

In the Supreme Court of the United States

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**KENNETH GREEN,**

Petitioner(s),

v.

**THE STATE OF COLORADO,**

Respondent(s).

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**On Petition for Writ of Certiorari to  
The State of Colorado Supreme Court**

**Application For Stay, Bail, And Bond Pending Final Decision Of The United  
States Supreme Court Of Writ Of Certiorari To The Supreme Court Of  
Colorado Pursuant Supreme Court Rule 23.3**

Petitioner, Kenneth Green, an unrepresented inmate requests that this Court enter temporary order staying, granting his release on bail, and issue personal recognizance bond pending the final vote of the United States Supreme Court on petition for certiorari. He sought relief in all appropriate state courts and he request that this Court review the orders denying relief. Attached as "Appendix F" are the orders of the lower court. This application's form and content are pursuant Rule 33.2.

**IN SUPPORT** of this application, petitioner respectfully shows as follows:

**FACTUAL HISTORY OF THE CASE**

Petitioner's arrest by Denver law enforcement officers on June 9, 2011, was without warrant, probable cause, or exigent circumstance, and the search of his home was effected

without a search warrant although officer's sworn affidavit states he had warrant for search. Furthermore the affidavit for search is dated six-days after the search/arrest. Additionally the arrest was not validated by a neutral and detached magistrate before or after arrest in a hearing where prosecution presented evidence that the arrest fell within one of the recognized exceptions to the Fourth Amendment to the United States constitution. *Gerstein v. Pugh*, 95 S.Ct. 854(citations omitted)] within 48 hours [*County of Riverside v. McLaughlin*, 111 S.Ct. 1661(citations omitted)]. Moreover, there is no order determining that probable cause exist on the registry of actions or in the court record. Colo. Crim. P. Rule 55 provides in pertinent part,

**"Register of actions (criminal docket).** The clerk shall keep a record known as the register of actions and shall enter therein those items set forth below. The register of actions may be in any of the following forms or styles:

\*\*\*

A register of actions shall be prepared for each case or matter filed. The file number of each case or matter shall be noted on every page, jacket cover, film, or computer record whereon the first and all subsequent entries of actions are made. *All papers filed with the clerk, all process issued and returns made thereon, all costs, appearances, orders, verdicts, and judgments shall be noted chronologically in the register of actions.* These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. *The notation of an order or judgment shall show the date the notation is made. The notation of the judgment in the register of actions shall constitute the entry of judgment. ..."*

The Clerk of Court acknowledge that there are no warrant(s) in the court file. Although petitioner pled guilty it cannot be said that his waiver was valid under the constitution because the plea entry was the result of coercion thus it was not knowingly, voluntarily, and intelligently entered. In the November 17, 2011 rule 11 hearing trial court engaged in the following colloquy with Green:

[THE COURT]:

I want to make sure, Mr. Green, just so that I satisfy myself personally, and also so that we have it clear on the record, I understand that the charges to which you're pleading guilty are serious charges. The sentencing is significant sentencing. I want to make sure, however, that you're doing this, as your own free and voluntary decision.

[Mr. Green]:

I feel I have no other options, Your Honor.

[THE COURT]:

Well you do have options from this standpoint. And that's, I, I noticed some hesitation on you part.

R. Tr. (Nov. 17, 2011), p.6 line 8-20 (Appendix F)

[THE COURT]:

From discussions with Mr. Freyre, which I'm not going to ask you about, that's between you and Mr. Freyre, I assume you have some understanding of the risks and benefits of going to trial, that there are pros and cons to that. There are also pros and cons of going forward with the guilty plea. Do you have that understanding?

[MR. GREEN]:

Yes Your Honor.

[THE COURT]:

And what I need to understand is having the information that you have, and understanding the pros and cons, is that the decision that you've made, that is to go forward with the guilty plea?

[MR. GREEN]:

I'm very afraid, Your Honor. I don't know what to do.

[THE COURT]:

Well here's what the options are, Mr. Green, and that is I'm not going to accept the pleas unless you're prepared to go forward with them and tell me that's your decision.

R. Tr. (Nov. 17, 2011), p. 7, line 17-22 (Appendix F).

[THE COURT]:

All right. The record will reflect that Mr. Green's had an opportunity for further discussion with Mr. Freyre.

Mr. Green, again I want you to understand I need to get a decision from you, but I don't care what that decision is. I don't have any stake in terms of, what your decision is, as long as it's the decision that you're making freely and voluntarily.

Do you want to go forward with the guilty pleas, or do you want to go forward with the arraignments on both cases? If so, that's fine, we'll simply set them for trial.

[MR. GREEN]:

I want to thank you for your patience, You Honor. I'm very afraid, I'm really, this is a very difficult decision for me I, I don't want to plead guilty to something I didn't do. I want to plead guilty to something I did.

R. Tr. (Nov. 17, 2011), P. 9, line 8-22 (Appendix F).

[THE COURT]:

... Mr. Freyre, was there something further you'd like for the record?

[Mr. Freyre]:

Your Honor, I, I think that the problem Mr. Green is having, and if I can make the record a little clear, perhaps he might feel better with proceeding. ON the charge of child abuse resulting in serious bodily injury, there is not a factual basis for that. The child did not suffer any type of injury in this case whatsoever.

R. Tr. (Nov. 17, 2011), p. 10 line 18-25 (Appendix F).

Cont'd.

We came to the agreement of that charge because it was a class three and provided some, something at least in the District Attorney's eyes related to the conduct here. Although, and I think that, as I've indicated, there is not factual basis we're waiving the establishment of a factual basis.

And I think that Mr., to put Mr. Green at ease, I think Judge Habas, or actually I think it will be Judge Hoffman who will actually be doing the sentencing on this case, will understand that that is something that we entered a plea of guilty to for purposes of the sentencing range, and that it is not conduct in which Mr. Green engaged.

I think his reluctance comes with the, entry of the plea of guilty to something that is conduct that he actually did not engage in.

R. Tr. (Nov. 17, 2011), p.11, line 1-17. (Appendix F).

[THE COURT]:

... I need you to tell me either yes I want to go forward with these pleas as have been presented to me. Or that you don't want to do that. And either of those is perfectly acceptable.

[MR. GREEN]:

Could you give me, Could the Court give me one moment to ask Mr. Freyre something?

[THE COURT]:  
    Certainly.

[MR. FREYRE]:  
    Thank you Your Honor.

[\*\*\* after a few moments]

[THE COURT]:  
    Mr. Green, what's it going to be?

[MR. GREEN]:  
    I reluctantly plead guilty.

[THE COURT]:  
    I don't, that wasn't my question. And I don't need any qualification of anything on this. I need a straight answer. Do you want to go forward with the disposition, yes? Do you not want to go forward with the disposition, no? That's all I need to know.

[MR. GREEN]:  
    No.

[THE COURT]:  
    Okay. We'll go ahead and proceed with the arraignment on both cases ...

[MR. GREEN]:  
    No, Your Honor, I'm sorry. Yes, yes. I'll take the deal.

[Mr. Freyre]:  
    He misspoke, Your Honor.

[THE COURT]:  
    All right. Are you doing that as your own free and voluntary decision?

[MR. GREEN]:  
    Yes.

R. Tr. (Nov. 17, 2011), p.12, line 1-24. (Appendix F).

[THE COURT]:  
    Any other questions that you have about any of the information in these documents?

[MR. GREEN]:  
    What are my options to change my plea if any?

[THE COURT]:

Well your options are, if we go forward with the pleas today Mr. Green, then there are very, very, there's a very limited grounds, I'm not going to sit here giving legal advice that's for you to discuss with your lawyer. But if you go forward on these counts entered today, if you was to withdraw your guilty pleas before sentencing there's a very narrow reason, legal grounds for you to do that. I wouldn't count on it.

R. Tr. (Nov. 17, 2011), p. 15, line 11-22. (Appendix F).

#### CONVICTION AND SENTENCING

On February 16, 2012, trial court entered judgment upon conviction based on an unconstitutional arrest, search, and plea entry in case(s) 11CR2449 and 11CR2366 against Green in District Court City and County of Denver, where he was sentenced to state imprisonment to twenty years followed by life time probation.

#### FIRST POST-CONVICTION MOTION

In 2014, petitioner moved a written postconviction motion for relief and stay of execution pursuant to Colorado Criminal Procedure Rule 35 (c), alleging that the arrest, search, and plea entry was unconstitutional. Subsequently he moved to supplement the 35 (c) adding claims of ineffectiveness of counsel and a request "For Free Files and Transcripts or On Loan" from the District Court. District court did not rule on the motions for over 570 days and only after petitioner moved a demand for judgment motion seeking sanctions on trial judge did court deny the matter. Interestingly rule 35(c)(3)(IV) provides in pertinent part,

"The court shall promptly review all motions that substantially comply with Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c). ... ***The court shall complete its review within 63 days (9 weeks)*** of filing or set a new date for completing its review and notify the parties of that date."(emphasis added).

During the pendency of the motion Green filed the following pro se motions: Motion for trial pursuant rule 33, and petition for relief from final judgment pursuant civil procedure

rule 60 by reason Judgment void court lacked jurisdiction. All motions allege that the arrest, search, and rule 11 hearing were unconstitutional resulting in court proceeding without constitutional authority. Trial court promptly denied all motions.

#### SECOND POST-CONVICTION MOTION

On March 27, 2017, Petitioner moved a written pro se 35 (a) post-conviction motion(s) alleging jurisdictional defects and constitutional deprivations results in no authority and illegal sentencing. This time he submitted copies of the transcripts of the November 17, 2011, February 16, 2012, rule 11, and sentencing hearings. He also include letters from clerk stating no warrant(s) exist in court file and a copy of the registry of actions showing no order of probable cause or a hearing determining whether probable exist, as they do not appear in the record. District Court Judge Gerdes denied motion(s) on July 23, 2017, without acknowledging any of the Appendixs.

#### COLORADO COURT OF APPEALS

Pursuant his right Green sought appellate review. In Colorado the statutory basis for such review is Crim. P. 35 (a);

“(a) Correction of Illegal Sentence. The court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time ...”

As a reading of this section reveals an illegal sentence or sentence imposed without jurisdiction is a prerequisite appellate review. In this case Green contends, his arrest and search was without unconstitutional authority, there was no probable cause, there was no hearing to determine whether the arrest fell within one of the federally recognized exceptions to the Fourth Amendment requirement, a neutral and detached magistrate did

not validate arrest, Rule 11 hearing not in compliance thus unconstitutional, district court did not order restitution at sentencing results in illegal sentence, and the imposition of state incarceration and probation in same conviction same case results in illegal sentence.

Section 16-12-101 C.R.S., gives one appeal as a matter of right. Under this section, one convicted of crime is entitled as a matter of right to *one appeal*. It reads fully;

“Every person convicted of an offense under the statutes of this state has the right of appeal to review the proceedings resulting in conviction. The procedures to be followed in any such appeal shall be as provided by applicable rule of the supreme court of Colorado.” Id.

Colorado Appellate Rules 1 additionally provide,

“Matters Reviewable. An appeal to the appellate court may be taken from: *A final judgment of any district, ... in all actions ...*” (emphasis added)

On August 4, 2017, Appellate Court accept appeal 2017CA1385. Green request a copy of transcripts for the June 11<sup>th</sup> 2011, advisement, in additional to above mentioned transcripts in forma pauperis, appellant court denied request however court supplied him with a court approved form to request transcripts in a criminal appeal in district court which he promptly submit, shortly thereafter Judge Kandice C Gerdes denied the request citing,

“Defendant filed a Crim. P. 35(c) motion on March 7, 2014, which this Court denied on October 13, 2015. Defendant then filed a Crim. P. 35(a) motion on March 27, 2017, which this Court denied on July 23, 2017. Defendant now request that transcripts be provided at state expense from the first advisement, providency, and sentencing hearings. More specifically, he request transcripts for the following dates: 6/11/11, 7/26/11, 9/8/11, 9/29/11, 11/3/11, 11/10/11, 11/17/11, and 2/16/12. Defendant’s Motion simply lists those dates but does not state whether the transcripts he requests contain specific facts that show he is entitled to post-conviction relief.”

This action by Judge Gerdes deprives Petitioner of a meaningful appeal as transcripts are required because they are record of the court. Additionally Judge Gerdes made a finding that

Petitioner is indigent. The transcripts supplied *show that he is entitled to relief*. Thus at the time of the denial Petitioner had the *clearly established right to a meaningful appeal* under 16-12-101 C.R.S., and he was *entitled to transcripts* at state expense for the purpose of criminal appeal pursuant *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956); *Mayer v. Chicago*, 404 U.S. 189, 92 S.Ct. 410, 30 L.Ed.2d 372 (1971); *People v. Shearer*, 181 Colo. 237 508 P.2d 1249 (1973)(An indigent defendant is entitled to obtain a free transcript when necessary to exercise the right of appeal).

#### MOTION FOR STAY OF PROBATION

Shortly after filing the appeal Green moved a written "Motion for Stay of Probation" as of right pursuant C.A.R. 8.1 and 18-1.3-202(1) in the district court on December 8, 2017 (See Appendix F at pg. 15),

C.A.R. 8.1(a)(4) provides in pertinent part,

"Probation. An order placing the defendant on probation shall remain in effect pending review by an appellate court unless the court grants a stay of probation."

And section 18-1.3-202(1)(a) C.R.S., provides in pertinent part,

"If the court chooses to grant the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if any appeal is brought, shall remain in effect pending review by an appellate court unless the court grants a stay of probation pursuant to section 16-4-201. Unless an appeal is filed that raises a claim that probation was granted contrary to the provisions of this title, the trial court shall retain jurisdiction of the case ..."

Pursuant this state created right Green request that district court stay probation during the appeal. On the same day Judge Gerdes answered motion by citing, "... this Court finds that it lacks jurisdiction to consider the relief requested ..." (See Appendix F at pg. 13-14). Green under state law has a right to request a stay of probation and district court has the

jurisdiction to rule on the matter. Judge Kandace C Gerdes is treating Green differently from other litigants depriving him of state created rights and federal constitutional rights.

FIRST ORIGINAL PROCEEDING IN STATE SUPREME COURT  
ENTITLED TO TRANSCRIPTS ON APPEAL

Petitioner moved an original proceeding pursuant C.A.R. 21 in the Colorado supreme court against Second Judicial District Court requesting that it invoke its supervisory role under the state constitution and order district court to abide to state law and federal constitution by granting him *transcripts at state expense* because he is a poor unrepresented inmate pursuant federal constitution and state law.

On November 21, 2017, The Colorado Supreme Court en banc stated,

"Upon consideration of the Motion to Proceed In Forma Pauperis and the Original Jurisdiction Proceeding C.A.R. 21 filed in the above cause, and now being sufficiently advised in the premises IT IS ORDERED that said Motion to Proceed In Forma Pauperis shall be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that said Original Jurisdiction Proceeding C.A.R. 21 shall be, and the same hereby is, DENIED. BY THE COURT, EN BANC, NOVEMBER 21, 2017."

The Court denied petition without commit or citing any authority *acquiescing* to the conduct of district court in violation of Green right to appeal. Colorado Supreme Court has failed to uphold Petitioner right to appeal thus violating his constitutional rights *inter alia*.

SECOND ORIGINAL PROCEEDING IN STATE SUPREME COURT  
ENTITLED TO A RULING ON REQUEST TO STAY PROBATION ON APPEAL

On June 13, 2018, Green petitioned the Colorado Supreme Court for a rule to show cause directed at Judge Gerdes and the Second Judicial District Court directing them to explain why they are not ruling on the request for a stay of probation as authorized by C.A.R. 8.1 and

section 18-1.3-201 –202. (See Appendix F at pg. 42). These rules and statutes are an exception to the divestment of jurisdiction of the Colorado Court of Appeals. Cf. *People v. Stewart*, 55 P.3d 107, 126 (Colo.2002); *People v. Jones*, 631 P.2d 1132, 1133(Colo. 1981). Additionally, he moved a request for in forma pauperis which the court promptly granted. On June 28, 2018, Colorado Supreme Court en banc denied the petition without citing any commit or any authority only stating,

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

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

BY THE COURT, EN BANC, JUNE 28, 2018."(See Appendix F at pg. 46)

The Colorado Constitution provides the Colorado Supreme Court with general supervising authority over all inferior courts, it provides in pertinent part,

"The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law." Colo. const. Art VI section 2.

Green fully complied with the statute and court rule. He and made a showing through state law that he is entitled to relief, however the Colorado Supreme Court chose to deprive Green of said rights by allowing lower to proceed in the unconstitutional manner of treating him differently than any other litigants on account of him being poor, unrepresented, incarcerated, and African American. Interestingly the court grant his "In Forma Pauperis" request".(See Appendix F at pg. 47) This Court has held a constitutional violation is not complete when the deprivation occurs; it is only complete if and when the state fails to

provide due process. *Castle v. Marquardt* N.D., Ga 2009 632 F.Supp 2d 1317, affirmed 627 F.3d 1366, opinion vacated and superseded 631 F.3d 1194, certiorari denied 132 S.Ct. 251. 181 L.Ed.2d 144.

REQUEST FOR A STAY OF APPEAL IN COLORADO COURT OF APPEAL

On July 2, 2018, Green request in the Colorado Court of Appeals a temporary stay pending the outcome of this matter by reason this action is based on the transcripts not being provided and he is entitled to them. On July 20, 2018, the Court of Appeals denied the motion without commit or citing any authority forcing Plaintiff to proceed on a meaningless appeal. (See Appendix F at pg. 47) It is held that the state to furnish transcript on appeal to justify trial court's determination. It is incumbent on the state to provide the appellate court with a transcript which shows that the trial court at the time of a guilty plea made such inquiry as to justify its determination without a hearing on a section (c) petition that defendant's plea was voluntarily made. *Von Pickrell v. People*, 163 Colo. 591, 431 P.2d 1003 (1967). Additionally, appellate review may *not discriminate on account of poverty*. A state is not required by the federal constitution to provide appellate courts or a right to appellate review at all. *But a state that does grant appellate review cannot do so in a way that discriminates against some convicted defendants on account of their poverty. In re Patterson*, 136 Colo. 401, 317 P.2d 1041 (1957)(emphasis added).

28 U.S.C. § 1257(a)

On November 5, 2017, and received again on January 23, 2018, Green submitted to the United States Supreme Court on Petitioner for Writ of Certiorari to the State of Colorado

Supreme Court. This Court granted Certiorari review. Andrew L. Cooper Office of Colorado Attorney General representing the State decline response on August 1, 2018, thus acquiescing to all of the allegation in the petition for certiorari review.

#### REQUEST FOR STAY AND BOND IN STATE COURT

##### **First Request**

Petitioner first filed a request for stay with motion for postconviction relief and stay of execution in 2014, motion denied 570 days later.

##### **Second Request**

Petitioner's second request for stay of probation pending appeal pursuant Colo. Rev. Stat. 18-1.3-201 and C.A.R. 8.1. filed on December 8, 2017. (Appendix F pg. 15.) Court order no action taken on December 8, 2017. (Appendix F pg. 13-14.)

##### **Third Request**

Petitioner third request for "Application for Stay and Bail Pending Appeal" filed on December 9, 2017, to Denver district court. (Appendix F pg. .) Court denied on December 12, 2017. (Appendix F pg. .)

##### **Fourth Request**

Petitioner fourth request for "Application for Stay and Bail Pending Appeal" filed in the Colorado Court of Appeal filed in December 2017. . (Appendix F pg. .) Denied on January 11, 2018, without commit or citing authority. (Appendix F pg. 8.)

### **Fifth Request**

Petitioner's last request for "Application for Stay and Bail Pending Appeal" filed in the Colorado Supreme Court on December 27, 2017. (Appendix F pg. 1-4.).

Colorado Supreme Court denied the request stating that it does not have to rule on motion because the motion was not included in the original C.A.R. 21. The Colorado supreme court having refused to rule on the last request affirmed the lower court's ruling denying Application For Stay And Bail Pending Appeal. Thus Petitioner has exhausted all remedies and is unable to secure release from imprisonment. The petitioner has been incarcerated since June 9, 2011, illegally, and this Court accept his petition for Writ of Certiorari to Supreme Court of Colorado.

#### **THE EQUITIES WEIGH STRONGLY IN FAVOR OF GRANTING THIS APPLICATION**

Green submit two major issues on petitioner for certiorari review which warrant a stay:

Does state have constitutional authority when the Fourth and Fourteenth Amendment mandates concerning arrest without warrant are not followed at all and the plea waiver was not constitutional; and

Does state have constitutional authority to discriminate against a poor unrepresented person whom it ruled is in forma pauperis on criminal appeal.

By this Court granting the petition for certiorari review and these issues presented are well-settled because at the time of his arrest he was entitled to be free from arrest and search except upon probable cause and he was entitled to enter a plea voluntarily knowingly, and intelligently. It is more likely than not they will vote in his favor on these documented fundamental constitutional defects, violations, and deprivations. Because arrest was without warrant and the state failed to hold a *Gerstein* hearing to determine if arrest was

constitutional provisions against these actions is well settled. These actions by the state are clearly reflected in the record the state will not be prejudiced by granting of this application because Green will prevail on appeal as a matter of law.

Only Green will be prejudiced by this Court not granting this application by his continued unconstitutional imprisonment, thus embolden the State to deprive other citizens with no though or consequence. He is resorting to this extraordinary application for stay, bail, and issuance of an OR/PR bond with a cost waiver Bond because the State of Colorado has demonstrated that it will not and has not applied any federal rights guaranteed by the federal constitution to Green in any, way, shape, or form. This ~~this~~ Court has a constitutional duty to intervene. Petitioner is a resident of Denver, Colorado whose continued incarceration deprives him of his constitutional rights, privileges, and guarantees.

**WHEREFORE**, Petitioner moves this Court for and ORDER staying the underling proceedings, admitting him to bail, issuing an OR/PR Bond and/or Cost Waiver bond, pending the final disposition of this case.

Completed on this 5<sup>th</sup> day of September 2018.

Respectfully Submitted,

  
/s/ Kenneth Green

Kenneth Green 156969  
Unrepresented inmate  
Trinidad Correctional Facility  
21000 Hwy 350 East  
Model, CO 81059

# In the Supreme Court of the United States

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**KENNETH GREEN,**

Petitioner(s),

v.

**THE STATE OF COLORADO,**

Respondent(s).

---

## **On Petition for Writ of Certiorari to The State of Colorado Supreme Court**

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### **Application For Stay, Bail And Bond Pending Final Decision Of The United States Supreme Court Of Writ Of Certiorari To The Supreme Court Of Colorado Pursuant Supreme Court Rule 23.3**

#### **Appendix F**

##### **Supreme Court, State of Colorado**

Application for stay, bail, and bond pending appeal...2017CA266.....	1
Answer: Denial Colorado Supreme Court.....	3

##### **Colorado Court of Appeals**

ORDER: Denial (Jan 11, 2018).....	5
Application for Stay, Bail and Bond Pending Appeal. 2017CA1385.....	7

##### **Denver District Court**

ORDER: Denial Application for stay, bail and bond pending appeal 11CR2449.....	9
ORDER: Denial Application for stay, bail and bond pending appeal 11CR2366....	10
Application for Stay, Bail and Bond Pending Appeal.....	12
ORDER: Denial Motion for stay of probation 11CR2449.....	13
ORDER: Denial Motion for stay of probation 11CR2366.....	14
Motion for stay of probation (Dec, 8 2017).....	15

##### **Transcripts**

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Petitioner for Rule to Show Cause 18SA146.....	42
ORDER: Denial Petition For rule to show cause.....	46
ORDER: Denial Stay of Appeal.....	47

SUPREME COURT, STATE OF COLORADO  
Court Address: 2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

FILED IN THE  
SUPREME COURT

Court Below: Denver  
Case Number Below: 11CR2366; 11CR2449  
Trial Court: Colorado Court of Appeals  
Trial Court Case Number: 2017CA1385

DEC 27 2017  
OF THE STATE OF COLORADO  
Cheryl L. Stevens, Clerk

Petitioner(s):

Re: [People v. Green]

Attorney or Party Without Attorney:

Kenneth Green

▲ COURT USE ONLY ▲

Case Number:  
2017SA266

Las Animas, CO 81054

Phone Number: None  
FAX Number: None  
E-mail: None  
Atty. Reg. #: pro se

**APPLICATION FOR STAY, BAIL, AND BOND PENDING APPEAL**

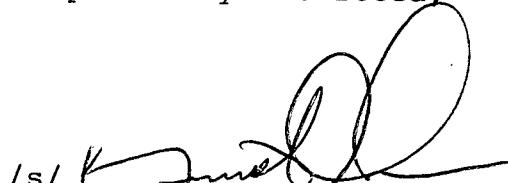
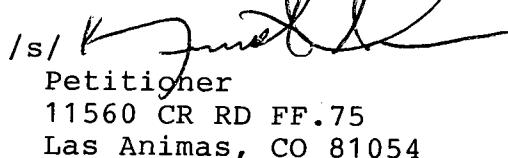
The Petitioner, Kenneth Green, request that this court grant a stay, bail, and bond pending appeal, or the issue of the mandate of the Colorado Court of Appeals or the final decision of the United States Supreme Court on Certiorari to the State of Colorado Supreme Court on the following grounds:

1. Petitioner request appeal bond in the Second Judicial District Court City and County of Denver, trial court denied.
2. Petitioner submit ' APPLICATION FOR STAY, BAIL, AND BOND PENDING APPEAL ' in the Colorado Court of Appeals and the court denied.
3. Petitioner request that this court grant this application because he presents federal question that district court proceed with out constitutional authority under the Fourth and Fourteenth Amendments by moving forward without an warrant or a determination of probable cause or that the arrest fell within one of the recognized exceptions to the Fourth Amendment and that the Rule 11 hearing was unconstitutional by reason the Plea was not voluntary, knowingly, and intelligently given, thus unconstitutional.
4. Because the constitutional violations and deprivations are evidence on record Petitioner will prevail on appeal.

**WHEREFORE**, Petitioner request that this court grant a stay, bail, and bond pending the final decision of appeal court or the final vote of the United States Supreme Court on Certiorari to the State of Colorado Supreme Court.

Completed on this 20 day December, 2017.

Respectfully Submitted,

  
/s/   
Petitioner  
11560 CR RD FF.75  
Las Animas, CO 81054

Colorado Supreme Court  
2 E. 14<sup>th</sup> Ave.  
Denver, Colorado 80203  
720-625-5150

To: Kenneth Green  
Date: January 22, 2018  
Case Number: 17SA266

Your document was received in the Colorado Supreme Court on December 26, 2017. Please note the following:

<input type="checkbox"/>	If you want to file a complaint on a judge regarding judicial conduct, you must contact the Commission on Judicial Discipline at:  1300 Broadway, Ste. 210 Denver, CO 80203 Phone: 303-457-5131
<input type="checkbox"/>	If you want to file a complaint about the conduct of your attorney, you must file a complaint directly with the Office of Attorney Regulation Counsel at:  1300 Broadway, Ste. 510 Denver, CO 80203 Phone: 303-457-5800
<input type="checkbox"/>	The Colorado Supreme Court cannot provide you with legal advice. The following agency can provide legal referrals in certain circumstances:  Legal Services 1905 Sherman St., 4th Floor. Denver, CO 80203 Phone: 303-837-1313
<input type="checkbox"/>	The Colorado Supreme Court does not have forms to provide for filing a case or a complaint. You must review the Colorado Appellate Rules for specific information on filing a case in the Colorado Supreme Court.
<input type="checkbox"/>	To obtain copies from the Supreme Court, you will need to pay \$0.75 per page in advance and provide a self-addressed, stamped envelope. The requested document(s)/case is        pages and the cost would be \$     . The check should be made out to the Colorado Supreme Court.
<input type="checkbox"/>	This case has been sent to Colorado State Archives. To obtain copies of documents, you must contact the State Archives. They will provide you with the information about costs. The Colorado State Archives is located at:  1313 Sherman St. Denver, CO 80203 Phone: 303-866-2358
<input checked="" type="checkbox"/>	The document you have filed does not meet the criteria to file a case with the Supreme Court and is being returned to you. You will need to review Colorado Appellate Rules 21 and 49 through 58 and they will give you information on what is required to file a case in the Supreme Court. If you wish to file a case in the Supreme Court you must comply with the appropriate Colorado Appellate Rules.
<input checked="" type="checkbox"/>	Other: Your original proceeding case no. 17SA266 was denied on November 27, 2017. No additional requests will be considered in this closed case. If you wish to file a new case, you will need to review the appropriate appellate rules as mentioned above.

Cheryl L. Stevens  
Clerk of the Colorado Supreme Court

Supreme Court of Colorado

2 EAST 14TH AVENUE  
DENVER, CO 80203

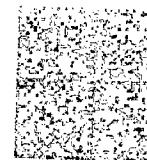
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Legal Mail

JAN 25 2018

Received

STATE OF COLORADO  
OFFICIAL MAIL  
PENALTY FOR PRIVATE USE

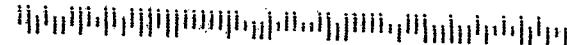


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SP

Kenneth Green #156969  
11560 CR RD FF 75  
Las Animas, CO 81054

8105488573 1001



Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 11, 2018
Denver District Court 2011CR2366 Denver District Court 2011CR2449	
Plaintiff-Appellee:  The People of the State of Colorado, v. Defendant-Appellant:  Kenneth Green.	△ COURT USE ONLY △  Case Number: 2017CA1385
<b>Order- Appeal Bond</b>	

**DENIED.**

The record remains due April 2, 2018

Hawthorne, J  
Fox J  
Freyre J

Issue 1/11/2018

BY THE COURT

Colorado Court of Appeals  
2 East 14th Avenue  
Denver CO 80203 United States



KENNETH GREEN #156969  
BENT COUNTY CORRECTIONAL FACILITY  
11560 COUNTY ROAD, FF.75 264-1003  
LAS ANIMAS CO 81054

To: Kenneth Green #156969

Subject: Service of documents in 2017CA1385.

You are being served with documents filed electronically through the Colorado Courts E-Filing system. Please review the following details concerning this service.

- Court Location: Court of Appeals
- Case Number: 2017CA1385
- Filing ID: N/A
- Filed Document Title(s):
  - Order- Appeal Bond
- Submitted on Date/Time: Thu Jan 11 18:30:03 MST 2018
- Submitted by Authorizing Organization:
- Submitted by Authorizing Attorney: Colorado Court of Appeals

If you have a question about the above listed case, please contact the court. Information for all Colorado court locations is listed on the Colorado Judicial Branch website <http://www.courts.state.co.us/Index.cfm>.

<p><b>COURT OF APPEALS, COLORADO</b>  Address: 2 East 14<sup>th</sup> Avenue  Denver, Colorado 80203</p>	
<p>Lower Court: _____</p> <p>Lower Court Judge: <u>Kandace Gerdes</u></p> <p>Lower Court Case#: <u>11CR2366; 11CR2449</u></p>	
<p><b>THE PEOPLE OF COLORADO,</b>  Appellee,  v.</p>	
<p>Appellant(s):  <u>KENNETH GREEN</u></p>	
<p>Attorney or Party Without Attorney:  Name: <u>Kenneth Green</u>  Address: <u>156969</u>  <u>11560 CR Rd FF.75</u>  <u>Las Animas, CO 81054</u>          </p> <p style="text-align: right;"><b>▲ COURT USE ONLY ▲</b></p> <p>Case No.: <u>2017CA1385</u></p>	

The Appellant, Kenneth Green, request that this Court grant a stay and release on bail pending issue of the mandate of this Court or the final decision of the United States Supreme Court on the following Grounds

1. Green on December 11, 2017 request appeal bond in district court which trial court denied on December 12, 2017.
2. Pursuant C.A.R. 8.1(c) and 9(b), Green request that this

Court grant a stay, bail, bond, and release pending the issue of the mandate of this Court or of the final decision of the United States Supreme Court on petition for Writ of Certiorari to the State of Colorado Supreme Court pursuant 28 U.S.C. § 1257 (a).

3. Green is appealing, that trial court proceeded without constitutional authority under the Fourth and Fourteenth Amendments by (1) Proceeding to prosecute based on an arrest without warrant or probable cause or exigent circumstance, (2) not validating the warrantless arrest, (3) a magistrate did not determine that probable cause exist and that the arrest fell within one of the recognized exceptions to the Fourth Amendment of the United States Constitution, (4) that the Rule 11 hearing was unconstitutional because the plea was not voluntary, knowingly, and intelligently entered, and (5) the imposition of state prison and probation in same conviction is illegal.

4. Because these constitutional violations and deprivations are evidence on record he will prevail.

WHEREFORE, Defendant-appellant Green request that this Court grant a stay, an release him on bail an bond forthwith.

Completed on this 19th day of December, 2017.

Respectfully Submitted,

/s/  8  
Defendant-Appellant

<p>DISTRICT COURT, DENVER COUNTY, COLORADO            Court Address:            1437 Bannock Street, Rm 256, Denver, CO, 80202            The People of the State of Colorado            v.            KENNETH GREEN</p>	<p>DATE FILED: December 13, 2017</p>
<p><b>△ COURT USE ONLY △</b></p>	
<p>Case Number: 2011CR2449            Division: 5B      Courtroom:</p>	
<p><b>Order: APPLICATION FOR STAY AND BAIL PENDING APPEAL</b></p>	

The motion/proposed order attached hereto: DENIED.

This matter is before the Court on Defendant's Application for Stay and Bail Pending Appeal, filed December 12, 2017. The Court has reviewed the Motion, the record, legal authority and being advised in the premises hereby FINDS and ORDERS as follows:

There is no constitutional right to bail after conviction in Colorado. Colo. Const. art. II, 19(2.5)(a). Further, a defendant seeking an appeal bond pending appeal of a postconviction order is not entitled to a hearing on a motion for an appeal bond. *People v. Roca*, 17 P.3d 835, 836 (Colo. App. 2000). The power to grant bail after conviction is provided by statute and within the sound discretion of the trial court. C.R.S. 16-4-201.5; *People v. Junes*, 233 P. 1109 (1925).

Accordingly, based upon a review of the Court's file and grounds for relief sought, the Court DENIES Defendant's Application for Bail Pending Appeal and does not find a hearing is appropriate.

Issue Date: 12/13/2017



KANDACE CECILIA GERDES  
 District Court Judge

DISTRICT COURT, DENVER COUNTY, COLORADO  
Court Address:  
1437 Bannock Street, Rm 256, Denver, CO, 80202  
The People of the State of Colorado  
v.  
KENNETH GREEN

DATE FILED: December 13, 2017

△ COURT USE ONLY △

Case Number: 2011CR2366  
Division: 5B      Courtroom:

**Order: APPLICATION FOR STAY AND BAIL PENDING APPEAL**

The motion/proposed order attached hereto: DENIED.

This matter is before the Court on Defendant's Application for Stay and Bail Pending Appeal, filed December 12, 2017. The Court has reviewed the Motion, the record, legal authority and being advised in the premises hereby FINDS and ORDERS as follows:

There is no constitutional right to bail after conviction in Colorado. Colo. Const. art. II, 19(2.5)(a). Further, a defendant seeking an appeal bond pending appeal of a postconviction order is not entitled to a hearing on a motion for an appeal bond. *People v. Roca*, 17 P.3d 835, 836 (Colo. App. 2000). The power to grant bail after conviction is provided by statute and within the sound discretion of the trial court. C.R.S. 16-4-201.5; *People v. Junes*, 233 P. 1109 (1925).

Accordingly, based upon a review of the Court's file and grounds for relief sought, the Court DENIES Defendant's Application for Bail Pending Appeal and does not find a hearing is appropriate.

Issue Date: 12/13/2017



KANDACE CECILIA GERDES  
District Court Judge



DISTRICT COURT Denver COUNTY, COLORADO  
Court Address: 520 W Colfax Ave Rm 135  
Denver, CO 80204

17 DEC 12 AM 9:00  
DISTRICT COURT  
ORIGINAL-OPN

Plaintiff(s):

THE PEOPLE OF THE STATE OF COLORADO,

v.

Defendant(s):

KENNETH GREEN

Attorney or Party Without Attorney:

Name: Kenneth Green

Address: 156969

11560 CR FF.75

Las Animas, CO 81054

COURT USE ONLY

Case Number: 11CR2366

11CR2449

Div: \_\_\_\_\_ Ctrm: FF

**APPLICATION FOR STAY AND BAIL PENDING APPEAL**

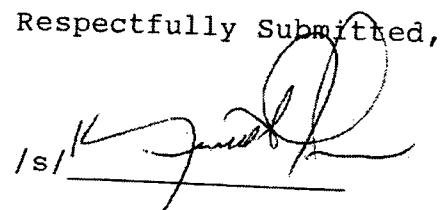
Kenneth Green, the defendant, move this court to grant a stay and release on bail pending appeal of the sentence and conviction in this case(s) pursuant Crim. P. 46, an C.A.R. 8.1, 9.

Defendant is appealing the constitutionality of this criminal action and it appears that he will prevail because of the foundational constitutional violations and deprivations will result in vacation of the sentence and conviction or the withdraw of the plea and an arraignment to trial.

**WHEREFORE**, the defendant request that this court grant this request forthwith.

Completed on this December 7, 2017.

Respectfully Submitted,

  
/s/ K. Green

<p>DISTRICT COURT, DENVER COUNTY, COLORADO            Court Address:            1437 Bannock Street, Rm 256, Denver, CO, 80202            The People of the State of Colorado            v.            KENNETH GREEN</p>	<p>DATE FILED: December 8, 2017</p>
<p>△ COURT USE ONLY △</p>	
<p>Case Number: 2011CR2449            Division: 5B      Courtroom:</p>	
<p><b>Order: Motion for stay of probation</b></p>	

The motion/proposed order attached hereto: NO ACTION TAKEN.

**This matter** comes before the Court on Defendant's *pro se* Motion for stay of Probation, filed December 8, 2017.

This case is currently on appeal in 17CA1385.

When an appeal has been perfected, the trial court is divested of jurisdiction to issue any further orders in a case. *People v. Stewart*, 55 P.3d 107, 126 (Colo. 2002); *People v. Jones*, 631 P.2d 1132, 1133 (Colo. 1981).

Therefore, this Court finds that it lacks jurisdiction to consider the relief requested in Defendant's Motion. Accordingly, the Court takes **NO ACTION**.

Issue Date: 12/8/2017



KANDACE CECILIA GERDES  
 District Court Judge

136 pg

DISTRICT COURT, DENVER COUNTY, COLORADO  
Court Address:  
1437 Bannock Street, Rm 256, Denver, CO, 80202  
The People of the State of Colorado  
v.  
KENNETH GREEN

DATE FILED: December 8, 2017

△ COURT USE ONLY △

Case Number: 2011CR2366  
Division: 5B      Courtroom:

**Order: Motion for stay of probation (security verified 12/08/17)**

The motion/proposed order attached hereto: NO ACTION TAKEN.

This matter comes before the Court on Defendant's *pro se* Motion for stay of Probation, filed December 8, 2017.

This case is currently on appeal in 17CA1385.

When an appeal has been perfected, the trial court is divested of jurisdiction to issue any further orders in a case. *People v. Stewart*, 55 P.3d 107, 126 (Colo. 2002); *People v. Jones*, 631 P.2d 1132, 1133 (Colo. 1981).

Therefore, this Court finds that it lacks jurisdiction to consider the relief requested in Defendant's Motion. Accordingly, the Court takes **NO ACTION**.

Issue Date: 12/8/2017



KANDACE CECILIA GERDES  
District Court Judge

147 pg

DISTRICT COURT, Denver COUNTY, COLORADO  
Court Address: 520 W Colfax Ave Rm 135  
Denver, CO 80204

17 DEC -8 AM 11:26

FILED IN DENVER  
DISTRICT COURT  
DENVER, COLORADO

ORIGINAL

Plaintiff(s):  
**THE PEOPLE OF THE STATE OF COLORADO,**

v.

Defendant(s):  
**KENNETH GREEN**

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney:  
Name: Kenneth Green 156969  
Address: 11560 CR Rd FF.75  
Las Animas, CO 81054

Case Number: \_\_\_\_\_

**11CR2449**  
**11CR2366**

Phone Number: None  
FAX Number: None  
E-mail: None  
Atty. Reg. #: None

Div: \_\_\_\_\_ Ctrm: \_\_\_\_\_

**MOTION FOR STAY OF PROBATION**

The defendant, Kenneth Green request a stay of probation pursuant to C.A.R. 8.1, and 18-1.3-202(1) C.R.S., and as grounds states:

1. Defendant moved a appeal of this courts denial of postconviction alleging that probation and state prison in same conviction results in illegal sentence on Aug. 11, 2017.
2. State law provides court loses jurisdiction over probation on appeal. See 16-12-102, and 18-1.3-201 C.R.S.; See also People v. Ray, 192 Colo. 391, 560 P.2d 74 (1977)(Probation is a creature of statute).
3. Defendant request that the court enter an order staying probation, including collection of probation fee's until after the

Court of Appeals has issued its mandate or after the United States Supreme Court pursuant 28 U.S.C. § 1257(a) issue a final order under writ of certiorari.

- a. Final judgments or decess rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari ...
- 4. Pursuant state law district court has no discretion to deny this motion.

WHEREFORE, the defendant request trial court stay probation in this matter.

Completed on this December 4, 2017.

Respectfull Submitted,

  
Defendant

Attachment to Motion

1 District Court  
2 Denver County  
3 COLORADO  
4 520 W Colfax Avenue, Room 135  
5 Denver, CO 80204

5 THE PEOPLE OF THE STATE OF  
6 COLORADO  
7 Plaintiff,

7 Plaintiff,

\*FOR COURT USE ONLY\*

## 0 | Versus

10 KENNETH GREEN

11 | Defendant,

12 For People:

15 KERRI LOMBARDI

For Defendant:

FERNANDO FREYRE

17           The matter came on for hearing on November 17, 2011, before  
18           the HONORABLE EDWARD BRONFIN, Judge of the District Court, and  
19           the following FTR proceedings were had.

Transcribing Solutions, LLC  
815 South Perry Street, Ste 110  
Castle Rock, CO 80104  
720-389-9420

1 NOVEMBER 17, 2011

## ARRAIGNMENT/PLEA

3 MR. FREYRE: (Audio started in mid-sentence) ...actually  
4 it is not, we've been previously appointed. We had a  
5 disposition...

6 THE COURT: Let me, just so that I can call both cases...

7 MR. FREYRE: Thank you.

8 THE COURT: ...and we'll have counsel on the record.

<sup>9</sup> 11CR2366, 11CR2449, People versus Green.

10 MS. LOMBARDI: Kerri Lombardi on behalf of the People.

11 MR. FREYRE: Fernando Freyre with Mr. Green who appears  
12 in custody.

13 Your Honor we have a disposition on both of these cases.

14 On case number 11CR2449, Mr. Green will be entering a plea  
15 of guilty to count one, a class four felony. The sentencing  
16 range in that is from two to six years with a period of parole of  
17 three years.

18 On case number 11CR2366, Mr. Green will be entering pleas of  
19 guilty to an added count five and an added count six. The added  
20 count five is a class five, attempt sex assault on a child.

21 MS. LOMBARDI: I'm sorry, I'm sorry.

22 THE COURT: Actually it's an original count five.

23 MS. LOMBARDI: If I...

24 MR. FREYRE: Pardon me, original count five.

25 MS. LOMBARDI: Yeah. It's...

1                   THE COURT: And then an added count six.

2                   MR. FREYRE: And an added count six...

3                   MS. LOMBARDI: Right.

4                   MR. FREYRE: ...which is a child abuse resulting in  
5 serious bodily injury.

6                   We are waiving the establishment of a factual basis. There  
7 was no SBI, no serious bodily injury at all. We are, we arrived  
8 at that plea for purposes of the applicable range.

9                   The sentencing agreement with respect to that case is that  
10 he will receive a sentence of 10 to 20 years. The Court would  
11 determine that, that amount. And then have a consecutive  
12 indeterminate to life probation to follow the ten...

13                  THE COURT: On the, on the count five?

14                  MR. FREYRE: On the, yes sir. On, correct, on the  
15 original count five.

16                  There is also an agreement to run the two to six year  
17 sentence concurrently with the 10 to 20 range on case number  
18 2366.

19                  We would be asking for a PSI. We would need an offense  
20 specific eval on this.

21                  Mr. Green also would like to provide the Court with some  
22 additional information, so I'd be asking that---I, I know  
23 generally sentencing is set out about 60 days, but in light of  
24 the holidays I would ask to set it out for maybe about 90  
25 (inaudible).

o

1           THE COURT: Well it's going to take a min, that  
2 shouldn't be a problem, it's going to take a minimum of six to  
3 eight weeks. Actually probably about eight weeks to get...

4           MS. LOMBARDI: I think it's about 10 to 12 for the  
5 psycho sex eval.

6           COURT CLERK: Yeah.

7           THE COURT: Yeah, so that's not going to be a problem,  
8 Mr. Freyre.

9           MR. FREYRE: That's fine.

10          THE COURT: All right.

11          MS. LOMBARDI: And Judge just to make one thing clear,  
12 the indeterminate to life probation that's to run consecutive to  
13 the Department of Corrections sentence, is a minimum of ten years  
14 indeterminate to life as to ISP.

15          MR. FREYRE: That's a correct statement.

16          THE COURT: All right, Mr. Green, I need to go over the  
17 following information with you.

18          Then on the 10CR2449 [sic] case, it's my understanding that  
19 you're going to be pleading guilty to count one, possession with  
20 intent to manufacture or distribute marijuana five to 100 pounds,  
21 class four felony.

22          In 10CR2366 [sic] it's my understanding that you're going to  
23 be pleading guilty to count five, sexual assault on a child,  
24 which pattern, pattern abuse. I'm sorry, sexual assault on a  
25 child, class four felony.

1        You're also going to be pleading guilty to added count six,  
2 child abuse resulting in serious bodily injury, a class three  
3 felony.

4        You've heard the proposed sentencing concession that's been  
5 read into the record by Mr. Freyre with the additional  
6 information that's been provided by Ms. Lombardi. I need to make  
7 sure that's your understanding of what you're agreeing to and  
8 what you want to do.

9        Is that accurate or not accurate, sir?

10        MR. GREEN: Yes.

11        THE COURT: All right. Give me your full name please.

12        MR. GREEN: Kenneth Green.

13        THE COURT: Do you read, speak and understand the  
14 English language?

15        MR. GREEN: Yes.

16        THE COURT: Are you thinking clearly today?

17        MR. GREEN: Yes.

18        THE COURT: Have you taken any prescribed medication,  
19 over the counter medication, drug or alcohol in the last several  
20 days that might affect your judgment, or make it hard for you to  
21 understand what's happening here today?

22        MR. GREEN: No I have not.

23        THE COURT: Do you have any physical, mental or  
24 emotional condition that might interfere with your ability to  
25 understand what's happening here today?

1 MR. GREEN: No.

2 THE COURT: Have you discussed the proposed disposition  
3 in both cases with Mr. Freyre?

4 MR. GREEN: Yes I have.

5 THE COURT: Are you satisfied with his representation of  
6 you?

7 MR. GREEN: Yes I am.

8 THE COURT: I want to make sure, Mr. Green, just so that  
9 I satisfy myself personally, and also so that we have it clear on  
10 the record, I understand that the charges to which you're  
11 pleading guilty are serious charges. The sentencing is a  
12 significant sentencing.

13 I want to make sure, however, that you're doing this, that  
14 you understand your options and alternatives here, and that  
15 you're doing this as your own free and voluntary decision. Is  
16 that, is that accurate or not?

17 MR. GREEN: I feel I have no other options, Your Honor.

18 THE COURT: Well you do have options from this  
19 standpoint. And that's, I, I noticed some hesitation on your  
20 part. And what I want you to understand is the following.

21 First of all, I don't have any stake in whether you go  
22 forward with the, go forward with the guilty plea versus going  
23 forward to trial. That's your decision.

24 So I want you to be clear, Mr. Green, that I'm not trying to  
25 influence you one way or the other. You have a right to go

1 forward with the guilty pleas in both cases as long as you  
2 understand what you're doing, and are doing that voluntarily.

3 You also have a result, you also have the right to go  
4 forward and not plead guilty, and we'll set these matters for  
5 trial. And that's perfectly okay if that's what you want to do.

6 From discussions with Mr. Freyre, which I'm not going to ask  
7 you about, that's between you and Mr. Freyre, I assume you have  
8 some understanding of the risks and benefits of going to trial,  
9 that there are pros and cons to that. There are also pros and  
10 cons of going forward with the guilty plea.

11 Do you have that understanding?

12 MR. GREEN: Yes Your Honor.

13 THE COURT: And what I need to understand is having the  
14 information that you have, and understanding the pros and cons,  
15 is that the decision that you've made, that is to go forward with  
16 the guilty pleas?

17 MR. GREEN: I'm very afraid, Your Honor. I don't know  
18 what to do.

19 THE COURT: Well here's what the options are, Mr. Green,  
20 and that is I'm not going to accept the pleas unless you're  
21 prepared to go forward with them and tell me that's your  
22 decision. And I'm not trying to force you or get you to say  
23 anything.

24 Because as I've told you, I'm perfectly happy if you want to  
25 not go forward with the pleas, I'm perfectly happy to go forward

1 FEMALE VOICE: No, we're actually (inaudible).

2 THE COURT: Oh, all right. 1:30.

3 MS. LOMBARDI: 1:30. So I will let these folks in the  
4 back as well know.

5 THE COURT: Thank you very much.

6 MS. LOMBARDI: Yeah.

7 MR. FREYRE: Your Honor I think we're ready to proceed.

8 THE COURT: All right. The record will reflect that Mr.  
9 Green's had an opportunity for further discussion with Mr.  
10 Freyre.

11 Mr. Green, again I want you to understand I need to get a  
12 decision from you, but I don't care what that decision is. I  
13 don't have any stake in terms of, of what your decision is, as  
14 long as it's the decision that you're making freely and  
15 voluntarily.

16 Do you want to go forward with the guilty pleas, or do you  
17 want to go forward with the arraignments on both cases? If so,  
18 that's fine, we'll simply set them for trial.

19 MR. GREEN: I want to thank you for your patience, Your  
20 Honor. I'm very afraid, I'm really, this is a very difficult  
21 decision for me. I, I don't want to plead guilty to something I  
22 didn't do. I want to plead guilty to something I did.

23 MR. FREYRE: Your Honor, what I...

24 THE COURT: Hold on, hold on. Mr. Green, let me make  
25 one thing clear to you, sir. I'm not involved in negotiating the

1 case. I haven't been, Judge Habas won't be, and that's not the  
2 Judge's role. I'm not going to go revisit or sit here and  
3 discuss with you and Mr. Freyre and Ms. Lombardi what the plea is  
4 or isn't.

5 So here are your choices today, okay? If you want to go  
6 forward with the guilty pleas in both case as has been provided  
7 to me, or presented to me, I'll go forward with that if you're  
8 doing that as your own free and voluntary decision, understanding  
9 that you're going to be, you know, there, the opportunity or  
10 ability to ask to withdraw those guilty pleas will be pretty  
11 limited. There are only very, very, very limited grounds on  
12 which one can ask to withdraw a guilty plea.

13 On the other hand, if that's not what you want to do then  
14 we'll go forward with the arraignment on both cases, and we'll  
15 set them for motions and trial.

16 But I'm not going to get into further negotiations or  
17 discussions on what you are or are not pleading on.

18 Excuse me, Mr. Freyre, was there something further you'd  
19 like for the record?

20 MR. FREYRE: Your Honor, I, I think that the problem Mr.  
21 Green is having, and if I can make the record a little more clear  
22 perhaps he might feel better with proceeding.

23 On the charge of child abuse resulting in serious bodily  
24 injury, there is not factual basis for that. The child did not  
25 suffer any type of injury in this case whatsoever.

1       We came to the agreement of that charge because it was a  
2 class three, and provided some, something at least in the  
3 District Attorney's eyes related to the conduct here. Although,  
4 and I think that, as I've indicated, there is no factual basis,  
5 we're waiving the establishment of a factual basis.

6       And I think Mr., to put Mr. Green at ease, I think Judge  
7 Habas, or actually I think it will be Judge Hoffman who will  
8 actually be doing the sentencing on this case, will understand  
9 that that is something that we entered a plea of guilty to for  
10 purposes of the sentencing range, and that it is not conduct in  
11 which Mr. Green engaged.

12       He has completely admitted his inappropriately sexual  
13 contact. I think he's very amenable to treatment for that, and  
14 he has no hesitation in admitting what he did do.

15       I think his reluctance comes with the, the entry of the plea  
16 of guilty to something that is conduct that he actually did not  
17 engage in.

18       THE COURT: All right. And I understand why it's being  
19 done in terms of the proposed sentencing range and the  
20 consecutive sentence on the added, or on count five, which would  
21 be to the minimum of ten years SOISP. So I understand that.

22       I still need to go back to my question to you, Mr. Green,  
23 which is with that further information from Mr. Freyre, what I  
24 need from you is one of two things, and I don't care which it is,  
25 I don't have any stake in which it is.

1       And that is, I need you to tell me either yes I want to go  
2 forward with these pleas as have been presented to me. Or that  
3 you don't want to do that. And either of those is perfectly  
4 acceptable.

5       MR. GREEN: Could you give me, could the Court give me  
6 one moment to ask Mr. Freyre something?

7       THE COURT: Certainly.

8       MR. FREYRE: Thank you Your Honor.

9       THE COURT: Mr. Green, what's it going to be?

10      MR. GREEN: I reluctantly plead guilty.

11      THE COURT: I don't, that wasn't my question. And I  
12 don't need any qualification or anything on this. I need a  
13 straight answer. Do you want to go forward with the disposition,  
14 yes? Do you not want to go forward with the disposition, no?  
15 That's all I need to know.

16      MR. GREEN: No.

17      THE COURT: Okay. We'll go ahead and proceed with the  
18 arraignment on both cases...

19      MR. GREEN: No, Your Honor, I'm sorry. Yes, yes. I'll  
20 take the deal.

21      MR. FREYRE: He misspoke, Your Honor.

22      MR. GREEN: I misspoke.

23      THE COURT: All right. Are you doing that as your own  
24 free and voluntary decision?

25      MR. GREEN: Yes.

1                   THE COURT: All right. In both of these cases, Mr.  
2 Green, I have received written requests to plead guilty. They  
3 both look they were initialed and signed by you. I need to make  
4 sure that's your signature and your initials on both of the  
5 documents, is that correct?

6                   MR. GREEN: Yes.

7                   THE COURT: Before you initialed and signed those did  
8 you take all the time that you needed to thoroughly read, review  
9 and understand those, make sure the information in there was  
10 clear, and make sure that any questions that you have were  
11 answered to your satisfaction?

12                  MR. GREEN: Yes.

13                  THE COURT: Do you have any questions for me about  
14 anything in those documents?

15                  MR. GREEN: Only on number 11 on 11CR2366, I believe it  
16 was the sentencing guidelines waiver, I believe.

17                  THE COURT: I think what that is, sir, is you're  
18 pleading guilty to a class three felony, which would be in the  
19 extraordinary risk range, and a potential sentence on that is,  
20 the presumptive sentence is a range of 10 to 32 years in the  
21 Department of Corrections, the 3,000 to \$750,000.00 fine and a  
22 period of mandatory parole of five years. Was that what you had  
23 the question about?

24                  MR. GREEN: Yes.

25                  THE COURT: What's the question?

1                   MR. GREEN: Is it at the Judge's discretion on these  
2 sentencing?

3                   THE COURT: The proposed agreement as I understand it on  
4 that in this case on count six, which is the class three felony,  
5 is the parties have agreed to a range of 10 to 20 years, plus the  
6 mandatory parole, with a cap of 20 years incarceration.

7                   What will happen is this, is following the, if we go forward  
8 with the pleas today several documents are going to be prepared.  
9 One of them is called a PSI, which is a presentence  
10 investigation. It is prepared by probation, given to both  
11 lawyers and to the Court.

12                  There's another document that's going to be prepared, Mr.  
13 Green, called an OSEN, Offense Specific Evaluation, which is  
14 prepared in cases involving sex offenses. You'll be contacted by  
15 probation and do interviews for both documents. That's also  
16 given to both lawyers.

17                  At the sentencing hearing, the Judge who will be in this  
18 courtroom is Judge Hoffman, Judge Hoffman will have reviewed  
19 those documents. He'll receive argument from both of the  
20 lawyers. He'll receive statements from anybody, be it  
21 individuals that the prosecution wishes to have speak, or  
22 individuals that Mr. Freyre wishes to have speak. Judge Hoffman  
23 will also give you an opportunity to make any statement you'd  
24 like him to consider.

25

1       At that point if Judge Hoffman does not agree to a sentence  
2 in the 10 to 20 year range, he would give you an opportunity to  
3 withdraw your guilty plea.

4       However, if there's going to be a sentence that would be, or  
5 I should say assuming that Judge Hoffman from all of that  
6 information is comfortable, then it's his discretion what that  
7 sentence is, a minimum of 10 years, a cap of 20 years, plus the  
8 five year mandatory parole on that charge.

9       Does that answer the question for you, sir?

10       MR. GREEN: Yes.

11       THE COURT: Any other questions that you have about any  
12 of the information in these documents?

13       MR. GREEN: What are my options to change my plea if  
14 any?

15       THE COURT: Well your options are, if we go forward with  
16 the pleas today, Mr. Green, then there are very, very, there's a  
17 very limited grounds, I'm not going to be sitting here giving  
18 legal advice, that's for you to discuss with your lawyer. But if  
19 you go forward with the pleas today of judgments of convictions  
20 on these counts entered today, if you ask to withdraw your guilty  
21 pleas before sentencing there's a very narrow reason, legal  
22 grounds for you to do that. I wouldn't count on it.

23       MR. GREEN: Okay, thank you.

24       THE COURT: Any other questions that you have, sir?

25       MR. GREEN: No, no further questions.

o

1           THE COURT: All right. With that additional information  
2 I need to make sure, Mr. Green, that you still want to go forward  
3 with the pleas in this case?

4           MR. GREEN: Yes I do.

5           THE COURT: All right. By entering the guilty pleas  
6 you're waiving or giving up certain rights that you have, which I  
7 need to go over with you.

8           You have the right to a lawyer at all stages of the  
9 proceeding. If you can't afford a lawyer I'll appoint one to  
10 represent you.

11          You have the right to a speedy and public jury trial to  
12 occur in both cases within six months after entering your not  
13 guilty plea.

14          You are presumed innocent on all charges. What that means  
15 is you don't have to prove or disprove anything. Instead the  
16 burden is on the District Attorney to prove each of the things  
17 they'd be required to prove beyond a reasonable doubt, and to the  
18 satisfaction of a unanimous jury.

19          At any trial you'd have the right to testify. You'd also  
20 have the right not to testify. That's a personal right, you make  
21 the decision whether or not you give testimony.

22          At trial you'd have the right to subpoena and call witnesses  
23 in court to give testimony on your behalf. You'd also have the  
24 right to confront and cross examine any witness called by the  
25 prosecution.

1       If you were convicted you'd have the right to appeal to a  
2 higher court.

3       Do you understand those right?

4       MR. GREEN: Yes I do.

5           THE COURT: I need to make sure you understand that by  
6 entering these guilty pleas you're giving up the rights that I've  
7 just gone over with you verbally. You're giving up the rights  
8 that are listed in the paperwork which you've signed.

9           You're giving up other important rights, including giving up  
10 your right to a jury trial.

11          You're giving up your right to appeal the convictions that  
12 will enter today to a higher court. You're, for purposes of this  
13 plea, admitting to the charges with the understanding, I think  
14 Mr. Freyre has made that clear that there is denial on the added  
15 count six of any injury, and a denial of the factual basis, but  
16 you can't come back later to seek to appeal or undo the guilty  
17 pleas.

18          Do you understand that?

19          MR. GREEN: Yes.

20           THE COURT: Is that what you want to do, go forward with  
21 the guilty pleas in both cases?

22          MR. GREEN: Yes.

23           THE COURT: In the 11CR2366 case, you're pleading guilty  
24 first to the class three felony. As I've told you, Mr. Green,  
25 the presumptive sentence for that is a range of incarceration in

1 the Department of Corrections of between 10 and 32 years, along  
2 with a fine of 3,000 to \$750,000, and a period of mandatory  
3 parole of five years.

4 On class four felony, which is the sexual assault on a  
5 child, the presumptive sentence is a range of incarceration of  
6 two to six years in the Department of Corrections, along with a  
7 fine of 2,000 to \$500,000.00.

8 If the Court found extraordinary mitigation, that sentence  
9 can be as little as one year.

10 If the Court found extraordinary aggravation, that sentence  
11 could be as much as 12 years, along with a period of mandatory  
12 parole of three years.

13 Is all that information clear to you, sir?

14 MR. GREEN: Yes.

15 THE COURT: In the 11CR2449 case, you're pleading guilty  
16 to a class four felony. The presumptive sentence on that is a  
17 range of incarceration in the Department of Corrections of  
18 between two and six year, along with a fine of 2,000 to  
19 \$500,000.00.

20 If the Court found extraordinary mitigation, that sentence  
21 can be as little as one year.

22 If the Court found extraordinary aggravation, that sentence  
23 could be as much as 12 years, along with a period of mandatory  
24 parole of three years.

25 Is that information clear to you?

5

1 MR. GREEN: Yes.

2 MR. FREYRE: Actually, Your Honor, as much as I wish  
3 that information were accurate, that's an in, that a two to six  
4 indeterminate to life sentence. There is the additional  
5 paperwork which we have...

6 MS. LOMBARDI: The range of penalties is included,  
7 Judge.

8 THE COURT: Well I was actually going over the 11-2449  
9 case, which was the marijuana.

10 MR. FREYRE: Oh, pardon me, Your Honor, I apologize.  
11 The Court's absolutely correct. And it's...

12 MS. LOMBARDI: That is correct

13 MR. FREYRE: ...in its recitation of the possible  
14 penalties on that charge. I thought the Court was on the other  
15 case.

16 THE COURT: But I did, I thank you for catching me on  
17 this, Mr. Freyre, because I did misstate this, and I want to make  
18 sure that it's clear for the record.

19 On the, we're back on the 2366 case, Mr. Green, on the class  
20 four felony. That is a range of, the presumptive range on that  
21 is two years to life in the Department of Corrections, with a  
22 range of at least ten to life on parole, and an indeterminate  
23 range of at least ten years to life on probation, along with the  
24 fine of 2,000 to \$500,000.00.

25

1       As indicated in the paperwork, you will be required to  
2 register as a sex offender once released from the Department of  
3 Corrections. So I need to make that modification on the record.

4       MR. GREEN: Yes, I understand.

5       THE COURT: All right. In both of these cases...

6       MR. FREYRE: Excuse me, Your Honor.

7       THE COURT: ...I've been provided with documents that are  
8 entitled Elements. These describe the things that the District  
9 Attorney would have to prove as to the charges that you're  
10 pleading guilty to.

11       It appears that these have been signed by you, Mr. Green,  
12 and I need to make sure that's your signature on those documents,  
13 is that correct?

14       MR. GREEN: Yes it is.

15       THE COURT: Before you signed those did you take all the  
16 time that you needed to thoroughly read, review and understand  
17 them? Make sure the information in there was clear, and make  
18 sure you got any questions that you had answered?

19       MR. GREEN: Yes.

20       THE COURT: Do you have any questions for me about  
21 anything in those documents?

22       MR. GREEN: No, I believe you (inaudible) everything.

23       THE COURT: All right. Again, I need to make sure that  
24 you understand that by signing those, obviously subject to the  
25 agreement that the child abuse is being pled to simply for

1 purposes of the sentencing range, and that there's a waiver of  
2 any factual basis, meaning you're not admitting those facts.  
3 That with regard to the other charges you are admitting those,  
4 you are agreeing that those things occurred, you can't come back  
5 later to deny or dispute those things.

6 MR. GREEN: Yeah.

7 THE COURT: Do you understand that?

8 MR. GREEN: Yes I do.

9 THE COURT: All right. I need to finally ask you, Mr.  
10 Green, I know we've discussed this question several times, but if  
11 you have any questions or reservations about it, now is the time  
12 to speak up, not later. Are you entering into these pleas as  
13 your own free and voluntary decision?

14 MR. GREEN: Yes.

15 THE COURT: Is anybody forcing or making you do this?

16 MR. GREEN: No.

17 THE COURT: Are you entering---has anybody offered or  
18 promised you anything else to enter into these pleas apart from  
19 what we've discussed here in court today?

20 MR. GREEN: No.

21 THE COURT: All right. I'll note a waiver of factual  
22 basis, Mr. Freyre, to added count six as to the additional counts  
23 factual basis.

24 MR. FREYRE: Yes sir.

25

1                   THE COURT: The Court notes the stipulation to factual  
2 basis in the 11CR2449 case, and a stipulation to factual basis to  
3 count five in 11CR2366.

4                   The Court finds that Mr. Green has been advised of his  
5 rights under Rule five in both cases. And from review of the  
6 paperwork and our discussion here in court today on the record,  
7 the Court finds that Mr. Green's pleas in both cases is made in a  
8 knowing, intelligent and voluntary fashion. Written findings to  
9 that effect will enter.

10                  The Court accepts the pleas, judgment of conviction enters  
11 on count five and added count six in 11CR2366, counts one through  
12 four are dismissed. Judgment of conviction enters, its count  
13 one, isn't it, on 2449?

14                  MS. LOMBARDI: It is count one, yes.

15                  THE COURT: On count one on 2449. We'll set this matter  
16 for a PSI and offense specific evaluation and sentencing. Becky  
17 if we can get some dates please.

18                  COURT CLERK: January 26<sup>th</sup> at 8:30.

19                  MR. FREYRE: Could we go a little further than that?

20                  THE COURT: Sure.

21                  MR. FREYRE: If we could go maybe to February 16<sup>th</sup>  
22 perhaps?

23                  THE COURT: Any problem with that Ms. Lombardi?

24                  MS. LOMBARDI: I don't think so. No, that's fine.  
25 Thank you.

1                   THE COURT: We'll set the sentencing then February 16<sup>th</sup>  
2 at 8:30 on both cases. The Court will order a PSI and offense  
3 specific evaluation.

4                   Mr. Green I just want to say this to you, sir. You know,  
5 part of the job is, is that I've got to just move forward. I, I  
6 don't want you to think that I'm insensitive to you or to the  
7 decisions that you need to make. So I don't want you to think  
8 I've been sitting here not recognizing that.

9                   And, so I just wanted to say that I hope you realize that's  
10 why I was kind of moving forward as I was, wanting to make sure  
11 that you were informed, but also understanding that any time one  
12 makes decisions like these, there's a lot to decide on and a lot  
13 to think about. And I certainly am not unsympathetic to the  
14 difficulty of those decisions. Good luck to you sir.

15                   MR. GREEN: Thank you for your patience, Your Honor.

16                   THE COURT: Certainly. Good luck to you.

17                   MR. GREEN: Thank you.

18                   THE COURT: Thank you Mr. Freyre.

19                   MR. FREYRE: Thank you.

20                   MS. LOMBARDI: Thank you Judge, I'm sorry.

21                   THE COURT: Thanks, not a problem.

22                   MR. FREYRE: Thank you for your patience, Judge, I  
23 appreciate it.

24                   THE COURT: Sorry that was---oh yeah, no, sorry that  
25 went on forever, but.

1 MS. LOMBARDI: Sorry we made you late.

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## CERTIFICATE

3 I, Dawn Heaton, certify that I transcribed this record  
4 from the digital recording of the above-entitled matter, which  
5 was heard on November 17, 2011, before JUDGE EDWARD BRONFIN in  
6 Division 5B of the Denver District Court.

8 I further certify that the aforementioned transcript is  
9 a complete and accurate transcript of the FTR proceedings based  
10 upon the audio facilities of these CD's and my ability to  
11 understand them. Inaudibles are due to microphones not working  
12 properly, excessive noises or muffled voices.

Dawn Heaton

Dawn Heaton

<p>COLORADO SUPREME COURT 2 East 14<sup>th</sup> Ave Denver, CO 80203</p> <p>Lower Court: Denver District Court City and County Lower Court Judge: Candice C Gerdes Lower Court Case No.:11CR2449/11CR2366</p>		<p>FILED IN THE SUPREME COURT</p> <p>JUN 13 2018</p> <p>OF THE STATE OF COLORADO Cheryl L. Stevens, Clerk</p>
<p><b>In re: People v Green</b> Petitioner, <b>KENNTH GREEN</b> v. Respondent.</p> <p><b>Second Judicial District Court City and County of Denver, Colorado</b></p>		<p>▲COURT USE ONLY▲</p>
<p>Party Without Attorney Kenneth Green 156969 21000 Hwy 350 East Model, Colorado 81059</p>		<p>Case No: 18 SA 146</p>

#### **PETITION FOR RULE TO SHOW CAUSE**

Kenneth Green, Petitioner, hereafter “*Green or Petitioner*” submits this petition under C.A.R. 21 requesting Court issue to the Second Judicial District Court City and County Denver, Colorado hereafter “*Respondent or District Court*” a Rule to Show Cause why it is not ruling on a request to grant a stay of probation pursuant C.A.R. 8.1 and C.R.S. 18-1.3-201 -202 which authorizes district court an exception to jurisdictional divestment of the Court of Appeals.

**IN SUPPORT** of this petition Kenneth Green states

#### **I. PARTIES**

**Petitioner:**

Kenneth Green, unrepresented inmate at Trinidad Correctional Facility 21000 Hwy 350 East Model, Colorado 81059.

**Respondent:**

Second Judicial District Court City and County of Denver, Colorado 520 West Colfax Ave Denver, Colorado 80204.

#### **II. RELIEF SOUGHT**

1. Petitioner seeks a rule to show cause directed at the Respondent by reason, he is entitled to immediate relief pursuant section C.A.R. 8.1(a) (4), and 9; 18-1.3-201(1)(a) C.R.S., which allow defendant the right to stay probation upon request when he “raises a claim that probation was granted contrary to the provisions of this [probationary power of court]”. *Id*

### III. ACT COMPLAINED OF

2. Relief sought in this original proceeding is against District Court and against the Honorable Kandace C. Gerdes Court Judge, who issued the order(s) described below.
3. The ruling complained of is December 8, 2017, order of Judge Gerdes when she failed to act upon Petitioner's "MOTION FOR STAY OF PROBATION", and ruled "take no action" contrary to statute, state an federal constitution by finding "it does not have jurisdiction" and "cannot grant relief" for request of a stay of probation while in appellant review in which petitioner is appealing the legality of probation depriving him of a statutory right under C.A.R. 8.1 (a)(4) and C.R.S. 18-1.3-202(1)(a).

### IV. NO OTHER RELIEF AVAILABLE

1. No other adequate remedy is available by reason Petitioner is in the appellate review 2017CA1385, appealing final decision of district court in which he alleges the imposition of probation and state incarceration in the same conviction is illegal.
2. Petitioner has no plain, speedy, and adequate remedy available in this case, '*but for*' the action of Respondent by its inaction which is harming him by not allowing him to apply to community corrections while incarcerated thus, depriving him of liberty interest *inter alia*.
3. Petitioner has no other relief available, he cannot force Respondent to obey state law. Nor can he appeal this decision under section 16-12-101 C.R.S., by reason, he is appealing the case. Moreover, court rule does not allow him to pursue simultaneous appeal of the same case.

### V. PUBLIC IMPORTANCE

1. As stated above a stay of probation is grant by statute upon request,
  - a. "(1)(a) ... If the court chooses to grant the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if *any appeal is brought, shall remain in effect pending review by an appellate court unless the court grants a stay of probation* pursuant to section 16-4-201. *Unless an appeal is filed that raises a claim that probation was granted contrary to the provisions of this title*, the trial court shall retain jurisdiction of the case for the purpose of adjudicating complaints filed against the defendant that allege a violation of the terms and conditions of probation." (Emphasis added). C.R.S. 18-1.3-202.
  - b. Additionally, C.R.S. 8.1(a) (4) provide in pertinent part,  
"Probation. An order placing the defendant on probation shall remain in effect pending review by an appellate court unless *the court grants a stay of probation*." (Emphasis added).
2. Here, Petitioner moved Crim. P. 35 (a) motion, alleging that probation is illegal and court denied motion, he sought appellate review, and reviewing court accept appeal. He then moved a "MOTION FOR STAY OF PROBATION". The statutory basis for such a stay is C.R.S. 18-1.3-202(a) (1), and C.A.R. 8.1(a) (4). *Infra*.

3. As a reading of these statute reveals filing of a notice of appeal is a prerequisite for requesting a stay.
  - a. As it applies to defendant, C.A.R. 8.1(a)(4) provides, in pertinent part, that when a notice of appeal is filed: "an order placing the defendant on probation shall be stayed . . ." The rule was modeled after and is similar to a former version of Fed. R. Crim. P. 38(a)(4). In 1972, Fed. R. Crim. P. 38(a) (4) was amended to exclude the mandatory language and now provides that the trial court "may" stay probation if an appeal is taken. *Id*
4. Trial court stating that it does not have jurisdiction is incongruent to the above statute(s), authority and clearly in error.
5. Petitioner, and the public at large will suffer irreparable harm if this Court declines to intervene by embolden district court to continue to disregard the statutory rights of defendants that appear and deprive inmates any fairness.

## **VI. SETTLED ISSUES**

1. Relief sought is not a ruling of law that would affect other cases of courts. *Cf People v. Martinez*, 22 P.3d 915 (Colo. 2001). Simply, it is the request of enforcement of settled court rules and statute that lower court refuse to adhere and that the petitioner is entitled.

## **VII. ISSUES PRESENTED**

### **A. Petitioner Is Entitled To A Stay of Probation Upon Request Pursuant State Law, Court Rule, And Authority.**

#### **i. Statement of Facts.**

1. On March 31, 2017 Petitioner move a written motion for post-conviction relief alleging *inter alia*, that district court's imposition of probation and state incarceration in the same conviction as separate counts results in illegal sentence additionally he moved a supplement on April 10, 2017. Furthermore, pursuant C.R.S. 18-1.3-101 he did not apply for or consent to probation. See *People v Green* 11CR2449/11CR2366 (unpublished).
2. Subsequently, on July 23, 2017, district court denied motion. See *People v Green*, (ORDER RE: Crim. P. 35(a) MOTION) 11CR2449/11CR2366 (unpublished).
3. On December 8, 2017, he moved an "APPLICATION FOR STAY AND BAIL PENDING APPEAL" in district court. (See Appendix A p. 8).
4. On same day district court order "NO ACTION TAKEN" citing,
  - a. "This case is currently on appeal in 17CA1385.  
When an appeal has been perfected, the trial court is divested of jurisdiction to issue any further orders in a cases. *People v. Stewart*, 55 P.3d 107, 126 (Colo.2002); *People v. Jones*, 631 P.2d 1132, 1133 (Colo. 1981).

Therefore, this Court finds that it **lacks jurisdiction** to consider the relief requested in Defendant's Motion. Accordingly, the Court takes NO ACTION." (Emphasis added). (See Appendix A pp. 6-7).

## ii. Legal Analysis.

1. Trial Court held, "[I]t lacks jurisdiction to consider the relief requested ..." Id
2. As a general rule, when an appeal has been perfected, the trial court is divested of jurisdiction to issue any further orders in the case. *Brooke v. People*, 139 Colo. 388, 339 P.2d 993 (1959). However, there are recognized exceptions to this general rule. One such exception is that a trial court retains jurisdiction over proceedings that are either authorized by statute or rule or do not involve a challenge to the propriety of the judgment on appeal. See, e.g., *In re Marriage of McCue*, 645 P.2d 854 (Colo. App. 1982) (recognizing that the trial court is not precluded from enforcing its judgment, even though an appeal is pending); see also *Johnson v. District Court*, 674 P.2d 952 (Colo. 1984) (recognizing that policy considerations and analytical framework in civil context are sometimes persuasive and instructive in criminal context).
3. Absent a stay of the probation, the trial court retains jurisdiction to modify and terminate probation. To deny the trial court jurisdiction to enforce its orders without a limited remand would, in effect, either suspend the statutes and the rules associated with probation or unduly complicate their enforcement. Thus, the COA held that the trial court continued to retain jurisdiction to enforce its probation order in the same manner as if no appeal had been filed. *People v. Widhalm*, 991 P.2d 291 (citations omitted).

However, C.A.R. 8.1(a) (4) has been amended so as to remove the automatic stay. The rule presently provides that

An order placing the defendant on probation shall remain in effect pending review by an appellate court unless the *court grants a stay of probation*. (Emphasis added) Similarly, 16-11-202(1), C.R.S. 1998, provides: If the court chooses to grant the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if any appeal is brought, shall remain in effect pending review by an appellate court unless the *court grants a stay of probation* pursuant to section 16-4-201. (Emphasis added).

4. As mentioned above, the court "does" have jurisdiction to grant a stay authorized under C.A.R. 8.1(a) (4) and 18-1.3-202 C.R.S.
5. However, under the plain language of section 18-1.3-202, only an order *placing* a defendant on probation takes effect upon entry. Similarly, under the current version of C.A.R. 8.1(a)(4), an order "placing the defendant on probation" remains in effect pending appellate review. "Placing" the defendant on probation means to put the defendant into that "particular state or condition."

6. Therefore Petitioner is entitled to stay because he is currently on probation and he is appeal the imposition of probation as illegal. Furthermore, he has met the prerequisite for a stay.

### CONCLUSION

Under statute and settled law Petitioner is entitled to a stay and at best district court should have ruled on the motion, by simply taking no action deprives him of due process and additional harm by not allowing him to proceed through CDOC to a community corrections facility, *but for*, probation. This inaction is depriving Petitioner of a liberty interest. See U.S. const., IVX amend.

Completed on this 21 day of May 2018.

Respectfully Submitted,



Petitioner Kenneth Green  
21000 Hwy 350 East  
Model, Colorado 81059

### APPENDIX A

	Pg#
District Court Case number 2011CR2366	
Order: Motion for stay of probation (security verified 12/08/17).....	6
District Court Case number 2011CR2449	
Order: Motion for stay of probation.....	7
Motion for Stay of Probation.....	8

Colorado Court of Appeals  
2 East 14th Avenue  
Denver, CO 80203

DATE FILED: July 20, 2018

Denver District Court  
2011CR2366  
Denver District Court  
2011CR2449

Plaintiff-Appellee:

The People of the State of Colorado,

v.

Defendant-Appellant:

Kenneth Green.

△ COURT USE ONLY △

Case Number:  
2017CA1385

**Order- Stay of Appeal**

**DENIED.**

Issue      7/20/2018

BY THE COURT

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 14, 2018
Original Proceeding, District Court, Denver County, 2011CR2449 & 11CR2366	
<b>In Re:</b>	
<b>Plaintiff:</b>	Supreme Court Case No: 2018SA146
The People of the State of Colorado,	
v.	
<b>Defendant:</b>	
Kenneth Green.	
ORDER OF COURT	

Upon consideration of the Request for In Forma Pauperis 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,

GRANTED.

BY THE COURT, JUNE 14, 2018.

In the Supreme Court of the United States

KENNETH GREEN,

*Petitioner(s)*

v.

THE STATE OF COLORADO,

*Respondent(s)*

On Petition for Writ Of Certiorari to  
the State of Colorado Supreme Court

PROOF OF SERVICE

I, Kenneth Green, do swear or declare that on this date, 9/5, 2018, as required by Supreme Court Rule 29 I have served the enclosed On Petition for Writ Of Certiorari to the State of Colorado Supreme Court Application For Stay, Bail And Bond Pending Final Decision Of The United States Supreme Court Of Writ Of Certiorari To The Supreme Court Of Colorado Pursuant Supreme Court Rule 23.3 PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Office Of The Clerk  
Supreme Court of The United States  
Washington, D. C. 20543

Cynthia Coffman  
Attorney General Of The State Of Colorado  
1300 Broadway St 10 Floor  
Denver, Colorado 80204

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/5/, 2018

*[Signature]*  
/s/ \_\_\_\_\_  
Petitioner, Kenneth Green 156969  
21000 Hwy 350 East  
Model, CO 81059