118 Nev. 500, 50 P.3d 1092  
3 (2002). Defendant's petition has already been denied and there is no need to expand the  
4 record further. Defendant only seeks to be present for hearing so he can harangue the Court  
5 with inappropriate arguments and inapposite legal citations. To the extent Defendant asserts  
6 a conclusory claim for a stay, that request should also be denied.

7 **CONCLUSION**

8 Based upon the foregoing, the State respectfully requests that this Honorable Court  
9 DENY Motion for Reconsideration, Withdrawal and Appointment of Alternative Counsel,  
10 and Stay of Proceedings.

11 DATED this 25th day of May, 2011.

12 Respectfully submitted,

13 DAVID ROGER  
14 Clark County District Attorney  
Nevada Bar #002781

15  
16 BY /s/ JAMES R. SWEETIN  
17 JAMES R. SWEETIN  
18 Chief Deputy District Attorney  
Nevada Bar #005144

19  
20  
21 **CERTIFICATE OF E-MAIL**

22 I hereby certify that service of the above and foregoing, was made this 25th day of  
23 May, 2011, by e-mail to:

24 CARMINE COLUCCI, ESQ.  
25 e-mail: cjc@lvcoxmail.com

26 /s/ HOWARD CONRAD  
27 Secretary for the District Attorney's Office

28 hjc/SVU

ORIGINAL

12

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*Ann L. Johnson*  
CLERK OF THE COURT

1 ORDR  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar No. 0881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274 (telephone)  
8 (702) 384-4453 (facsimile)

DISTRICT COURT

CLARK COUNTY, NEVADA

11 ALFRED CENTOFANTI III,	)	CASE NO. 01C172534
	)	DEPT NO. 6
12       Petitioner,	)	
	)	
13 vs.	)	
	)	
14	)	
15 E.K. McDANIEL, WARDEN,	)	
16 ELY STATE PRISON,	)	
	)	
17       Respondent.	)	

**ORDER**

18  
19  
20       The Motion to Withdraw as Attorney of Record for Petitioner, ALFRED  
21 CENTOFANTI III, having come on regularly for hearing before the above-entitled  
22 Court on the 23<sup>rd</sup> day of May, 2011, Catherine L. Nelson, Esq., of the law firm of  
23 Carmine J. Colucci, Chtd., appearing, the petitioner not present and the State  
24 being represented by a representative of the District Attorney's Office and no  
25

26 // // // //

27 // // // //

28 // // // //

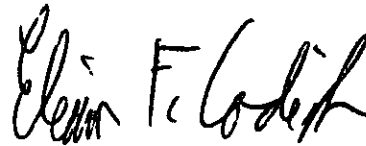
01C172534  
ORDR  
Order  
1440075



1 objection having been filed to said motion, and the Court having reviewed all the  
2 papers and pleadings on file herein and the Court being fully advised in the  
3 premises,  
4

5 IT IS HEREBY ORDERED that counsel's Motion to Withdraw of Record as  
6 Attorney of Record is hereby granted.

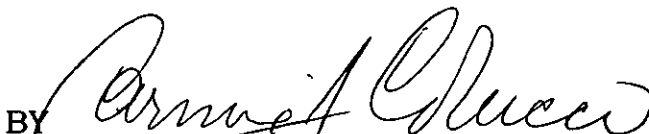
7 DATED this 26<sup>th</sup> day of May, 2011.

8 

9  
10 DISTRICT JUDGE

11 T.F.

12 CARMINE J. COLUCCI, CHTD.

13  
14 BY 

15 CARMINE J. COLUCCI, ESQ.

16 Nevada Bar No. 000881

17 629 South Sixth Street

18 Las Vegas, Nevada 89101  
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CLERK OF COURT

01C172534  
SUPP  
Supplemental  
1447293



ALFRED CENTOFANTI #85237  
P.O. BOX 6501 HDSP  
Indian Springs, NV 89070

CASE NO.: NO. 01C172534

Dept NO. 6

VS.

Date of Hearing: June 1, 2011

Time of Hearing: 8:30 a.m.

E.K. McDaniel, Warden

### Petitioner's Supplemental Points and Authorities

COMES NOW, Alfred Centofanti, in Proper Person and hereby supplements the Memorandum of Points and Authorities submitted in support of his Motion for Reconsideration and other relief, set to be heard by this Honorable Court on June 1, 2011 at 8:30 a.m.

This Supplemental Points and Authorities is being provided on the representations made to Petitioner by his prior counsel's office, Carmine Colucci, that this matter has been continued from May 23, 2011 to June 1, 2011, and Petitioner's desire to place the facts, law and argument on the Record.

Dated this 24<sup>th</sup> day of May 2011.

Alfred Centofanti #85237  
Petitioner in Proper Person

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PAGE 2 OF 9

CLERK OF THE COURT

1 The selection of self-defense was both ineffective and  
2 prejudicial under Strickland

3 This Court should reconsider its denial of relief on this  
4 ground on the following basis:

5 1) There is no basis factually or legally for this  
6 Court's position that a diminished capacity defense would  
7 "have also required Defendant to testify as he did in this  
8 trial." See, Saranchuk v. Beard, 538 F.Supp.2d 847, (2008)

9 2) There was a showing of "what evidence would have  
10 been relied upon for this proposed defense that would have  
11 a probability of a different outcome"

12 The evidence was extensively presented in the memorandum  
13 of points and authorities at pp. 235-238, 285-289, and the  
14 Reply at pp. 63-65. (summarizing the trial testimony and other  
15 evidence of diminished capacity).

16 Defense expert John Lukers also explained how this, and  
17 other evidence available could have been used to negate both  
18 premeditation and deliberation. Transcript July 30, 2010 at pp.  
19 41, 42, 83, 84, 89 and 95.

20 Defense expert John Lukers also explained this defense  
21 could be asserted without a state psychological exam. Id.  
22 at pages 65-67, 83-84, 94-95, 96-97.

23 3) The Court overlooked the fact that at the March 12,  
24 2004 hearing counsel (Bloom) stated "he didn't have an  
25 opponent to the matter" (counsel) and "I wasn't going to

Object" (Transcript pp. 4-5), which was ineffective assistance  
of counsel. See Evidentiary Hearing Transcript, pp. 36-37, 70-72,  
90-93, 95-97). The prejudice was the canvass was done in  
violation of Johnson v. Zerbst, 58 S.Ct. 1019 (1938) as followed  
and explained in Hernandez v. State 194 P.3d 1235 (2008).  
The failure at a critical stage of the proceeding, allowing  
the state to preclude a defendant from being able to  
assert issues on appeal pre-trial should constitute a  
complete failure by counsel under Cravie 466 U.S. at  
658.

This Court also failed to consider the impact of the  
lies counsel told at that hearing regarding his hearing records  
of Dr. Sessions, and previous hearings regarding the ~~opinions~~  
opinions of his experts (Eisele in particular), and the  
use of Lt. FRANKS and Emeline Eisenman on defendant's  
consent to both self defense and any alleged admission  
of elements required by the state to be proven at trial.  
See also Mickens v. Taylor 535 U.S. 162, 166 (2002)  
(actual or constructive denial of assistance of counsel altogether).

II. The Lies told by counsel precluded defendant's  
ability to obtain a fair trial.

This Court should re-examine its position relative to  
the impact (prejudice) of counsel's (Bloom's) lies.

1) The Court acknowledged Bloom lied about LT.  
FRANKS. This lie was deliberately relied upon by the

1 defendant to "consent" to the use of self defense on  
2 March 12, 2004.

3 2) Bloom lied about the records of Dr. Sessions  
4 supporting the defense position of a hole in defendant's  
5 nose. Defendant detrimentally relied upon this both at  
6 the canvass and in the preparation and presentation  
7 of his testimony and decision to testify.

8 3) Bloom lied about the opinions of expert forensic  
9 pathologist John Eisle, an expert who did not support  
10 self defense. Memo pp. 165-169, Reply 47-50, Evidentiary  
11 Hearing pp. 38, 50-53, 64, 76-78, Defendant detrimentally  
12 relied upon this both at the canvass and in the preparation  
13 and presentation of his testimony, & decision to testify.

14 4) Bloom lied about not wanting to call Emeline Eisenman  
15 as a witness at his deposition (pp. 144-145). If he was  
16 "happy when she didn't testify" (144) because she would  
17 be "an explosively negative witness" (145) I beg (1) why  
18 did he engage in a discussion on the record in which he  
19 stated "That will be the end of it other than my request  
20 to wait until tomorrow to see about locating of Lynn  
21 Eisenmann and L.J. Franks." April 13, 2004 Trial Transcript,  
22 p. 95 (AA 170) (2) why didn't the state call her? and  
23 again, this was relied upon by defendant as with (1)-(3) above.

24 These four lies should be considered by this Court  
25 in evaluating its reliance on Bloom's testimony as to the



1 alleged facts that a "psychological evaluation had been  
2 obtained." Where is the evaluation? Who is to say if one  
3 was conducted or, arguendo, what it may or may  
4 not have covered or subd. As. John Lukers told  
5 this Court his review of the Records to indicate  
6 that it was even considered, "it's simply not there".

7 Transcript p. 41 So there is no evidence for this  
8 Court to conclude an evaluation was done and not used  
9 that is believable and to use as a basis to deny the writ.

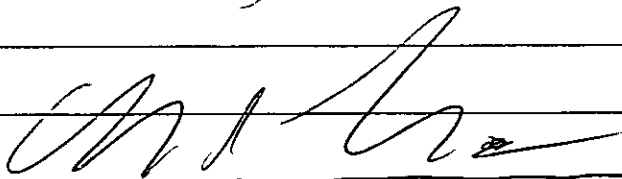
10 In sum, the question defendant wants this Court  
11 to consider is But/for the lies and ineffective  
12 assistance of counsel would defendant have consented  
13 to the defense of self-defense and admit allegedly  
14 being the shooter at the March 12, 2004 canvas?  
15 If counsel had told the truth as to state of  
16 his unpreparedness and the non viability of the  
17 defense of self-defense would it be reasonably  
18 probable a different result without using self-  
19 defense at trial?

20 Additionally, defendant would like to ask the  
21 Court to reconsider the previous dismissal of  
22 grounds 1-5 as the factual and legal basis  
23 were not available to him on direct appeal as  
24 outlined in both the memo and Reply Briefs  
25 submitted.

1 ~ Finally, defendant does not have copies of the  
2 transcript of the September 24, 2010 proceedings,  
3 the deposition of Alfred Bloom transcript (official  
4 version), and any minutes or orders issued by  
5 this Court, including any notice of entry of order  
6 of the May 9, 2011 Order denying writ.

7 Therefore, defendant asks the Court to take  
8 judicial notice of the Record not available to  
9 defendant, which is made by him on Information  
10 and belief.

11  
12 Respectfully submitted,

13  
14 

15 Alfred Cerofolini #65237  
16 Petitioner in Suspension  
17  
18  
19  
20  
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25

**CERTIFICATE OF SERVICE BY MAILING**

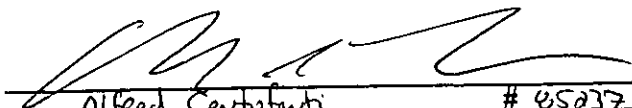
I, Alfred Centofanti, hereby certify, pursuant to NRCP 5(b), that on this 24<sup>th</sup>  
day of May, 2011, I mailed a true and correct copy of the foregoing, "Supplemental Points and Authorities"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

D. A. David Rodger  
200 Lewis Avenue  
Las Vegas, NV 89155

Hon Judge Cadish  
(copy asked to be delivered  
to chambers by clerk's office)

CC:FILE

DATED: this 24<sup>th</sup> day of May, 2011.

  
Alfred Centofanti # 45237  
Petitioner /In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Supplemental Points & Authorities  
(Title of Document)

filed in District Court Case number C 172534

☒ Does not contain the social security number of any person.

-OR-

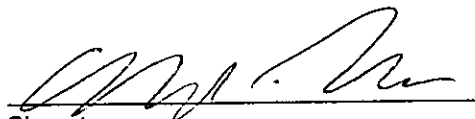
☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

  
Signature

5-24-11  
Date

Alfred Centofanti  
Print Name

Petitioner in Pro Per  
Title

1 Alfred Centofanti ID NO. 85237

2 HIGH DESERT STATE PRISON  
3 22010 COLD CREEK ROAD  
4 P.O. BOX 650  
5 INDIAN SPRINGS, NEVADA 89018

6 District Court  
7 Clark County, Nevada

8 Alfred Centofanti }  
9 Petitioner

10 v.

11 E.K. McDannel, Warden }  
12 Respondent

CASE NO.: 172534

DEPT. NO.: 6

DOCKET: June 1, 2011  
8:30 a.m.

13 To: Clerk's Office

14 Please deliver to Judge Cadish in chambers upon recolor  
15 prison to June 1, 2011 hearing at 8:30 a.m.  
16 \* Copy provided \*

17 COMES NOW, Petitioner, Alfred Centofanti, herein above respectfully  
18 moves this Honorable Court for an submits his Supplemental Memorandum of  
19 Points and Authorities.

20  
21 This Motion is made and based upon the accompanying Memorandum of Points and  
22 Authorities.

23 DATED: this 24 day of May, 2011

24 BY: [Signature]  
25 Alfred Centofanti # 85237  
26 Defendant/In Proper Personam

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28 MAY 31 2011  
CLERK OF THE COURT

Alfred Centofanti # 85237

HOSP / P.O. Box 650

Indian Springs, NU 89070

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*Alfred P. Centofanti, III*  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

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Notice of Entry of Decision and Order  
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Case No: 01C172534  
Dept No: VI

ALFRED P. CENTOFANTI, III,  
Petitioner,  
vs.  
THE STATE OF NEVADA,  
Respondent,

NOTICE OF ENTRY OF  
DECISION AND ORDER

PLEASE TAKE NOTICE that on May 9, 2011, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on June 6, 2011.

STEVEN D. GRIERSON, CLERK OF THE COURT

By: *Heather Ungermann*  
Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 6 day of June 2011, I placed a copy of this Notice of Entry of Decision and Order in:

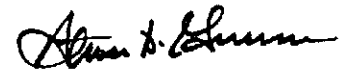
The bin(s) located in the Office of the District Court Clerk of:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division

☒ The United States mail addressed as follows:

Alfred Centofanti, III # 85237  
P.O. Box 650  
Indian Springs, NV 89070

Rochelle T. Nguyen, Esq.  
324 S. 3rd St., #1  
Las Vegas, NV 89101

*Heather Ungermann*  
Heather Ungermann, Deputy Clerk



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \*

State of Nevada,  
Plaintiff,  
VS  
Alfred P. Centofanti III,  
Defendant.

CASE NO.: C172534  
DEPARTMENT 6  
**ORDER DENYING PETITION FOR WRIT OF  
HABEAS CORPUS**

Before the Court is Defendant's Petition for Writ of Habeas Corpus, which was fully briefed by the parties. This is Defendant's first post-conviction petition. After arguments by counsel on December 2, 2009 and subsequent discovery proceedings, the Court held an evidentiary hearing on July 30, 2010, and heard closing arguments by the parties on September 24, 2010. In addition to the parties' briefs and the evidence and argument presented at these hearings, the Court has reviewed the extensive appendix and exhibits submitted by Defendant, as well as legal authorities pertinent to the decision herein. All claims other than ineffective assistance of counsel were previously dismissed by the Court. Defendant seeks to establish that his trial counsel, Allen Bloom, was ineffective, and that a new trial is mandated as a result. Under the Strickland test, Defendant must establish (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). The Court can consider these two elements in any order and need not consider both prongs if there is an insufficient showing on either one. In order to establish prejudice, Defendant "must show a

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ELISSA F. CADISH  
DISTRICT JUDGE  
DEPARTMENT VI



1 reasonable probability that, but for counsel's errors, the result of the trial would have been  
2 different." Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1997).

3 The Court hereby denies the petition because the Court does not find a reasonable  
4 probability that, but for counsel's alleged errors, the result of the trial would have been  
5 different. In this regard, on Defendant's direct appeal, the Nevada Supreme Court noted  
6 several times the strength of the State's case against Defendant. Order of Affirmance, filed  
7 December 27, 2006, at 4 ("in light of the strength of State's case against Centofanti, we  
8 consider any error harmless"), 5 ("the evidence against Centofanti was voluminous"), 8  
9 ("Here we conclude that any exposure Juror Wheeler had to extrinsic information through  
10 the purported firearm experiment was minimal in the context of the trial as a whole,  
11 considering the overwhelming evidence supporting Centofanti's conviction"), and 10 n.25  
12 ("We conclude that because of the evidence against Centofanti, his contention that  
13 cumulative error requires a new trial is without merit."). This Court agrees that the record  
14 reveals overwhelming evidence supporting Defendant's conviction. Thus, while Defendant  
15 has raised some issues regarding counsel's performance that give the Court pause, prejudice  
16 has not been established.

17 The Court will specifically address some of the more significant issues raised by the  
18 Defendant. First, Defendant asserts that counsel's performance was deficient in relying on a  
19 self-defense theory at the trial. While the Court agrees that it was very difficult to try to  
20 establish self-defense under the applicable legal standard in this case, counsel also argued  
21 that Defendant did not have the requisite state of mind for first degree murder and argued for  
22 second degree murder or manslaughter as well. Additionally, it is suggested a diminished  
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24  
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28

ELISSA F. CADISH  
DISTRICT JUDGE  
DEPARTMENT VI

1 capacity defense should have been pursued. However, trial counsel testified that a  
2 psychological evaluation had been obtained pre-trial but was not helpful, and it was a  
3 reasonable strategy not to present it, particularly since it would have likely opened up the  
4 Defendant to examination by the State through its psychologist. Moreover, as a practical  
5 matter, this type of defense would have also required Defendant to testify as he did in this  
6 trial. Most importantly, there is no showing of what evidence would have been relied on for  
7 this proposed defense that would have a probability of a different outcome. Similarly, with  
8 respect to allegations that counsel did not adequately investigate the case or gather records to  
9 support Defendant's testimony, there is no showing of what any such investigation would  
10 have revealed that would have been helpful.

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12  
13 The Court is concerned about the self-defense canvass at the hearing on March 12,  
14 2004, where Defendant was required to acknowledge on the record in front of the State that  
15 he was the shooter in order to allow the presentation of self-defense at trial. However,  
16 counsel had previously objected to this process when it was raised the first time by the State,  
17 and noted an objection on the record at this hearing, after there had apparently been an off-  
18 the-record discussion about this matter in chambers. Accordingly, counsel was not  
19 ineffective in this regard but instead his objections were overruled. It should be noted that  
20 this matter was not raised on appeal, a matter that is not raised in the instant petition.

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22  
23 Next, Defendant complains about the fact counsel stated in the trial that he was going  
24 to call Lieutenant Steve Franks as an expert regarding officer-involved shootings to help  
25 explain Defendant's shooting in this case, but then did not have him testify. Counsel told the  
26 Court in the jury's presence that Franks had been subpoenaed, but his wife had become very  
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1 ill with cancer and, particularly since some of this area had been covered with other  
2 witnesses, he would not be trying to enforce the subpoena and would thus not be presenting  
3 Franks as a witness. Counsel had discussed Franks' anticipated testimony in his opening  
4 statement, and this discussion regarding the reasons for not calling him took place in front of  
5 the jury on April 14, 2004 before Defendant rested. While testimony at this Court's  
6 evidentiary hearing indicated counsel had never spoken to Franks and never served a  
7 subpoena on him, counsel's investigator had had general conversations with Franks relating  
8 to the case. The Court is concerned about the misleading statements made to the Court and  
9 the jury, but there is no showing of prejudice from failing to have him testify or from  
10 mentioning his anticipated testimony in the opening.  
11

12  
13 Finally, an issue is raised regarding the fact Defendant testified at trial that he had  
14 been told by the victim's plastic surgeon, Dr. Sessions, that the victim had a hole in her nose  
15 septum from drug use. At a pretrial hearing, the State objected to this anticipated testimony  
16 because there had been no medical records showing this nose condition. At the hearing,  
17 counsel represented that he had received Dr. Sessions' records, and that the records did show  
18 a perforated septum. Based on this representation as an officer of the Court, the Court said  
19 he would allow the Defendant's testimony in this regard since there was a basis for the  
20 allegation. Transcript of Hearing of March 12, 2004, at 19. After Defendant testified to this  
21 matter at trial, and was vigorously cross-examined about it, the State brought Dr. Sessions to  
22 testify in rebuttal. He testified that there was no hole in the victim's nose and that he had  
23 never told Defendant any such thing. No records were used by Defendant's counsel to cross-  
24 examine Dr. Sessions nor were they ever put in evidence. Indeed, the records are still not  
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1 before this Court, and they apparently were not in trial counsel's file that was turned over to  
2 his current counsel. Additionally, trial counsel apparently never tried to speak to Dr.  
3 Sessions regarding these matters in advance of trial. This issue was argued by the State in  
4 closing as showing a lack of credibility on the part of the Defendant. However, Defendant  
5 still insists that the conversation with Dr. Sessions did take place, but asserts counsel should  
6 have prepared him for Dr. Sessions' contrary belief. Again, these misleading statements by  
7 counsel regarding corroboration in the medical records are of great concern to the Court.  
8 However, the statements by counsel regarding having the records were not made before the  
9 jury, and Defendant's credibility was weak even absent this particular dispute. Given the  
10 overwhelming evidence in this case, this Court does not find a probability that the result  
11 would have been different if not for this issue.  
12

13  
14 The Court has reviewed all other arguments presented by Defendant and similarly  
15 finds that the required prejudice has not been demonstrated. Accordingly, the Defendant's  
16 Petition for Writ of Habeas Corpus is denied, and his conviction stands.  
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18  
19 Dated this 9th day of May, 2011

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23 ELISSA F. CADISH, DISTRICT JUDGE  
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26  
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ELISSA F. CADISH  
DISTRICT JUDGE  
DEPARTMENT VI

**CERTIFICATE OF SERVICE**

I hereby certify that on the date filed, I electronically served, mailed to the following proper persons, or placed a copy of this order in the attorney's folder in the Clerk's Office as follows:

Michael Schwartz, Assistant District Attorney  
Carmine J. Colucci, Esq.

  
Timothy D. Kelley  
Judicial Executive Assistant

ELISSA F. CADISH  
DISTRICT JUDGE  
DEPARTMENT VI

ORIGINAL

25

1 **ORDR**

2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 JAMES R. SWEETIN  
6 Chief Deputy District Attorney  
7 Nevada Bar #005144  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

**FILED**

AUG 5 11 39 AM '11

*Ann L. Johnson*  
CLERK OF THE COURT

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

01C172534  
ODM  
Order Denying Motion  
1659289



14 THE STATE OF NEVADA,  
15 Plaintiff,

16 -vs-

17 ALFRED P. CENTOFANTI, III,  
18 #1730535

19 Defendant.

Case No. **C172534**  
Dept No. **VI**

20 **ORDER DENYING DEFENDANT'S MOTION FOR CONSOLIDATION AND**  
21 **OTHER RELIEF and DEFENDANT'S MOTION FOR WITHDRAWAL AND**  
22 **APPOINTMENT OF ALTERNATIVE COUNSEL, STAY OF**  
23 **PROCEEDINGS AND OTHER RELIEF**

24 DATE OF HEARING: JUNE 1, 2011

25 TIME OF HEARING: 8:30 A.M.

26 THIS MATTER having come on for hearing before the above entitled Court on the  
27 1ST day of June, 2011, the Defendant not being present, IN PROPER PERSON, the Plaintiff  
28 being represented by DAVID ROGER, District Attorney, through ROBERT STEPHENS,  
Deputy District Attorney, and the Court having heard the arguments of counsel and good  
cause appearing therefor,

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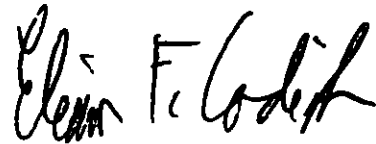
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2

1 IT IS HEREBY ORDERED that the DEFENDANT'S MOTION FOR  
2 CONSOLIDATION AND OTHER RELIEF, shall be, and is, DENIED as MOOT; further

3 IT IS HEREBY ORDERED that the DEFENDANT'S MOTION FOR  
4 WITHDRAWAL AND APPOINTMENT OF ALTERNATIVE COUNSEL, STAY OF  
5 PROCEEDINGS AND OTHER RELIEF, shall be, and is, OFF CALENDAR.


6 DATED this 2 day of <sup>August</sup> ~~July~~, 2011.



DISTRICT JUDGE

NT

11 DAVID ROGER  
12 DISTRICT ATTORNEY  
13 Nevada Bar #002781

14  for  
15 ROBERT STEPHENS  
16 Deputy District Attorney  
17 Nevada Bar #011286

28 hjc/SVU