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100
4317

APPENDIX (A)

DISTRICT COURT, LOGAN COUNTY, COLORADO	
Court Address: 110 Riverview Road, Room 205, Sterling, CO, 80751	
Plaintiff(s) JAMES RUDNICK v. Defendant(s) MATTHEW HANSEN	DATE FILED: March 28, 2017
△ COURT USE ONLY △	
Case Number: 2017CV8 Division: C Courtroom:	
Order Denying Petition for Writ of Habeas Corpus	

The purpose of this proceeding is to determine if Petitioner is being wrongly deprived of his liberty.

The exhibits filed with the Petition make clear that Mr. Rudnick is serving a life sentence for Murder in the First Degree, followed by concurrent sentences for attempted First Degree Murder and two counts of First Degree Assault (Heat of Passion) (See Exhibit I).

Certain corrections were made to the sentence order at later points, such as an effort to add pre-sentence confinement credits, and to address costs and restitution.

One mittimus indeed erroneously failed to note the First Degree Murder conviction. (See Exhibit IV) That mittimus failed to even mention Court II, which was the First Degree Murder charge. It is clearly a clerical error. However, there is no evidence that Denver District Court ever vacated that conviction for any reason.

I am not convinced that a handful of obvious errors by the sentencing court in amending the mittimus serves as sufficient grounds to find that Petitioner has been unjustly deprived of his liberty. An actual order vacating the First Degree Murder conviction itself would be most convincing.

Petition is Denied, without a hearing, and without prejudice.

Issue Date: 3/28/2017



MICHAEL KEITH SINGER
District Court Judge

APPENDIX B

DISTRICT COURT, LOGAN COUNTY, COLORADO		DATE FILED: April 18, 2017
Court Address: 110 Riverview Road, Room 205, Sterling, CO, 80751		
Plaintiff(s) JAMES RUDNICK v. Defendant(s) MATTHEW HANSEN		
		△ COURT USE ONLY △
		Case Number: 2017CV8 Division: C Courtroom:
Order: Petition		

The motion/proposed order attached hereto: DENIED.

Plaintiff raises no issues that would justify reconsideration.

Issue Date: 4/18/2017



CHARLES M HOBBS
District Court Judge

11/21/17

APPENDIX C

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 21, 2017
Original Proceeding District Court, Logan County, 2017CV8	
In Re: Plaintiff: James Rudnick, v. Defendant: Matthew Hansen, Warden of Sterling Correctional Facility.	Supreme Court Case No: 2017SA227
ORDER OF COURT	

Upon consideration of the Petition for a Rule to Show Cause in the Nature of Mandamus filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition for a Rule to Show Cause in the Nature of Mandamus shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 21, 2017.
JUSTICE COATS does not participate.

Rec'd
11/21/17

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6-29-17

APPENDIX D
(3 pg^s)

D-1

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 29, 2017
Original Proceeding District Court, Logan County, 2017CV8	
Plaintiff: James Rudnick, v. Defendant: Matthew Hansen.	Supreme Court Case No: 2017SA102
ORDER OF COURT	

Rec'd 6-30-17

The Court has reviewed Petitioner's Notice and Attachments to Satisfy Order and Notice of Deficiency. When Petitioner filed this case, he appeared to be appealing the Logan County District Court's denial of his habeas corpus petition. But, in response to a deficiency notice by this Court, Petitioner reiterates that he is seeking mandamus relief and is asking for a rule to show cause to issue to the Logan County District Court and specific district court judges within Logan County. Thus, Petitioner specifies that he is not appealing the denial of his habeas corpus petition.

Accordingly, the Court ORDERS that the petition is construed as an original proceeding pursuant to C.A.R. 21.

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Petitioner requests that the caption be amended to reflect the correct respondents. The caption for an original proceeding is controlled by rule.

See C.A.R. 21(e)(1) ("The petition shall be titled, 'In Re [Caption of Underlying Proceeding]'" in which mandamus relief is sought).

Accordingly, IT IS ORDERED that the caption shall be amended to comply with C.A.R. 21(e)(1).

BY THE COURT, JUNE 29, 2017.

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6-29-17

D-3

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 29, 2017
Original Proceeding District Court, Logan County, 2017CV8	
Plaintiff: James Rudnick, v. Defendant: Matthew Hansen.	Supreme Court Case No: 2017SA102
ORDER OF COURT	

Upon consideration of the Petition for a Rule to Show Cause in the Nature of Mandamus filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition shall be, and the same hereby is,

DENIED.

BY THE COURT, EN BANC, JUNE 29, 2017.
Justice Coats does not participate.

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12/30/13
Rudnick
11-14-13

ORDER

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APPENDIX E

E-1 (3 pgs)

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 520 W. Colfax Avenue Denver, Colorado 80204		
THE PEOPLE OF THE STATE OF COLORADO Plaintiff v. JAMES RUDNICK Defendant		
		▲ COURT USE ONLY ▲
		Case Number: 91CR2236 Courtroom: 5D
ORDER		

THIS MATTER comes before the Court on the Defendant's Petition for Writ of Habeas Corpus and Judicial Notice for Writ of Coram Nobis for Purposes of Relief and Release from Custody Based on Falsification of a Public and Official Document and Unconstitutional Ex-Post Facto Change of Sentence filed on October 28, 2013. The Court, having reviewed the related pleadings and its file finds and rules as follows:

A. Introduction

The Defendant challenges his amended mittimus. The Defendant was originally charged with five felony counts. At trial, on April 15, 1992, the Court granted the Defendant's motion for judgment of acquittal on count one, and granted the motion on count three to the extent that it related to extreme indifference murder in the first-degree. On April 20, 1992, the Defendant was convicted of counts two (murder in the first-degree under §§ 18-3-102(1)(a), C.R.S.), four (assault in the first-degree, heat of passion under § 18-3-202(1)(a), (2)(a) C.R.S.), five (assault in the first degree, heat of passion under § 18-3-202(1)(c), (2)(a), C.R.S.), and modified count three (attempt to commit first-degree murder under §§ 18-3-102(1)(a) and 18-2-101, C.R.S.). On June 16, 1992, the Defendant was sentenced to a term of life in prison on count two; eighteen years on count three, and four years on counts four and five. Counts 3, 4, and 5 were run concurrent to each other and consecutive to count two. The mittimus was issued and was not challenged.

At some point after judgment of conviction entered and the mittimus was issued, the Colorado State Judicial Branch updated its systems. It appears that during this transition the information regarding the original charges were erroneously entered into the new system, the result being that all four convictions were listed as extreme indifference crimes (first-degree murder, attempted first-degree murder, and two counts of first-degree assault). On February 25, 2013, the Defendant filed a motion with the Court requesting 58 days presentence confinement credit, goodtime credit, and for the Court to state on the mittimus that the outstanding restitution

listed as
1/1(d)

A-8

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E-2

balance is zero. The Court granted the motion in part, awarding all relief sought except goodtime credit. When the mittimus was amended, an electronic version was pushed to the Department of Corrections (DOC). It mirrors the offenses of conviction found on the amended mittimus and contains additional information including imposed fees and costs.¹

The Defendant takes issue with the differences between the contemporary version of the amended mittimus and original, the cited statutory provisions relating to the offenses of conviction, the offense descriptions, certain key dates, and the nomenclature associated with fees and costs.

B. Law and Analysis

Crim.P. 36 provides the Court with authority to correct clerical errors at any time. After reviewing the Defendant's claims, the Court denies the petition in part and grants it in part.

! The Defendant first challenges the offenses of conviction as listed in his amended mittimus. The Court agrees with the Defendant that the convictions listed on the amended mittimus are different than the crimes of conviction and orders the mittimus to be further amended to mirror the language on the original mittimus.

The Defendant's petition enumerates numerous additional claimed errors or omissions on the amended mittimus. With respect to the date of conviction, the amended mittimus should reference April 20, 1992 rather than April 15, 1992.² The date of acquittal on count one should state April 15, 1992. The Defendant's request to include further details of the acquitted charges is denied. Neither the original nor the amended mittimus include any notation that the Defendant's motion for judgment of acquittal was granted on count three to the extent that it relates to extreme indifference murder in the first-degree.³ The correct charge for which the Defendant was convicted is identified. Accordingly, the Court declines to add such notation now.

The Defendant next argues that certain nomenclature included in the amended mittimus will prejudice him when he becomes eligible for parole. For example, the Defendant takes issue with the use of the term "vacated" rather than "paid in full" in regards to reflecting a zero balance of owed fees and costs. He believes that the latter will militate in favor of a grant of parole while the former will not. The Defendant extends this argument to the change in description of the crimes of conviction. However, the Defendant includes no specific authority supportive of the proposition that this change in nomenclature is prejudicial or that the original language is improper and his request to modify the language of the amended mittimus is denied.

¹ The Defendant has attached the electronic amended mittimus as Exhibit II of his petition.

² The Defendant also takes issue with the "sentence modified date." The Defendant has not elaborated why this date is incorrect or how it prejudices him in light of DOC retaining a June 16, 2013 sentence effective date.

³ See the Court's April 15, 1992 minute order for its ruling on the Defendant's motion for judgment of acquittal as to Count Three.

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E-3

wrong

The Defendant further argues that the amended mittimus adds an additional four year term to his sentence. This allegation is refuted by the record and the Court will take no action.


Finally, the Defendant argues that the amended mittimus lists an incorrect sentencing date and ambiguously describes the sentence on count two. The Court has investigated these claims and finds them either unsupported by the record or not warranting relief. While the sentencing date changed with the amended mittimus, the sentence effective date remains June 16, 1992. Accordingly, the Defendant is getting credit towards his sentence for the entire period of his confinement. Further, while the sentence on count two is notated as "life," this language mirrors the original mittimus. After confirming with the DOC that the Defendant is serving life with parole on count two, the Court has determined that no action is required to further clarify this sentence.

C. Ruling

The Court orders the mittimus amended to mirror the original mittimus dated August 14, 1992.⁴ The mittimus should further include the following notation: "Sentence modified to reflect 58 days PSCC awarded and restitution balance of zero." The date of conviction shall be amended to April 20, 1992, and date of acquittal on count one amended to April 15, 1992. All other requests for relief are DENIED.

SO ORDERED this 30th day of October, 2013

BY THE COURT:


John W. Madden, IV
District Court Judge

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⁴ The Court only orders the statute citations changed; the Judicial Branch and the DOC's systems may include a different description of the substantive offense. Any description of offense found in this order is included for ease of the reader.

ACTION & "HEADER" CONVERTED TO CRIM.P. MOTION
NOT BY MY ACTION
ORIGINAL FILING DATE 3/12/15 BY FALK

COPY

APPENDIX F

F-1

(4pgs)

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 12, 2015
Original Proceeding, Habeas Corpus District Court, City and County of Denver, 1991CR2236	
In Re:	
Plaintiff:	Supreme Court Case No: 2015SA37
The People of the State of Colorado, v.	
Defendant:	
James Rudnick.	
ORDER OF COURT	

Upon consideration of the Petition for Writ of Habeas Corpus (C.A.R. 21)
filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition shall be, and the same hereby is,

DENIED.

BY THE COURT, EN BANC, MARCH 12, 2015.
JUSTICE COATS does not participate.

A-11

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F-2

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: April 9, 2015
Original Proceeding, <u>Habeas Corpus</u> District Court, City and County of Denver, 1991CR2236	
In Re:	Supreme Court Case No: 2015SA37
Plaintiff:	
The People of the State of Colorado,	
v.	
Defendant:	
James Rudnick.	
ORDER OF COURT	

Upon consideration of the Petition for Rehearing filed in the above cause,
and now being sufficiently advised in the premises,

IT IS ORDERED that said Petition shall be, and the same hereby is,
DENIED.

BY THE COURT, APRIL 9, 2015, EN BANC.

A-12

Rec'd
2-10-15

~~FILED~~

F-3

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 5, 2015
Original Proceeding, Habeas Corpus District Court, City and County of Denver, 1991CR2236	
In Re: Plaintiff: The People of the State of Colorado, v. Defendant: James Rudnick.	Supreme Court Case No: 2015SA37
ORDER OF COURT	

Upon consideration of the Motion to file Without Prepayment of Filing fee
filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is,
GRANTED.

BY THE COURT, FEBRUARY 5, 2015.

A-13

"ORDERS" NOT AUTHENTICATED

~~FILED~~

F-41

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 6, 2015
Original Proceedings <u>Habeas Corpus</u> District Court, City and County of Denver, 1991CR2236	
In Re: Plaintiff: The People of the State of Colorado, v. Defendant: James Rudnick.	Supreme Court Case No: 2015SA37
ORDER OF COURT	

Upon consideration of the Notice of Failure to Authenticate Rulings Voiding
"Order of Dismissal(s)" filed in the above cause, and now being sufficiently
advised in the premises,

IT IS ORDERED that said Request shall be, and the same hereby is,
DENIED.

BY THE COURT, JULY 6, 2015.

A-14

FILED
1-13-14

APPENDIX G

(10 PGS)

G-1

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	COPIES MAILED TO COUNSEL OF RECORD Tr. Ct. Judge Tr. Ct. Clerk
Denver District Court 1991CR2236	
Plaintiff-Appellee: The People of the State of Colorado, v. Defendant-Appellant: James Rudnick.	AND _____ ON _____ BY _____ Court of Appeals Case Number: 2013CA2181
ORDER OF COURT	

To: Appellant

The Court has reviewed the notice of appeal and waives the docket fee.

The notice of appeal is accepted only as to the district court's order of October 31, 2013, under Crim. P. 36.

Appellant is ORDERED to correct the caption page to reflect that this appeal is to proceed as "People v. James Rudnick." All future pleadings must contain this caption or they will not be considered.

The Court also instructs appellant that certification of service of all filings and pleadings is required by C.A.R. 3(g)(8) and C.A.R. 25(b). C.A.R. 25 provides, with emphasis added:

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(c) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(d) Manner of Service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(e) Proof of Service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

Thus, this Court ORDERS appellant to file a signed acknowledgment with all filings of the method used to serve the appellee and the address that was served. Appellant shall, within 21 days, supply this certification to the Court regarding the service of the notice of appeal. In addition, all future filings must include a certificate of service or they will not be considered.

The record remains due March 3, 2014.

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BY THE COURT
Loeb, C.J.

mhc/lj

A-17

7/17/14

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Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 14, 2014
Denver District Court 1991CR2236	
Plaintiff-Appellee: The People of the State of Colorado, v. Defendant-Appellant: James Rudnick.	
Order	

ISSUED.

The supplemental opening brief is STRICKEN. the reply brief remains due July 21, 2014.

Issue Date: 7/14/2014

BY THE COURT

A-18

Rec'd
11-3-14

13CA2181 Peo v Rudnick 10-30-2014

COLORADO COURT OF APPEALS

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G-5

DATE FILED: October 30, 2014

Court of Appeals No. 13CA2181
City and County of Denver District Court No. 91CR2236
Honorable John W. Madden, IV, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

James Rudnick,

Defendant-Appellant.

APPEAL DISMISSED

Division VI
Opinion by JUDGE PLANK*
Bernard and Fox, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced October 30, 2014

John W. Suthers, Attorney General, Majid Yazdi, Assistant Attorney General,
Denver, Colorado, for Plaintiff-Appellee

James Rudnick, Pro Se

*Sitting by assignment of the Chief Justice under the provisions of Colo. Const.
art. VI, §5(3), and § 24-51-1105, C.R.S. 2014.

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G-6

Defendant, James Rudnick, appeals the trial court's denial, in
part, of his Crim. P. 36 motion. We dismiss the appeal.

Following a jury trial, defendant was found guilty of first degree murder – after deliberation, attempted first degree murder – after deliberation, first degree assault with intent to cause serious bodily injury, and first degree assault – extreme indifference. He was sentenced to life in Department of Corrections (DOC) custody on the murder charge and to concurrent eighteen-year and four-year sentences in DOC custody on the attempted murder and assault charges, which run consecutive to the life sentence. Defendant appealed and a division of this court affirmed the judgment of conviction. *See People v. Rudnick*, 878 P.2d 16 (Colo. App. 1993). The mandate issued on August 24, 1994.

In February 2013, defendant filed a motion to amend the mittimus to include fifty-eight days of presentence confinement credit and fifty-eight days of good time credit he claimed were awarded at sentencing and to reflect a zero balance for his outstanding restitution obligation. The trial court granted the motion with regard to presentence confinement credit and

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restitution but denied the motion with regard to good time credit, finding that it did not have the authority to award such a credit. An amended mittimus was issued.

In October 2013, defendant filed a "Petition for Writ of Habeas Corpus and Judicial Notice for Writ of Coram Nobis for Purposes of Relief and Release from Custody Based on Falsification of a Public and Official Document and Unconstitutional Ex-Post-Facto Change of Sentence," in which he alleged that the amended mittimus contained erroneous information that constituted an "ex-post-facto change of sentence" and, consequently, required his immediate release from custody.

The trial court treated this filing as a Crim. P. 36 motion to correct clerical errors. See Crim. P. 36 ("Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time."). In its order, the court acknowledged that the amended mittimus contained incorrect information and explained that, during an update of the Judicial Branch's computer systems, the information contained in defendant's original mittimus was

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incorrectly entered into the new system. The trial court then granted the motion in part and denied it in part. Another amended mittimus was issued. This appeal follows.

In his opening brief, defendant argues that the trial court erred by treating his petition as a Crim. P. 36 motion and maintains that the filing was a petition for habeas corpus relief. Because we lack jurisdiction to consider habeas corpus claims, the appeal is dismissed as it relates to that issue. See § 13-45-101(1), C.R.S. 2014; *Stilley v. Tinsley*, 153 Colo. 66, 88, 385 P.2d 677, 689 (1963) (“Habeas corpus is a *civil action*, petitions for the writ may be filed at any time, by anyone *in the supreme court, any district court . . . or in any county court.*”) (emphasis added); *Oates v. People*, 136 Colo. 208, 210, 315 P.2d 196, 197 (1957) (“An application for a writ of habeas corpus is a civil action, independent of the criminal charge and is no part of the inquiry based on the information.”); see also *Duran v. Price*, 868 P.2d 375, 378 (Colo. 1994); *Leske v. Golder*, 124 P.3d 863, 865 (Colo. App. 2005). Indeed, before defendant’s opening brief was filed, we issued multiple orders clarifying that “[t]he notice of appeal is accepted only as to the district court’s

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order of October 31, 2013, under Crim. P. 36" and that "this appeal is an appeal of the district court's October 31, 2013, order addressing appellant's claims under Crim. P. 36."

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CRIM. P. USED
FOR CIVIL ACTION

Furthermore, we lack jurisdiction to consider issues on appeal that were originally raised in defendant's February 2013 motion since he did not appeal the order addressing that motion within forty-nine days of its entry. See C.A.R. 4(b); *Estep v. People*, 753 P.2d 1241, 1246 (Colo. 1988) ("The timely filing of a notice of appeal is a jurisdictional prerequisite to appellate review.").

IRRELEVANT

Accordingly, the appeal is dismissed for lack of jurisdiction.

JUDGE BERNARD and JUDGE FOX concur.

Court Caused Delay!
REFUSED TO ACCEPT FILINGS

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