

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 ALFRED P. CENTOFANTI, III No.: 78193-COA

4 Appellant,

5 vs.

DC NO.: C1725-34

FILED

6 THE STATE OF NEVADA,

JUL 13 2020

7 Respondent.

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

Appellant's Supplement to Petition for Rehearing

COMES NOW, Appellant, Alfred P. Centofanti, III, proceeding in Pro Per and pursuant to NRAP 40, his previously file motion for Leave to Amend (Concurrently filed with the Petition for Rehearing mailed for filing June 16th) and the inherent powers of the Court, Files this Supplement to Appellant's Petition for Rehearing of the Order of Affirmance filed June 5, 2020 in the above-referenced matter, in the Court of Appeals.

Dated this ^{July} 2nd day of ~~June~~, 2020

Respectfully submitted,

By *[Signature]*
Alfred Centofanti III

NDOC # 95237

HOSP / P.O. BOX 650

Indian Springs, NV 89070

Appellant in Pro Per

RECEIVED
281 10 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Memorandum of Points and Authorities

1 In Supplement, Appellant is requesting Reconsideration due to the benefit of
2 analysis of the following overlooked or misapprehended facts or points of law:

3 1. Can appointment of discretionary counsel under NRS 34.750 with a conflict
4 provide good cause to overcome a procedural bar?

5 The answer to this has to be yes, and yes in Centofanti's case. ANRS 34.750
6 appointment is not ~~pro bono~~ and in fact uses taxpayer dollars to pay counsel. Did
7 the legislature intend for district courts to not ensure that counsel who are appointed
8 meet bare minimum requirements of being qualified and competent? Would that not
9 necessarily include conflict free counsel? If not, it would make a farce or sham of
10 the appointment and discretion. In theory it could allow the appointment of someone
11 from the DA's office, a probate or bankruptcy attorney, or other, that would have
12 the appearance of impropriety or incompetence circumventing the legislative intent of
13 assisting a pro per litigant and not hindering them or making matters worse. This
14 is different from ineffectiveness (Barjorano, 929 P.2d 922 (1996)) after appointment

15 Here, it is undisputed that Colucci was appointed after the conflict arose,
16 without anyone raising the conflict (Colucci, the State or the Court) or notice to
17 Centofanti such to allow valid waiver, dismissal of counsel, and the ability to
18 avoid the petition in those proceedings to raise claims prevented not by ineffectiveness
19 but interference, a separate and distinct basis, that was raised in the
20 plethora of proceedings which took place after the May 9, 2011 Order denying
21 the 2008 habeas, including the 2012 pro per habeas, Jan 29, 2014 Order pp 2-5.

22 What distinguishes Centofanti's facts from other published Nevada
23 Supreme Court decisions is the timing and actions taken. Unlike in
24 Rippo¹ and Williams², the conflict was raised in the initial habeas
25 proceedings and not years after the fact.³ The State raised the issue
26 at the July 2010 evidentiary hearing. The Court prevented a discussion
27 on the record and conducted a constitutionally deficient canvass.⁴

28 ¹ Rippo v. State, 423 P.3d 1084 (2016)

² Williams v. State 2016 Nev. Unpub. Lexis 493 (2016)

³ A common factor in case annotation collected in NRS 34.726.

⁴ July 24, 2015 Order, at p 3, line 23 to p 4, line 3, page 6, lines 5-18.

1 Centofanti was reasonably misled by the Court allowing Colucci to present
2 witnesses and evidence in support of Grounds 1-5 on the 2008 habeas that
3 were dismissed in 2009. Furthermore, the Court allowed Colucci to make
4 closing arguments as to the dismissed Grounds in September of 2010 prior
5 to taking the matter under submission.¹

6 Centofanti was not put on notice, and did ^{not} suffer prejudice until the
7 May 9, 2011 Order denying the 2008 habeas without considering the dismissal claims.
8 Colucci did not disclose his conflict to the Court or client. The State
9 waited until the evidentiary hearing to raise, perhaps as a tactical move? The Court
10 failed at dismissal of grounds in 2009, appointment in 2010, and at hearing in 2010 to inquire
11 and address the conflict. Should these failures and, perhaps, misconduct be allowed
12 to harm Centofanti or instead be considered impediments external to him? NRS
13 34.726(1); Hathaway, 71 P.3d at 506. Clearly these were external impediments.

14 2. Did the Appellate Court overlook or fail to apply this Court's decision in Rippe?

15 Yes. In Rippe this Court analyzed the timeliness of claims answering a two-part
16 test: (1) The factual basis not reasonably available until the conclusion of the proceedings
17 it arose, and (2) filing within one year after entry of the district court's order disposing
18 of the petition. 423 P.3d at 1046-1047. Here, the first five issues were dismissed,
19 but litigated both in discovery, in pleadings, and at hearings post dismissal. Upon
20 filing of the May 9, 2011 Order upholding the dismissal (factual basis conclusion of the
21 proceedings) Centofanti, in pro per and through counsel, sought relief (reconsideration,
22 remand, appeal) and ultimately filed a pro-person ^{WRIT} April 24, 2012 (within 1 year of May 9, 2011).
23 The prejudice, also explained in Rippe at 1047, under NRS 34.726(1) is met.
24 The district court allowed testimony of Dew Albright and Centofanti as to the Disqual-
25 ification of Albright's (Dismissed Issue one), and Centofanti as to the self-defense
26 Camress (Dismissed Issue Two). Colucci included them as independent grounds
27 in the 2008 petition and part of a 334 memo of points and authorities

28 ¹ Transcripts of July 10, 2010 and Sept. 24, 2010 Page 3
and Jan. 24, 2011 Order p. 2, lines 15-25

1 the dismissed claims were the subject of hundreds of pages of motions, oppositions, Reply's,
2 Briefs, Supplements, hearings and argument yet evaded review not on the merits
3 by the appellate court. As set forth in the December 7, 2012 Reply and Opposition
4 Centofanti's efforts to litigate the dismissed and other issues was prevented by
5 the Court and counsel (Id. at pp. 5-7, and p. 10) and not through a lack of diligence
6 or effort. Although Rippe invoked the ineffectiveness of appointed counsel in a
7 capital case, it's analysis of when claims become ripe and timeliness of filing
8 should be applied here under all the facts and circumstances overlooked
9 in the June 5, 2020 Affirmance, and ruled in favor of the 2012 writ being
10 timely.

11 3. Can judicial interference and that of discretionary counsel provide good cause?

12 Yes, and yes in Centofanti's case. Overlooked in the June 5, 2020 Order
13 of Affirmance was the availability under NRS 34.726(1) that 'interference by
14 officials' made compliance impracticable. See also Hathaway at 506. Here the
15 Court interfered with Centofanti's ability to present meritorious claims by appointing
16 Colucci after dismissing claims Colucci failed to raise on Direct Appeal.
17 Even a cursory review of the 2008 writ would reveal the conflict. No notice
18 (Entry of order) was prepared or provided to Centofanti of the dismissed
19 claims in 2008, Colucci was appointed without proper vetting or the
20 consent of Centofanti or waiver of any conflicts, and, the Court did
21 not advise Centofanti of his rights in 2010 which prevented him

22 (1) From seeking the advice of independent counsel;

23 (2) From seeking the dismissal of Colucci and replacing him or
24 proceeding in Pro Se;

25 (3) From seeking to reinstate the dismissed claims and/or

26 Amend the timely filed 2008 writ with additional claims.

27 The interference continued post decision denying the 2008 writ (May
28

1 9, 2011) as Motions to withdraw and replace Colucci, Amend the writ, and
2 Reconsider the denial were all denied. Unlike the published decisions made
3 available to Certofanti, no other litigant attempted to Raise the conflict
4 issue as interference both during the initial habeas proceedings,
5 prior to and during the appeal, and prior to the one year the issues
6 became ripe expiring (itself while the appeal of the denial of the
7 writ was pending - not including also raising it in Reconsideration
8 and En Banc Reconsideration).

9 As to discretionary counsel, is interference a separate claim from
10 ineffectiveness? Yes. As briefed in the original April 24, 2012 writ, Dec 7, 2012
11 opposition to the motion to Dismiss, the June 1, 2012 Supplemental Points
12 and Authorities, as well as the facts and circumstances of this case
13 Colucci's failures to disclose any conflict to the Court, seek appointment
14 after conflict, not discussing or obtaining a waiver, and perpetrating
15 a ruse that dismissed claims were still viable is separate and distinct
16 from being ineffective and should be considered as such. Asking questions
17 at the deposition of trial counsel of dismissed claims, of prior counsel and
18 cheat at evidentiary hearing of same is diabolical and cannot be condoned
19 by this Court, or worse, place an undue, if impossible, burden on
20 habeas petitioners to uncover such unethical and ill advised trickery
21 in time or have it form the basis of procedural bar, as was done here.

22 In this case, it wasn't until an evidentiary hearing held on November
23 20, 2014 that facts and evidence in the form of testimony from Colucci
24 and Certofanti, which was presented in 2010, came to light and
25 formed the decision to allow the writ of April 2012 to proceed
26 on the merits and not procedural bar, which was overlooked and
27 misperceived by the Appellate Court.

See, also, April 24, 2012 writ at pp 7L-7N; Supplemental memo of June 1, 2012, at pp 9-10;
December 7, 2012 Reply and Opposition, pp 3-4 discussing Blake and Manning; and July 29, 2015
order at p. 5 discussing Manning et al.

4. Centofanti is unable to supplement the remainder of the Court's June 5, 2020 Order

Concurrently with the filing of this supplement, Centofanti mailed for filing a Motion for Contempt and Other Relief. In that Motion, Centofanti asks for relief and for a Stay of these proceedings, including the filing of this Supplement to the Petition for Rehearing due to the failure of those at HDSP to provide law library access to accommodate Centofanti's request to attend the law library and/or have the ability to make legal calls during business hours.

As the Court may be aware, Centofanti used to be an attorney licensed in both California and Nevada (Bar # 6250). He also was employed for 8 years at the law libraries in both Ely and High Desert. He is well aware of the deficiencies of the paging system and needs access to the Lexis-Nexus system in order to be able to adequately research and draft documents to present to this Court for its considerations. Although a Petition for Rehearing is Discretionary, Centofanti still has the right to pursue it without being denied access to the Courts through the phone and law library.

Here, Centofanti, in proper person cannot respond to the portion of the June 5, 2020 opinion as it relates to the merits of the claims by denying the request for discovery (which is not entirely true) and an evidentiary hearing without researching the issues himself.

Distict Court Judge Cadish did in fact allow discovery. Centofanti was appointed an investigator who was able to locate jurors in furtherance of juror misconduct claims that Centofanti was both never allowed an evidentiary hearing to prove and denied on the failure to prove. Should those claims have been denied without further discovery and a hearing based upon the facts, witnesses, documents and other evidence presented in Centofanti's proper person May 2017 Proper Person Brief which collected the discovery of the appointed investigator and set for the law and arguments in support of further discovery and an evidentiary hearing? Centofanti incorporates those portions of the brief relevant to this Petition, which were part of the record on appeal and overlooked by the Appellate Court, and seeks leave to at a minimum shepardize and further research those cases cited to back in 2017.

Conclusion and Prayer for Relief

Based upon the following and the concurrently filed Motion for Contempt and Other Relief, Centofanti respectfully requests the following relief:

1. A stay of the proceedings unless or until Centofanti is allowed access to the law library and the ability to make legal calls;
2. That the NDCO and those at HDSP responsible for law library access and outgoing legal calls be given a date certain to formulate a policy and/or provide access to Centofanti;
3. Centofanti be given to a date certain to Supplement his Petition for Rehearing after being provided access; and
4. Whatever further relief is deemed appropriate.

Respectfully submitted, this 2nd day of July 2020.


Alfred Centofanti # 85237
HDSP / P.O. Box 650
Indian Springs, Nevada 89070
Appellant in Proper Person

Affidavit of Alfred P. Centofanti III

State of Nevada } ss
County of Clark }

I, Alfred P. Centofanti III, the undersigned, do hereby swear that I have read the contents of the Supplement to the Petition for Rehearing and that the facts, statements, and descriptions of events are true and correct, and that the Exhibits are true and correct copies

Signed under the penalty of perjury pursuant to NRS 208.165

FURTHER AFFIANT SAYETH NAUGHT

Executed at High Desert State Prison, this 2nd day of July 2020

Alfred P. Centofanti III

NDOC # 85237

HDSP / P.O. BOX 650

Indian Springs, NV 89070

Appellant in PRO PER

Certificate of Service by Mailing

I, Alfred P. Centofanti, III, hereby certify, pursuant to NRCPS (c) that on this - day of June, 2020, I mailed a true and correct copy of the Supplement to Petition for Rehearing by depositing them in the HDSP mail, First-class postage fully pre-paid and addressed as follows:

Clark County Dist. Atty's office - Appellate / Post Gov. Division

200 Lewis Ave / Las Vegas, NV 89101

Dated this 2nd day of July, 2020

Alfred P. Centofanti III, # 85237

Appellant in PRO PER