

**APPENDIX**

Decision of the Fremont County Court.....A

Order of the Colorado Supreme Court.....B

# APPENDIX A

DISTRICT COURT FREMONT COUNTY, COLORADO 136 Justice Center Road Cañon City, Colorado 81212 (719) 269-0100	DATE FILED: July 3, 2017
<b>JASON BROOKS,</b> <b>Plaintiff,</b>  v.  <b>CYNTHIA COFFMAN et al,</b> <b>Defendant</b>	▲ COURT USE ONLY ▲  Case Number: 2017 CV 64  Div.: 4/2 Courtroom: 301
<b>ORDER DENYING PLAINTIFF'S WRIT OF HABEAS CORPUS.</b>	

THIS MATTER came before the Court on Plaintiff's Writ of Habeas Corpus. A mandate is pending in Case Number 2016CA0755 involving Weld County Case Number 2009CR959. Since the originating case is still on appeal, Defendant's request for Habeas Relief is denied. This Court lacks jurisdiction to hear this matter as the appeal is still pending. In addition, the Writ fails for the reasons set forth below.

The Court has read the motion, reviewed the Weld County case file 2009CR959, Court of Appeal's Order dated June 29, 2017, affirming the trial court's order in Case Number 2016CA0755 (Mandate Pending), relevant statutes and law, and otherwise advised in the premises.

#### BACKGROUND

(Taken from Court of Appeal's Order 2016CA0755 dated June 29, 2017)

In 2010, defendant pleaded guilty to four counts of securities fraud, all class 3 felonies, and agreed to pay over five million dollars in restitution. In exchange, the prosecution dismissed the other twenty-two counts in the indictment and agreed to a sentencing cap of thirty-six years in prison. The district court accepted the plea, sentenced defendant to an aggregate term of thirty-two years in prison, and ordered defendant to pay \$5,132,352.46 in restitution.

In February 2011, defendant filed his **first** Crim. P. 35(c) motion alleging that his Crim. P. 11 advisement was defective and that he received ineffective assistance from his plea counsel. The district court denied that motion without a hearing, and a division of this court affirmed that denial. *See People v. Brooks*, (Colo. App. No. 12CA1781, Mar. 6, 2014) (not published pursuant to C.A.R. 35(f)).

Between May 2014 and August 2015, defendant filed **three more** postconviction motions alleging, among other things, that he was not properly advised of mandatory parole, his counsel

was ineffective for not advising him that the restitution he agreed to pay would be subject to interest, and that the terms of the plea agreement were breached by the imposition of interest on the amount of restitution he agreed to pay. In written orders, the district court summarily denied each of those motions.

Defendant's fifth motion, filed in March 2016 and captioned "Motion to Correct an Illegal Sentence Pursuant to Crim. P. 35(a)," alleges that (1) his sentence is illegal because interest on his restitution was going to be assessed starting on September 12, 2015, and not from the date of his conviction as required by statute, and (2) his plea was illegally induced because he was not advised when he agreed to pay restitution that he would have to pay interest on it. The district court denied this motion in a written order finding that defendant was not raising any new issues and that his sentence was not illegal.

In the instant case, Defendant seeks a Writ of Habeas Corpus arguing that the Colorado Securities Act, as applied to criminal violations of Colo. Rev. Stat. § 11-51-501(1) violates due process, equal protection, and violates cruel and unusual punishment.

**FINDS AS FOLLOWS:**

1. A petition for a writ of habeas corpus "shall be accompanied by a copy of the warrant of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given." C.R.S. § 13-45-101(1). This is a jurisdictional requirement that cannot be waived. The petition must be dismissed if the mittimus or order of confinement is not attached to the petition. *Evans v. District Court*, 572 P.2d 811, 813 (Colo. 1977). This is a jurisdictional requirement that cannot be waived. *Id.* There is no mittimus for Plaintiff's most recent conviction attached to the petition. By itself, that is sufficient cause to deny the petition for lack of jurisdiction. Thus, the Petitioner's Writ of Habeas Corpus fails to state a *prima facie* case for habeas relief and fails to state any other civil claim upon which relief can be granted.

2. It appears from the petition itself, or from the documents annexed, that the Plaintiff can neither be discharged nor admitted to bail nor in any other manner relieved. C.R.S.A. § 13-45-1014. The trial court may dismiss a petition for writ of habeas corpus if it is clear from the petition that petitioner is not entitled to be discharged. *Higgins v. People*, 868 P.2d 371 (Colo. 1994).

3. A petitioner makes a *prima facie* showing that he is entitled to relief if he produces evidence that, when considered in a light most favorable to the petitioner, with all reasonable inferences therefrom drawn in the petitioner's favor, permits a district court to find that the petitioner is entitled to release. *Cardiel v. Brittan*, 833 P.2d 748 (Colo. 1992)

4. Pursuant to § 11-51-101(2), C.R.S., cited as the "Colorado Securities Act", the purposes of this article are to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets. This article is remedial in nature and is to be broadly construed to effectuate its purposes. This relief could have been presented at the time of a direct appeal after sentencing.

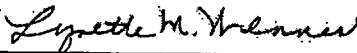
5. Habeas corpus relief is unavailable if the issue can be considered under another legal procedure. *Duran v. Price*, 868 P.2d 375, 377 (Colo. 1994). “[H]abeas corpus is only an appropriate remedy to redress an unlawful restraint on one’s liberty when no other form of relief is available.” *Id.* Thus, habeas cannot substitute for a direct appeal. *Ryan v. Cronin*, 553 P.2d 754 (1976). Similarly, habeas may not be used as a substitute for a Crim. P. 35 motion. *Kailey v. Colorado State Dep’t of Corrs.*, 807 P.2d 563, 566 (Colo. 1991); *Graham v. Gunter*, 855 P.2d 1384, 1385 (Colo. 1993). It is also not a substitute for a Petition for Mandamus or claim brought pursuant to 42 U.S.C. § 1983. See *Reece v. Johnson*, 793 P.2d 1152, 1153-1154 (Colo. 1990). It appears that Defendant dismissed his direct appeal, case 10CA1149 on February 8, 2011. According to the deadline noted in the Order Denying Defendant’s Motion for Postconviction Relief Pursuant to Crim. P. 35(c) by the Hon. Timothy G. Kerns on June 24, 2014, any motion collaterally attacking the conviction in this case needed to be filed on or before February 8, 2014.

IT IS THEREFORE, ORDERED:

Plaintiff’s Writ of Habeas Corpus is DENIED.

Entered this 3rd day of July, 2017.

BY THE COURT:

  
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District Court Judge

## APPENDIX B

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 13, 2018
Appeal from the District Court Fremont County, 2017CV64	
<b>Petitioner:</b>  Jason Brooks,  v.  <b>Respondents:</b>  Cynthia Coffman, Attorney General of the State of Colorado and Lou Archuleta, Warden of Fremont Correctional Facility.	Supreme Court Case No: 2017SA186
ORDER OF COURT	

Upon consideration of the Notice of Appeal, together with the brief(s) and the record filed herein, and now being sufficiently advised in the premises,

IT IS ORDERED that the decision of the Fremont County District Court is AFFIRMED.

BY THE COURT, EN BANC, JULY 13, 2018.