

FILED

JAN 13 2021

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 78193

Alfred P. Centofanti, III,

vs Appellant,

The State of Nevada,

Respondent.

Motion For Leave to File a Petition for En Banc

Reconsideration Outside the 10 day time limit of NRAP 40A(b)

COMES NOW, Appellant Alfred P. Centofanti, III, (hereinafter "Centofanti"), in PRO PER, and hereby files this Motion, pursuant to NRAP 26, to request he be allowed leave to file a Petition for En Banc Reconsideration Outside the 10 day time limit of NRAP 40A(b).

The purpose of this Motion and request for relief is that due to the fact that Centofanti is incarcerated at an institution that remains on Covid-19 lockdown making compliance with the 10 day limit of NRAP 40A(b) impossible to meet therefore denying him the right to request En Banc Reconsideration without an Order from this Court allowing additional days to file.

This Motion is made and based upon all records and pleadings on file, the NRAP, the inherent powers of the Court, the attached Memorandum of Points and Authorities, as well as any additional arguments, facts, law and evidence this Court orders or allows at the hearing of this Motion, if any.

Respectfully submitted,

this 6th day of January, 2021

APL

Alfred Centofanti # 85237

HDSP / P.O. Box 650

Indian Springs, NV 89070

Petitioner in PRO PER

RECEIVED

JAN 12 2021

21-01038

Memorandum of Points and Authorities

1 I. Relevant Procedural History, Facts, Law and Argument

2 On June 5, 2020, a 3-judge panel of the Court of Appeal filed an Order of
3 Affirmance as to the denial of Centofanti's Petition for Writ of Habeas Corpus (Post
4 Conviction) in District Court (Clark County) Case No. C-01-C172534.

5 On January 4, 2021, pursuant to an Order of this Court allowing him to do so,
6 Centofanti filed an Amended Petition for Rehearing by this Court the June 5, 2020
7 decision of the Appellate Court.

8 Pursuant to NRS 40A(b) Centofanti is entitled to, in the event the pending
9 Petition (Amended) for Rehearing is denied, Petition for En Banc Reconsideration.
10 However, as things stand, and further described below, Centofanti cannot meet the
11 10 day deadline due to facts and circumstances external to him and beyond his
12 control, OR file and prepare this motion within the 10 day window.

13 As this Court is well aware, Covid-19 has altered the way the NDC, and HOSP,
14 where Centofanti is incarcerated are being allowed to operate. Specifically, pursuant
15 to Covid-19 protocols, HOSP is on lockdown. Presently, Centofanti is only allowed out
16 of his cell 1/2 a day^① has (since the June 5, 2020 decision) and continues to be
17 denied access to the resources needed to research, draft, prepare, copy, mail
18 and file pleadings, motions, OR responsive documents; and, due to staffing
19 shortages, mail, and legal mail in particular is delayed often to the point of
20 making the dates and deadlines contained therein past due or compliance
21 compromised. ^① or less, or not at all (Jan 1st - Jan 5th)

22 The NDOC, HOSP officials, and their counsel, the Nevada Attorney General's
23 Office have not been required by either the Appellate Court, or by the
24 Honorable Justice of this Court assigned to hear motions, to appear
25 to contest Centofanti's motions filed from June through December of
26 2020 alleging the violation of his right to access to the courts and
27 request for relief. Instead, deadlines have been continued, but without relief
28 as to resources or an alternative, compliance remains impossible.

1 Since the fact of Centofanti's incarceration, HOSP's lockdown and Covid-19
2 Protocols, and that they make his ability to meet the 10 day deadline of NRAP 40 A(5)
3 impossible, are ^{neither} ~~not~~ disputed or in question, Centofanti respectfully request he be given
4 leave to file a Petition for En Banc Reconsideration outside the 10 days to allow for
5 the delays inherent in mailing, or at least 30 days.

6 In further support of this Motion, Centofanti, in the event the pending Petition for
7 Rehearing is denied, will seek further review by request for En Banc not for an
8 improper purpose or delay, but believes the 5 question(s) presented for review
9 involve substantial precedential, constitutional and public policy issues to wit: ^①

10 Question One: Conflict screening of Appellate Justices

11 Question Two: Criteria used to appoint discretionary counsel

12 Question Three: Judicial Interference as good cause to overcome procedural bars

13 Question Four: Appellant's Rights when appeal court uses a non-appraised issue as the
14 basis for denial

15 Question Five: What remedies available due to Covid-19 restrictions imposed by the NDOC

16 All of these issues deserve review on the merits as they impact not only
17 Centofanti's appeal, but if not addressed, will result in the violation of
18 the U.S. Constitutional Rights of other and future litigants.

19 As to Question Five, this Court is asked to consider the U.S. Supreme Court's
20 Ruling in Roman Catholic Diocese of Brooklyn, NY v. Andrew Cuomo, 592 U.S.
21 ____ (2020) on the State of Nevada ex rel The NDOC's Covid-19 restrictions
22 on Centofanti and other inmates' Constitutional Rights.

23 A decision of the full panel of this Court will be warranted to provide
24 clarity and direction that is currently lacking on these issues.

25 In the event relief is granted, this Motion can be cleared as moot
26 or withdrawn by Centofanti

27 ///

28 ^① Questions are shortened from the ones presented at p.2 of Amended Pet P+A's.
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1 II Conclusion and Prayer for Relief

2 THEREFORE, and Based upon the following, Centofanti respectfully requests
3 the following relief

4 1. That Centofanti be given leave, of at least 30 days, from the date
5 any order denying his pending Petition (Amended) for Reconsideration is
6 filed, to file a Petition for En Banc Reconsideration pursuant to
7 NRAP 40 A(b);

8 2. Stay the issue of the remittitur of any denial of the Petition
9 (Amended) for Reconsideration to allow for the 30 day extension
10 of the NRAP 40 A(b) filing deadline;

11 3. The Clerk be ordered to serve this Motion electronically on the
12 Respondent's counsel; and

13 4. Any relief deemed necessary under the facts and circumstances.
14

15 Dated this 6th day of January, 2021.

16
17 APL

18 Alfred Centofanti # 85237

19 HDSP / P.O. BOX 650

20 Indian Springs, NV 89070

21 Appellant in Pro Per

22

23 Certificate of Service

24 The clerk has been asked to electronically serve the Respondent's
25 counsel as requested in this motion and appeared in prior filings

26 APL

27 Alfred Centofanti # 85237

28 Appellant in Pro Per

January 6, 2021

Supreme Court of Nevada
Office of the Clerk
201 S. Carson St., Ste 201
Carson City, NV 89701

Re: CentoFanti v. Nevada
Case No. 78193

Dear Clerk's Office:

- Enclosed please find Petitioner's Motion for Leave to File a Petition for EV Basic Reconsideration Outside the 10 day time limit of NRAP 40 A(b), and a Notice and Request for Errata.
- Due to continuing Covid-19 restrictions and lockdowns I have asked the Court to Order your office to electronically serve Respondent's counsel, the Nevada Attorney General's office with the motion and the notice and Request for Errata.
- Could I please be provided a file stamped copy of the motion? and notice?

Thank You,

Respectfully,

APL

Alfred Centofanti #85237

HDSP / P.O. Box 650

Indian Springs, NV 89070

Appellant in Pro Per

